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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 550, and 591

RIN 3206–AF38

Pay Administration (General); Lump-Sum Payments for Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations to establish a uniform Governmentwide policy for calculating lump-sum payments for accumulated and accrued annual leave for employees who separate from the Federal service.

EFFECTIVE DATE: September 7, 1999.

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

SUPPLEMENTARY INFORMATION: The Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992) added section 5553 to title 5, United States Code, to give the Office of Personnel Management (OPM) regulatory authority for the administration of lump-sum payments for accumulated and accrued annual leave. Under 5 U.S.C. 5551 and 5552, an agency must make a lump-sum payment for annual leave when an employee separates from the Federal service or enters on active duty in the armed forces and elects to receive a lump-sum payment. The lump-sum payment must equal the pay the employee would have received had he or she remained employed until expiration of the period of annual leave. Section 6306 of title 5, United States Code, provides that when an employee is reemployed in the Federal service prior to the expiration of the period of annual leave (i.e., the lump-sum leave period), he or she must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. An agency must recredit to the employee an amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

OPM acknowledges that some of these regulatory provisions involve items not expressly provided for by statute. However, OPM would emphasize in this regard that an administrative agency may determine matters within its expertise that have not been specifically addressed by statute. Indeed, administrative agencies formulate policy and make appropriate rules as needed to carry out their regulatory responsibilities consistent with statutory authority. *See Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 843 (1984) and *United States* v. *Grimaud,* 220 U.S. 506, 517 (1911), as cited in Davis, K., *Administrative Law Treatise, Third Edition,* § 2.6, pp. 70–71. The construction of a statute by those charged with its administration is entitled to great deference, particularly when that interpretation has been followed over a long period of time. *United States* v. *Clark, 454 U.S. 555, 565 (1982) and Rosete* v. *OPM, 48 F.3d 514, 518-519 (Fed. Cir. 1995).*

On July 29, 1997, OPM published proposed regulations (62 FR 40475) to establish a Governmentwide policy for calculating lump-sum payments for accumulated and accrued annual leave for employees who separate from Federal service. OPM received comments from 7 agencies, 1 labor organization, 1 employee association, and 4 individuals, for a total of 13 comments. The majority of the agencies and the labor organization agreed that regulations are needed to provide consistency throughout the Federal Government. The labor organization stated that the development of one set of rules will ensure that employees are aware of the lump-sum payment policy and are familiar with their rights to receive payment for unused annual leave when they separate from the Federal service. The labor organization further stated that the adoption of one Governmentwide policy eliminates inequities that necessarily result from agency-specific policies. A summary of the comments received and the changes made in the regulations is presented below.

Employees Eligible for a Lump-Sum Payment

The proposed regulations stated that an agency must not make a lump-sum payment for accumulated or accrued annual leave to an employee whom the agency determines to be in a continuing employment program under which the employee is required to work a mixed tour of duty (i.e., the employee works full-time or part-time for a limited portion of the year and intermittently for the remainder). Since an employee working intermittent duty cannot accrue or use leave, the proposed regulations required the agency to hold any accrued leave in abeyance during the time the employee is working intermittent duty and to recredit the annual leave when the employee returns without a break in service to full-time or part-time employment. In addition, the proposed regulations required the agency to hold in abeyance any of the employee's fractional pay periods for leave accrual purposes and recredit the pro-rata leave as provided in § 630.204 when the employee returns to full-time or part-time employment.

One agency recommended that the final regulations allow each agency the discretion to determine whether to pay a lump-sum payment for annual leave when an employee changes to intermittent duty or to hold the employee's accrued annual leave in abeyance until he or she returns to a part-time or full-time position. The agency disagrees with the proposed regulations and believes that requiring an agency to hold leave in abeyance results in additional leave being available for use during periods of part-time and full-time employment when the agency needs its employees at work the most. The agency believes mission requirements, staffing needs, and sources of available funds vary greatly from one organization to another and that applying the same rule universally may have a negative financial impact on one or more agencies or organizations. In addition, the agency stated that the proposed rule would eliminate the financial cushion (i.e., lump-sum payment) that many employees working mixed tours of duty have become

accustomed to receiving during non-work periods.

Another agency commented on the administrative burden of paying lump-sum payments during short periods of intermittent work. The agency requested approval to hold accrued annual leave in abeyance so that an employee would have annual leave available at the beginning of his or her part-time or full-time employment. Under this approach, an employee also would not lose any fractional hours of creditable service for purposes of leave accrual when the employee's tour changes to intermittent.

Upon further review, we believe it would be in the best interest of the Government to permit more flexibility. Therefore, § 550.1203(i) of the final regulations permits each agency to prescribe its own policy for paying lump-sum payments for employees on mixed tours of duty. Each agency's policy must ensure that employees are treated in a fair and equitable manner. In developing its policy, we encourage each agency to consider the likelihood that an employee will return to work, as well as the agency's mission requirements and staffing needs.

An agency requested clarification as to whether an employee on a mixed tour of duty is entitled to continue to accrue leave on a prorated basis during periods of intermittent employment. If an employee is assigned intermittent duty and does not have an established regular tour of duty each week, he or she cannot accrue or use leave during the intermittent period. (See 5 U.S.C. 6301(2).)

A commenter requested clarification about entitlement to a lump-sum payment when an employee who had annual leave restored under 5 U.S.C. 6304(d)(3) transfers to a component of the Department of Defense (DOD) that is not undergoing closure or realignment. Section 1611 of Pub. L. 104–201 (September 23, 1996), added paragraph (c) to 5 U.S.C. 5551 to require DOD to pay a lump-sum payment to an employee for any unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when the employee (1) transfers to a position in any other department or agency of the Federal Government or (2) moves to a position within DOD not located at an installation undergoing closure or realignment. The entitlement to a lump-sum payment for affected DOD employees became effective on September 23, 1996, and applies only to employees transferring from a DOD component undergoing closure or realignment at the time of transfer. Further questions on this provision should be directed to DOD's Civilian Personnel Management Service, Field Advisory Services, 1400 Key Boulevard, Arlington, VA 22209–5144 (telephone: (703) 696–6301).

The proposed regulations stated that when an employee enters active duty, any annual leave previously restored under 5 U.S.C. 6304(d) may not remain to the employee's credit and may be paid in a lump-sum payment. An agency commented that this statement is confusing, since 5 U.S.C. 6304(d)(2) requires an agency to make a lump-sum payment for restored annual leave when an employee enters on active duty. We agree and have revised § 550.1203(c) of the final regulations to require an agency to make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when an employee enters active duty. The agency may not recredit the restored leave when the employee returns to Federal service.

Employees Not Eligible for a Lump-Sum Payment

Under the proposed regulations, if an employee transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code (e.g., a position in the U.S. Postal Service), and only a portion of his or her accumulated and accrued annual leave may be transferred, the losing agency would hold in abeyance the annual leave that could not be transferred. The agency would then recredit the annual leave that had been held in abeyance once the employee is reemployed without a break in service in a position to which his or her accumulated and accrued annual leave may be transferred. An agency suggested that OPM seek a statutory change in 5 U.S.C. 5551 to allow for the immediate lump-sum payment of any annual leave in excess of the amount accepted by the gaining agency (e.g., the U.S. Postal Service). The agency believes this change would preclude the need for establishing and tracking a separate leave account for non-transferrable leave and result in quicker settlement of the matter for the employee. The agency stated that this change would, in effect, be identical to the lump-sum payment provisions in 5 U.S.C. 5551(c) for employees affected by base realignment or closure (Pub. L. 104–201).

We agree with the substance of the agency's recommendation, but have determined that this can be accomplished by regulation rather than legislation. Therefore, § 550.1203(f) of the final regulations provides that when an employee transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, the losing agency must make a lump-sum payment under § 550.1205 for the amount of annual leave that cannot be transferred to the gaining agency. This does not apply to an employee transferring to an excepted position under 5 U.S.C. 6301(2)(x)–(xiii), (e.g., a member of the Senior Executive Service who accepts a Presidential appointment).

Under the proposed regulations, an employee who was concurrently employed in more than one part-time position in more than one agency, and who separated from one of the part-time positions, would have had the annual leave that accrued in the agency from which he or she separated transferred to the current employing agency. An agency recommended that the agency pay a lump-sum payment to an employee who separates from any of the part-time appointments. The agency believes the annual leave should not be transferred because (1) such transfer would place a financial burden on the gaining agency in terms of a future lump-sum payment if the employee later separates from Federal service, (2) the employee would receive an unintended increase or loss in the value of annual leave if the multiple part-time appointments are at different grades or levels, and (3) the employee may be absent for extended periods in the gaining agency and/or may be forced to forfeit annual leave in excess of the maximum annual leave limitation.

We agree that these are all important factors for employees to consider when separating from a part-time position. However, the law provides that an employee is entitled to a lump-sum payment only when he or she separates from Federal service (or goes on military duty) or when unused annual leave cannot be transferred or credited at a gaining agency. Since an employee who is employed in a second part-time position is not separated from Federal service and could have his or her accumulated annual leave transferred to a gaining agency, he or she is not entitled to a lump-sum payment. Therefore, OPM made no changes in § 550.1203(h)(4) of the final regulations.

Projecting the Lump-Sum Leave Period

An agency asked whether ''use or lose'' or restored annual leave should be included in the projected lump-sum leave period if the leave is scheduled to be forfeited within a few days after separation. The answer is yes. Under 5 U.S.C. 5551, an employee is entitled to receive a lump-sum payment for accumulated and currently accrued annual leave to which an employee is entitled by statute on the date of

separation. This includes all ''use or lose'' and restored annual leave to the employee's credit on the date of separation. Annual leave that has not yet been forfeited must be included in a lump-sum payment.

The proposed regulations required an agency to project the lump-sum leave period so that annual leave restored under 5 U.S.C. 6304(d) in a separate leave account must be used before using any accumulated annual leave in the employee's regular annual leave account. This was done so that if an employee returned to Federal service prior to the expiration of the lump-sum leave period, the restored annual leave would have already been used and would not be recredited to the employee. We have revised the proposed regulations on recrediting annual leave so that there is no longer any requirement to identify restored annual leave and recredit it upon reemployment. Therefore, § 550.1204(c) of the final regulations does not require agencies to project the lump-sum leave period so that restored annual leave is used before using regular annual leave.

Section 550.1204(a) of the final regulations states that the period of leave used for calculating the lump-sum payment may not be extended by compensatory time off earned under 5 U.S.C. 5543 and §§ 550.114(d) or 551.531 or by credit hours accumulated under an alternative work schedule under 5 U.S.C. 6126. The employee association expressed concern that agencies may misinterpret this regulation to mean that they do not have to pay a separating employee for any earned compensatory time off or credit hours. Section 550.1204(a) merely ensures that compensatory time off and credit hours, which are not types of leave under chapter 63 of title 5, United States Code, are not identified and included in the calculation of a lump-sum payment for annual leave. Since agencies are responsible for ensuring that compensatory time off and credit hours (credit hours not in excess of 24 hours) remaining to an employee's credit at the time of separation are paid separately as part of a final salary payment under existing law and regulations, we do not believe any change is necessary. (See §§ 550.114(d) and 551.531(d) and 5 U.S.C. 6126.)

Pay Received Prior to Separation

Throughout the regulations, we use the phrases ''immediately prior to separation, death, or transfer'' and ''immediately prior to the date the employee becomes/became eligible for a lump-sum payment under § 550.1203'' interchangeably. An agency recommended that OPM consistently use the phrase ''immediately prior to the date the employee becomes/became eligible for a lump-sum payment under § 550.1203'' throughout the regulations. The agency believes this change would eliminate any confusion and ensure coverage of all intended employees, including those who choose to receive a lump-sum payment upon entering active duty in the armed forces. We agree and have modified the final regulations as suggested.

Calculating the Lump-Sum Payment

Under 5 U.S.C. 5551, a lump-sum payment must equal the pay an employee would have received had he or she remained in Federal service until expiration of the period of annual leave (excluding any differential under section 5925 and any allowance under section 5928). The term ''pay'' is not further defined in law. In the final regulations, we have interpreted this term to mean the pay the employee would have received on a biweekly basis had he or she remained in Federal service on annual leave. For example, an employee's rate of basic pay, any applicable locality payment, and availability pay for law enforcement officers (where applicable) are included in a lump-sum payment, while hazardous duty pay, environmental differentials, and Sunday premium pay are excluded. Also excluded are allowances that are paid in addition to a rate of basic pay for the sole purpose of encouraging an employee to remain in Government service, such as retention allowances and physicians comparability allowances.

Under § 550.1205(a) of the final regulations, an agency calculates a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the employee's applicable hourly rate of pay, including the types of pay listed in § 550.1205(b). An algebraically equivalent method that an agency may also use is to multiply the weeks of annual leave by the employee's applicable weekly rate of pay.

One agency believes the phrase ''including types of pay'' could be misconstrued and recommended it be changed to ''plus other applicable types of pay'' so as to limit the additional types of pay to those applicable to the employee. To clarify our intent, we have revised § 550.1205(a) to state that a lump-sum payment must be calculated by multiplying the number of hours of accumulated and accrued annual leave by the applicable hourly rate of pay, including other applicable types of pay listed in § 550.1205(b).

For an employee on an uncommon tour of duty (as defined in § 630.201), an agency may choose to calculate the lump-sum payment based on the applicable weekly rate and convert the annual leave balance to a 40-hour workweek basis. For example, to determine the number of weeks to use in computing a lump-sum payment for an employee who normally works an uncommon tour of duty of 72 hours each week, the agency may convert the employee's annual leave balance from a 72-hour workweek basis to a 40-hour workweek basis by multiplying the total hours of annual leave by the fraction 40/72 and dividing the result by 40.

The proposed regulations listed the types of basic pay that must be included in a lump-sum payment. An agency suggested that OPM include a retained rate authorized under 5 U.S.C. 5363 and 5 CFR part 536, subpart B, in the list. We agree and have added a retained rate of pay to the list in § 550.1205(b)(1)(i). In addition, we have added supervisory differentials paid under 5 U.S.C. 5755 to the list of the types of pay to be included in a lump-sum payment, since an employee who was receiving such a differential would have received supervisory differential payments on a biweekly basis had he or she remained in Federal service on annual leave. (See § 550.1205(b)(7).)

General Pay Adjustments

The proposed regulations stated that in the case of a Federal Wage System (FWS) employee, a lump-sum payment must include the rate of pay established under 5 U.S.C. 5343. In addition, such an employee would receive any applicable adjustments in prevailing rates that become effective during the lump-sum leave period if the employee separated after issuance of an official order to conduct a wage survey for his or her applicable wage area. The lump-sum payment would be adjusted to reflect the increased prevailing rate beginning on the effective date of the rate adjustment. Since a prevailing rate employee who separated from Federal service prior to the issuance of an official order to conduct a wage survey in his or her applicable wage area would not be entitled to the FWS pay adjustment in that wage area for that year, we proposed that the FWS pay adjustment should not be included in the employee's lump-sum payment for annual leave.

An agency recommended that prevailing rate employees be treated the same as General Schedule employees under § 550.1205(b)(2). Only those pay adjustments approved before the date of separation must be included in a lump-

sum payment. The agency noted that because FWS surveys are ordered 9 weeks before the survey results take effect, the agency would have to establish temporary payroll files whenever a retroactive recomputation of a lump-sum payment would be necessary.

We agree that the proposed regulations were unnecessarily complicated with respect to inclusion of pay adjustments after separation and would have caused administrative burdens for the agencies, including the need for additional individual calculations of lump-sum payments. Because of the concerns we received from agencies about the complexity in determining an employee's entitlement to a pay adjustment in his or her lump-sum payment after the employee separates from Federal service, we have simplified the final regulations. Section 550.1205(b)(2) and (3) provide that lump-sum payments for all covered Federal employees must include any general pay adjustment and locality pay adjustment that becomes effective during the employee's lump-sum leave period. The lump-sum leave period is the employee's annual leave projected forward for all workdays the employee would have worked if he or she had remained in Federal service, including holidays (even though they are typically nonworkdays) as required by 5 U.S.C. 5551(a), until the expiration of the employee's accumulated and accrued annual leave. The lump-sum payment will be adjusted to reflect the increased rate on and after the effective date of the pay schedule adjustment. We do not believe these changes to simplify the calculation of lump-sum payments will significantly increase costs for Federal agencies, since many employees separate after the official approval or authorization of a pay adjustment and/or do not have large amounts of accumulated and accrued annual leave that extend beyond the effective date of a pay adjustment.

Night Differential and Night Pay

Under § 550.1205(b)(5)(i) of the final regulations, a lump-sum payment includes a night differential under 5 U.S.C. 5343(f) for regularly scheduled nonovertime hours at the percentage rate received by a prevailing rate employee for the last full workweek immediately prior to the date the employee becomes eligible for a lump-sum payment. An agency recommended that the night differential be based on the average received during a 12-week period, since a single week could reflect an unusual or anomalous situation. Under 5 U.S.C. 5343(f), a night differential for a prevailing rate employee is considered part of basic pay and is included in all regularly scheduled nonovertime periods of night shift duty, including periods of paid leave. The language in OPM's proposed regulations was adopted from the Federal Wage System (FWS) Operating Manual. The FWS Operating Manual comprises long-standing policies, practices, and recommendations adopted by the Federal Prevailing Rate Advisory Committee, a labor and management committee that reports to the Director of OPM. The FWS Operating Manual states that a night shift differential is included in a lump-sum payment and is paid at the percentage rate received by the employee for the last full workweek immediately prior to separation. Therefore, OPM made no changes in § 550.1205(b)(5)(i).

The proposed regulations provided that a lump-sum payment includes night pay under 5 U.S.C. 5545 for regularly scheduled nonovertime hours based on the average amount of night pay received by a General Schedule (GS) employee during the 12 workweeks immediately prior to the date the employee becomes eligible for a lump-sum payment. Two agencies objected to including night pay in a lump-sum payment, since night pay is not considered part of basic pay for GS employees. In addition, the agencies noted that 5 U.S.C. 5545(a)(2) prohibits the payment of night pay for any hours of leave between 6 a.m. and 6 p.m. whenever the total amount of leave in the pay period equals or exceeds 8 hours. The agencies believe the proposed regulations would result in an employee receiving more than he or she would have received had he or she remained in Federal service. One agency objected to the requirement for 12-week averaging, since such a requirement would force timekeepers to compute an average amount of night pay manually. The same agency recommended that OPM treat night pay for GS employees the same as night differentials for prevailing rate employees by calculating the amount of night pay to be included in a lump-sum payment based on the rate the employee received for regularly scheduled nonovertime hours in the workweek immediately prior to becoming eligible for a lump-sum payment.

We agree that night pay is not part of basic pay for GS employees and that the proposed regulations would have provided such employees with a greater benefit than they would have received if they had remained in Federal service. Therefore, the final regulations do not include night pay for GS employees among the types of pay that must be included in a lump-sum payment.

Sunday Premium Pay

The proposed regulations provided that a lump-sum payment includes Sunday premium pay for nonovertime hours on Sunday based on the average amount of Sunday premium pay received by the employee during the 12 workweeks immediately prior to the date the employee became eligible for a lump-sum payment. An agency recommended that Sunday premium pay be excluded from a lump-sum payment because it is not considered part of basic pay for retirement purposes. Two agencies recommended that the amount of Sunday premium pay included in a lump-sum payment be based solely on the employee's workweek immediately prior to eligibility for a lump-sum payment. Another agency added that if OPM wishes to use an average amount received during a 12-week period, the computation should be based on the average number of hours worked on Sunday rather than on the amount of Sunday premium pay received. The agency noted that the actual amount of Sunday premium pay received during an earlier work period could have been paid at a lower rate if, for example, an employee received a within-grade increase or promotion during the latter part of the 12-week period.

Section 636 of the Treasury and General Government Appropriations Act, 1998 (Pub. L. 105–61, October 10, 1997), permanently restricts the payment of Sunday premium pay for all employees Governmentwide who are paid from appropriated funds and who do not actually perform work on Sunday. In addition, section 624 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, October 21, 1998), expanded the permanent restriction on the payment of Sunday premium pay to cover employees who are paid from any Act (including payments from revolving funds). Consistent with these laws, we removed Sunday premium pay from the types of pay that must be included in a lump-sum payment.

Overtime Pay

Under the proposed regulations, a lump-sum payment included overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for overtime work that is regularly scheduled during an employee's established uncommon tour of duty (as defined in § 630.201 and established under § 630.210) for which the

employee receives standby duty pay under 5 U.S.C. 5545(c)(1) if the uncommon tour of duty was applicable to the employee immediately prior to the date the employee became eligible for a lump-sum payment. The lump-sum payment included the amount of FLSA overtime pay for regularly scheduled overtime work ordered or approved at the time the employee became eligible for a lump-sum payment. (This provision applied to most firefighters and some emergency medical technicians.)

On June 18, 1997, OPM issued an Interagency Advisory Group Memorandum that encouraged agencies to include in a lump-sum payment all FLSA overtime pay for overtime hours that are regularly scheduled during an employee's established uncommon tour of duty if the uncommon tour of duty was in effect for the employee immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. OPM based this advice on the results of two lawsuits—*James Calhoun* v. *The United States* (Fed. Cl. No. 95–840C, December 21, 1995) and *Theodore Abbott, et al.,* v. *The United States* (Fed. Cl. No. 90–756C, January 31, 1994). In these cases, the Federal Government conceded that FLSA overtime pay for regularly scheduled overtime hours that occur during an uncommon tour of duty must be included in an employee's lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551.

Two agencies disagreed with the inclusion of FLSA overtime pay in a lump-sum payment. One suggested that hours of work that are used for the purpose of determining entitlement to FLSA overtime pay should not be used for determining entitlement to other payments under title 5, United States Code. The other agency believes such inclusion would be contrary to the intent of Congress' prohibition on the payment of premium pay during periods of paid leave. An employee association agreed with the inclusion of FLSA overtime pay, but suggested that the amount be based on the average number of hours worked during the preceding 12 weeks.

On October 21, 1998, legislation was enacted that changes the method of computing basic pay, overtime pay, and other entitlements for Federal firefighters who are classified in the GS–081 classification series (Fire Protection and Prevention) and who have regular tours of duty averaging at least 53 hours per week (or 106 hours biweekly). (See section 628 of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Pub. L. 105–277, October 21, 1998.) The new law eliminates the use of standby duty pay for firefighters and provides that firefighters are paid solely on an hourly rate basis using a special ''firefighter hourly rate.'' Both FLSA-covered (nonexempt) and FLSA-exempt firefighters will receive time-and-one-half overtime pay for all overtime hours—i.e., hours in excess of 53 hours per week (or 106 hours biweekly).

On November 23, 1998, OPM issued interim regulations (63 FR 64589) that included a revised definition of ''uncommon tour of duty'' in § 630.201(b)(2) to incorporate a reference to firefighters compensated under the new law. Also, a new paragraph (c) was added to § 630.210 to require that agencies establish an uncommon tour of duty for leave purposes for firefighters with regular tours of duty that generally consist of 24-hour shifts. An agency may also establish an uncommon tour of duty under § 630.210(a) for leave purposes for firefighters with a regular tour of duty that includes a basic 40-hour workweek, plus regularly scheduled overtime hours. Existing regulations (§ 550.1306(c)) require that in computing a lump-sum payment for firefighters with an uncommon tour of duty established under § 630.210 for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

As a result of these changes, a new paragraph (iv) has been added to § 550.1205(b)(5) of the final regulations to provide that overtime pay for overtime hours within a firefighter's regular tour of duty is used in computing a lump-sum payment for annual leave, since those overtime hours are part of an uncommon tour of duty established under § 630.210 for leave purposes. Section 550.1205(b)(6) continues to apply to an employee who receives FLSA overtime pay for overtime work that is regularly scheduled during an established uncommon tour of duty as defined in § 630.201(b)(1), for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1) (e.g., emergency medical technicians).

We believe the amount of overtime pay to be included in a lump-sum payment should reflect the amount the employee would have received had he or she remained employed in the Federal service. In addition, it is not our intent to require agencies to establish new methodologies for calculating overtime pay for lump-sum payment purposes. Therefore, in response to agency comments that overtime pay in a lump-sum payment for firefighters should be limited to the normal amount of overtime work performed in each pay period—i.e., after meeting the overtime weekly standard of 53 hours (or 106 hours biweekly), we have added a sentence to §§ 550.1205(b)(5)(iv) and 550.1205(b)(6) of the final regulations to state that a lump-sum payment must be calculated using the same methodology used by the employing agency to calculate the firefighter's entitlement to regular overtime pay for the pay period immediately prior to the date the firefighter became eligible for a lump-sum payment. Therefore, if an agency calculates overtime on a biweekly basis, the amount of overtime pay to be included in a lump-sum payment will be determined after the employee meets the overtime standard of 106 hours each biweekly pay period. If an agency calculates overtime pay on a weekly basis, the amount of overtime pay to be included in a lump-sum payment will be determined after the employee meets the overtime standard of 53 hours each week.

Sample Calculation

The following example shows how an agency should calculate the overtime pay component of a lump-sum payment for a firefighter with an uncommon tour of duty established under § 630.210(c). In the example, a firefighter who normally works 144 hours each pay period (three 24-hour tours of duty in each administrative workweek) separates at the end of a pay period with 400 hours of accumulated and accrued annual leave. The firefighter receives a ''firefighter hourly rate'' (as established in 5 CFR 550.1303) for all 400 hours of annual leave, plus ½ of the ''firefighter hourly rate'' for all overtime hours in the employee's uncommon tour of duty. The agency determines the firefighter's entitlement to overtime pay based on a 106-hour biweekly overtime standard. Thus, in each full 144-hour biweekly pay period, the firefighter is entitled to overtime pay for 38 regularly scheduled overtime hours (144 − 106 = 38) within his or her uncommon tour of duty.

EXAMPLE OF LUMP-SUM PAYMENT FOR A FIREFIGHTER

Projecting the lump-sum leave period for 400 hours of annual leave.	Pay Period 1=144 hours ... Annual leave remaining: 256 hours. (400–144=256)	Pay Period 2=144 hours ... Annual leave remaining: 112 hours. (256–144=112)	Pay Period 3=112 hours ... Annual leave remaining: ... 0 hours ..... (112–112=0)	Total=400 hours of annual leave.
Firefighter hourly rate	144 hours	144 hours	112 hours	400 hours.
Firefighter overtime rate	38 hours	38 hours	6 hours	82 hours.

Although each agency has the right to establish the work schedules of its employees, this authority may not be used to change an employee's work schedule just prior to separation or retirement for the sole purpose of circumventing OPM's regulation requiring agencies to include FLSA overtime pay in a lump-sum payment. We have added a provision to §§ 550.1205(b)(5)(iv) and 550.1205(b)(6) to prevent such an outcome.

Air Traffic Controllers

An employee recommended that OPM include the ''5 percent operational differential'' or ''controller pay'' for Federal Aviation Authority Air Traffic Controllers in the calculation of lump-sum payments. Pub. L. 104–50 (November 15, 1995), authorized the Administrator of the Federal Aviation Administration (FAA) to develop and implement a personnel management system that addresses the unique demands on that agency's workforce. The compensation provisions in title 5, United States Code, no longer apply to FAA employees, and OPM has no authority to prescribe regulations for lump-sum payments to FAA employees.

Refund of a Lump-Sum Payment

Under 5 U.S.C. 6306, when an employee who receives a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund to the employing agency an amount equal to the payment covering the period between the date of reemployment and the expiration of the lump-sum period. This rule applies whether an employee is reemployed in a position covered by chapter 63 of title 5, United States Code, or under a different formal leave system. The refund is based on the pay used to compute the lump-sum payment; e.g., an employee who received a lump-sum payment based on the pay for a GS–11 position must refund the lump-sum payment based on the same GS–11 pay, even if he or she is reemployed at a lower or higher grade level. The refund is deposited in the Treasury of the United States to the credit of the employing agency.

In the final regulations, § 550.1206(a) states that an agency may permit an employee to refund a lump-sum payment for annual leave in installments. If an agency permits the lump-sum to be paid in installments, the employee must pay the refund in full within 1 year after the date of reemployment. A component of an agency recommended that the agency require a full refund of a lump-sum payment before an employee returns to the Federal Government. The component further advised that if this cannot be implemented, employees should be required to sign an installment agreement before entering on duty. OPM's regulations at § 550.1206(a) provide agencies with discretionary authority to establish a policy for refunding lump-sum payments for annual leave. The only restriction is that the lump-sum refund must be paid in full within 1 year after the date of reemployment. Agencies may establish internal policies to require an employee to sign an installment agreement for refunding a lump-sum payment. In addition, we have added a statement that an agency may not waive the refund of a lump-sum payment.

We recently received inquiries about whether a refund for a lump-sum payment is required from a retired Federal employee who is reemployed under a temporary appointment of less than 90 days. If an employee retires from the Federal Government and is immediately reemployed on the next work day, he or she is not entitled to a lump-sum payment because this is not a separation from Federal service. However, if an employee retires from the Federal Government and has a break in service of 1 or more workdays, he or she is entitled to a lump-sum payment. If an annuitant is reemployed in the Federal Government prior to the expiration of the lump-sum period in a temporary appointment of less than 90 days, he or she must refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period. In addition, the reemploying agency must recredit to the reemployed annuitant an amount of leave equal to the leave represented by the refund, and the employee may use the recredited leave during the temporary appointment. We added a new paragraph (e) to § 550.1206 of the final regulations to reflect these outcomes, which are required by law.

Recredit of Annual Leave

The final regulations include a new § 550.1207, Recredit of Annual Leave. Paragraphs (b), (c), (d), (g) and (h) of § 550.1206 of the proposed regulations were moved to the new § 550.1207 and renumbered.

An agency requested clarification of the proposed regulations, which provided that if any part of a lump-sum refund reflects annual leave restored under 5 U.S.C. 6304(d), the annual leave must be restored in a separate account using the expiration date originally established for using the restored annual leave. If the expiration date originally established for using the restored annual leave occurs before the date of reemployment, a refund is required for all of the unexpired portion, but none of the restored annual leave may be recredited. The agency does not believe this is the intent of the law. Another agency asked whether a refund must reflect all remaining annual leave, including ''use or lose'' annual leave, and whether the ''use or lose'' annual leave should be recredited to the employee's leave account. A third agency recommended that an employee should not be required to pay back any portion of a lump-sum payment that reflects leave that cannot be recredited to the employee's leave account.

OPM's proposed regulations were intended to ensure that an employee's leave would be treated the same upon reemployment as it would have been treated had the employee remained employed. Restored annual leave and leave in excess of the maximum limitation in 5 U.S.C. 6304(b) would be subject to forfeiture if the employee did not use the leave within the time periods prescribed. However, when an employee who receives a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the

lump-sum payment, the employee must refund to the employing agency an amount equal to the payment covering the period between the date of reemployment and expiration of the projected lump-sum period. (See 5 U.S.C. 6306.) In addition, an amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period must be recredited to the employee by the employing agency.

Thus, both the lump-sum refund and the recredit of annual leave are based on the date of reemployment and the end of the lump-sum period, not the amount or type of leave included in the lump-sum payment. We believe the intent of the law is to recredit any and all annual leave that is equivalent to the refund of the lump-sum payment. In addition, former OPM guidance stated that restored annual leave included in a lump-sum payment is not subject to refund and may not be recredited if the employee is reemployed prior to the expiration of the lump-sum leave period. (See attachment to former FPM Letter 630–22, January 11, 1974).

Therefore, we have revised § 550.1206(a) of the final regulations to provide that an agency should not include restored annual leave in a lump-sum refund and must subtract restored annual leave from the lump-sum leave period if an employee is reemployed prior to the expiration of the lump-sum leave period. In addition, we have revised § 550.1207(a)(3) to provide that an agency will not recredit restored annual leave to an employee if the employee is reemployed prior to the expiration of the lump-sum leave period.

The proposed regulations provided that if annual leave recredited to an employee is in excess of the maximum annual leave limitation established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, for the position in which reemployed, and the employee was subject to a higher maximum annual leave limitation in the former position, the employee's maximum annual leave limitation must be determined based on the amount of annual leave to be recredited. Two agencies expressed concern that this provision would allow an employee's maximum annual leave limitation to be set below the 240-hour maximum limitation established by 5 U.S.C. 6304(a). Another agency noted that there were no rules for setting an employee's personal leave ceiling when the amount of annual leave to be recredited is in excess of the maximum limitation for the position in which reemployed and the maximum annual leave limitation for the former position is less than the current maximum annual leave limitation.

The proposed regulations would have applied only when the annual leave to be recredited was in excess of the maximum annual leave limitation for the position in which reemployed *and* the employee was subject to a *higher* maximum annual leave limitation in the former position. Therefore, it would be impossible to set the employee's maximum annual leave limitation below the 240-hour maximum limitation established by 5 U.S.C. 6304(a). If the amount of annual leave the agency is to recredit is less than or equal to the maximum annual leave limitation for the position in which the employee is reemployed, § 550.1207(b) of the final regulations requires the agency to set the employee's maximum annual leave limitation at the maximum annual leave limitation for the position in which the employee is reemployed.

In response to these comments and additional questions we have received, we have clarified (§ 550.1207(c) and (d)) of the final regulations as follows.

First, if the amount of annual leave to be recredited is more than the maximum annual leave limitation for the new position, and the employee's former maximum annual leave limitation was established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the amount of annual leave to be recredited.

EXAMPLES OF RECREDITING ANNUAL LEAVE

Annual leave to be recredited	Former maximum leave ceiling	New maximum leave ceiling	New personal leave ceiling
300	360	240	300
400	360	240	400
900	1000*	240	900
1200	1000*	720 (SES)	1200

*SES Personal Leave Ceiling established under § 630.306(d).

Second, if the amount of annual leave to be recredited is more than the maximum annual leave limitation for the new position, and the employee's former maximum annual leave limitation was established under an authority other than 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the employee's former maximum annual leave limitation.

EXAMPLE OF RECREDITING ANNUAL LEAVE UPON TRANSFER FROM USPS

Annual leave to be recredited	Former maximum leave ceiling	New maximum leave ceiling	New personal leave ceiling
540	440*	240	440

*Maximum Annual Leave Limitation for U.S. Postal Service.

Under 5 U.S.C. 6304(c), an employee's personal leave ceiling will be reduced if more annual leave is used than earned in a leave year until it equals the maximum annual leave limitation established for the position in which reemployed. In addition, an employee must use the annual leave earned in a leave year or it becomes subject to forfeiture at the end of the leave year.

Income Taxes and Deductions

Under 5 U.S.C. 5551, a lump-sum payment for annual leave is considered pay for income tax purposes. A number of agencies requested guidance on whether a nonforeign area cost-of-living

allowance (COLA) that is included in a lump-sum payment is subject to income tax. Under section 912 of title 26, United States Code, a COLA paid under 5 U.S.C. 5941(a)(1) to an employee stationed in a nonforeign area outside of the contiguous United States (48 States) is not included as gross income and is not subject to income tax. OPM posed the agencies' question to the Internal Revenue Service (IRS).

In a letter to OPM dated March 12, 1998, IRS stated that a nonforeign area COLA authorized under 5 U.S.C. 5941(a)(1) that is paid in connection with a lump-sum payment for annual leave is not subject to Federal income tax. Therefore, in calculating an employee's taxable Federal income for a lump-sum payment for annual leave, agencies must first subtract any nonforeign area COLA authorized under 5 U.S.C. 5941(a)(1). Similarly a post allowance in a foreign area authorized under 5 U.S.C. 5924(1) is not subject to Federal income tax, and the agency must subtract it from a lump-sum payment when determining taxable Federal income. However, nonforeign area post differentials authorized under 5 U.S.C. 5941(a)(2) that are included in a lump-sum payment for annual leave are included as gross income and are subject to Federal income tax.

An agency asked about the treatment of lump-sum payments in relation to deductions for the Federal Insurance Contributions Act (FICA) and Medicare. The agency stated that some types of pay included in a lump-sum payment are subject to deductions for FICA/Medicare, while others are not. The agency requested clarification as to whether the lump-sum payment should be considered as one separate payment or whether each type of pay should be considered separately when computing deductions for FICA/Medicare. The agency also requested that OPM state in the regulations that (1) if a lump-sum payment is repaid in the same calendar year, the employee is required to pay back the gross amount of the lump-sum payment, minus Federal and State income taxes and FICA/Medicare; and (2) if the employee repays the lump-sum payment in a subsequent year, he or she must repay the gross amount reduced only by FICA/Medicare. The agency stated that IRS has ruled that corrections of earnings for Federal, State, or local withholding taxes cannot be made for a prior year.

OPM referred these questions and comments to IRS. In a letter to OPM dated April 22, 1998, IRS responded that it is appropriate to divide a lump-sum payment into that portion (i.e., different types of pay) that is subject to FICA taxes and that which is not. In addition, IRS stated that repayment of a lump-sum payment made in the same year it is paid affects the treatment of Federal income tax withholding and FICA taxes, but that a repayment in a subsequent year affects only FICA taxes. IRS stated that employers should refer to Publication 15, Circular E, Employers Tax Guide, for additional information on Federal employment tax consequences and reporting requirements. General information on Federal income tax forms and instructions can be found on the Internet at http://www.irs.ustreas.gov/prod/forms_pubs/index.html. Any questions on State and local tax implications should be referred to the appropriate State and local taxing authority.

OPM received a comment from the labor organization recommending that employees be afforded some flexibility in choosing when to receive their lump-sum payment. The labor organization encouraged OPM to permit employees to defer a lump-sum payment for a reasonable period of time so that their tax liability may be mitigated. We referred this comment to IRS. In its letter to OPM dated April 22, 1998, IRS advised that such a choice would result in the lump-sum being included for income tax purposes in the taxable year it is first made available, without regard to whether an employee chose to receive it immediately or defer the payment.

Effective Date of Regulations

The final regulations apply only to lump-sum payments made by an agency on or after the effective date of the final regulations. The final regulations on lump-sum payments for annual leave are not retroactive. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. See *Alaskan Arctic Gas Pipeline* v. *United States,* 831 F.2d 1043, 1045-8 (Fed. Cir. 1987). Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. See *Landgraf* v. *USI Film Products,* 511 U.S. 244, 255–257 (1984). This is a new rule that standardizes inconsistent agency practices. The determinations made by agencies prior to the effective date of the final regulations are not subject to change based on the provisions of the final regulations.

Two agencies requested additional time to implement the final rules in order to modify their payroll systems and operating procedures. We agree. The final regulations will become effective *60 days* after the date of publication in the **Federal Register**. The delayed effective date will also provide additional time for those agencies responsible for pay authorities outside of title 5 to review their policies and issue regulations for the administration of lump-sum payments for annual leave.

Miscellaneous Comments

The components of two large agencies commented that any pay excluded from retirement basic pay should also be excluded from lump-sum payments for annual leave. In effect, this would limit a lump-sum payment to basic pay and certain types of premium pay, such as annual premium pay under 5 U.S.C. 5545(c)(1) and (2) and 5545a. One of the agencies stated that it would support a final regulation limiting lump-sum payments to basic pay, excluding FLSA overtime pay. In addition, an individual commented that a lump-sum payment should not be adjusted to include any extra pay or benefits such as Sunday premium pay, night pay, or any general pay adjustments or within-grade increases that become effective after the employee separates from Federal service.

Under 5 U.S.C. 5551, a lump-sum payment ''must equal the pay (excluding any differential under section 5925 and any allowance under section 5928) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave.'' Issuing final regulations to limit lump-sum payments to those that are basic pay for retirement purposes would be contrary to the lump-sum payment law.

The labor organization recommended that OPM consider approaches to expedite lump-sum payments to employees. In addition, the labor organization recommended that OPM simplify and expedite the process of recrediting annual leave when employees are reemployed in the Federal service. Agencies are responsible for administering lump-sum payments, consistent with the law and OPM's regulations. A universal rule is not feasible, since it cannot possibly accommodate the requirements and complexities of the numerous agency payroll systems that administer lump-sum payments.

An agency asked whether implementation of the final regulations on lump-sum payments would be subject to collective bargaining and inquired about the date by which such bargaining must be completed. Certain provisions may be subject to collective bargaining—e.g., whether an agency permits employees to refund a lump-

sum payment in installments. Additional questions on this matter should be addressed to the agency's labor relations office.

An agency commented that agencies responsible for administering other kinds of pay outside of title 5 should be permitted the greatest latitude possible and that each agency should decide whether its regulations should be consistent with OPM's regulations. In contrast, another agency recommended that such agencies not be permitted to determine the types of pay to be included in a lump-sum payment because this would result in the exact situation that OPM is trying to correct—i.e., inconsistent payment practices and inequities among Federal employees.

Under 5 U.S.C. 5553, OPM has regulatory authority for the administration of lump-sum payments for annual leave. Section 550.1205(c) delegates authority to the head of each agency to determine other kinds of pay authorized in statutes outside of title 5 that should be included in a lump-sum payment. We continue to believe such agencies are in the best position to determine the types of pay under their authority that should be included in a lump-sum payment consistent with 5 U.S.C. 5551, 5552, and 6306. If inconsistencies and inequities arise, OPM will reconsider the delegation of these authorities.

Conforming Amendments

In many parts of title 5, Code of Federal Regulations, there are existing references to lump-sum payments for annual leave. Because there is now a new subpart on lump-sum payments in part 550, there is no further need for these separate references. Therefore, we are removing these references and reserving the following sections: § 531.304(d) (special law enforcement officer adjusted rate of pay), § 531.606(d) (locality rate of pay), § 531.703(c) (continued rate of pay), and § 550.186(c) (availability pay). In § 591.210(c)(1) (allowances and differentials in nonforeign areas), we are deleting the last sentence. However, the references to lump-sum payments for annual leave in part 532 will need to be reviewed by the Federal Prevailing Rate Advisory Committee before we make any similar changes.

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

5 CFR Part 550

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

5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 531, 550, and 591 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

2. In § 531.304, paragraph (d) is revised to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status.

* * * * *

3. In § 531.606, paragraph (d) is revised to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(d) A locality rate of pay is paid only for those hours for which an employee is in a pay status.

* * * * *

4. In § 531.703, paragraph (c) is revised to read as follows:

§ 531.703 Administration of continued rates of pay.

* * * * *

(c) A continued rate of pay is paid only for those hours for which an employee is in a pay status.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

5. The authority citation for Subpart A of Part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

§ 550.186 [Amended]

6. In § 550.186, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

7. Subpart L is added to part 550 to read as follows:

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

Sec.
550.1201 Purpose, applicability, and administration.
550.1202 Definitions.
550.1203 Eligibility.
550.1204 Projecting the lump-sum leave period.
550.1205 Calculating a lump-sum payment.
550.1206 Refunding a lump-sum payment.
550.1207 Recrediting annual leave.

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

Authority: 5 U.S.C. 5553, 6306, and 6311.

§ 550.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 5551, 5552, and 6306 of title 5, United States Code, and must be read together with those sections. Sections 5551 and 5552 provide for the payment of a lump-sum payment for accumulated and accrued annual leave when an employee:

(1) Separates from Federal service; or

(2) Enters on active duty in the armed forces and elects to receive a lump-sum payment for accumulated and accrued annual leave. Section 6306 requires that when an employee is reemployed in the Federal service prior to the expiration of the lump-sum period, he or she must refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the period of annual leave (i.e., the lump-sum leave period).

(b) *Applicability.* This subpart applies to—

(1) Any employee who separates, dies, or transfers under the conditions prescribed in § 550.1203; and

(2) Any employee or individual employed by a territory or possession of the United States who enters on active

duty in the armed forces and who elects to receive a lump-sum payment for accumulated and accrued annual leave.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 550.1202 Definitions.

In this subpart—

Accumulated and accrued annual leave means any annual leave accumulated and accrued, as these terms are defined in § 630.201 of this chapter, plus any annual leave credited to an employee under 5 U.S.C. 6304(c) and § 630.301(d) of this chapter and any annual leave restored under 5 U.S.C. 6304(d). Accumulated and accrued annual leave does not include annual leave received by a leave recipient under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, or annual leave advanced to an employee under 5 U.S.C. 6302(d).

Administrative workweek has the meaning given that term in § 610.102 of this chapter.

Agency means—

(1) An executive agency and a military department as defined in sections 105 and 102 of title 5, United States Code, respectively; and

(2) A legislative or judicial agency or a unit of the legislative or judicial branch of the Federal Government that has positions in the competitive service.

Employee has the meaning given that term in 5 U.S.C. 2105.

Lump-sum payment means a final payment to an employee for accumulated and accrued annual leave.

Mixed tour of duty means a condition of employment for positions in which a fluctuating workload requires an employee to work full-time or part-time for a limited portion of the year and on an intermittent basis for the remainder of the year.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Transfer means the movement of an employee to another position without a break in service of 1 workday or more.

§ 550.1203 Eligibility.

(a) An agency must make a lump-sum payment for accumulated and accrued annual leave when an employee—

(1) Separates or retires from the Federal service;

(2) Dies; or

(3) Transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and his or her accumulated and accrued annual leave cannot be transferred, except as provided in paragraphs (c), (d), and (e) of this section.

(b) The Department of Defense (DOD) must make a lump-sum payment to an employee who has unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when he or she transfers from a DOD installation undergoing closure or realignment to a position in any other department or agency of the Federal Government or moves to a position within DOD not located at an installation undergoing closure or realignment.

(c) An employee who enters on active duty in the armed forces may elect to receive a lump-sum payment for accumulated and accrued annual leave or may request to have the annual leave remain to his or her credit until return from active duty. However, an agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee enters active duty. The agency may not recredit the restored leave when the employee returns to Federal service.

(d) An employee who transfers to a position in a public international organization under 5 U.S.C. 3582 may elect to retain accumulated and accrued annual leave to his or her credit at the time of transfer or receive a lump-sum payment for such annual leave under 5 U.S.C. 3582(a)(4). However, the agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee transfers to the public international organization. The agency may not recredit the leave under these circumstances.

(e) An agency must make a lump-sum payment to an employee who transfers to a position excepted from subchapter I of chapter 63 of title 5, United States Code, by 5 U.S.C. 6301(2)(x)–(xiii) for any annual leave restored under 5 U.S.C. 6304(d) upon transfer to an excepted position. However, the agency may not make a lump-sum payment for any annual leave in the employee's regular leave account upon transfer to the excepted position. The agency must hold such annual leave in abeyance for recredit if the employee is subsequently reemployed without a break in service in a position to which his or her accumulated and accrued annual leave may be transferred. If the employee later becomes eligible for a lump-sum payment under the conditions specified in this section, the current employing agency must make a lump-sum payment for the annual leave held in abeyance. The agency must compute the lump-sum payment under § 550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position excepted by 5 U.S.C. 6301(2)(x)–(xiii). An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c), is not entitled to receive a lump-sum payment.

(f) In the case of an employee who transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and to which only a portion of his or her accumulated and accrued annual leave may be transferred, the agency must make a lump-sum payment for any remaining annual leave that cannot be transferred. The agency must compute the lump-sum payment under § 550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position not covered by subchapter I of chapter 63 of title 5, United States Code. This does not apply to an employee transferring to an excepted position covered by paragraph (e) of this section.

(g) An agency must make a lump-sum payment for accumulated and accrued annual leave to an employee in a missing status (as defined in 5 U.S.C. 5561(5)) on or after January 1, 1965, or the employee may elect to have such leave restored in a separate leave account under 5 U.S.C. 6304(d)(2) upon his or her return to Federal service. The agency must compute the lump sum payment under § 550.1205(b) based on the rate of pay in effect at the time the annual leave became subject to forfeiture under 5 U.S.C. 6304(a), (b), or (c).

(h) An agency may not make a lump-sum payment for accumulated or accrued annual leave to—

(1) An employee who transfers between positions covered by subchapter I of chapter 63 of title 5, United States Code;

(2) An employee who transfers to a position not covered by subchapter I of chapter 63 of title 5, United States Code, but to which all of his or her accumulated and accrued annual leave may be transferred;

(3) An employee who transfers to the government of the District of Columbia or the U.S. Postal Service;

(4) A nonappropriated fund employee of the Department of Defense or the Coast Guard who moves without a break in service of more than 3 days to an appropriated fund position within the Department of Defense or the Coast Guard, respectively, under 5 U.S.C. 6308(b); or

(5) An employee who is concurrently employed in more than one part-time position and who separates from one of the part-time positions. Instead, the former employing agency must transfer the employee's accumulated and accrued annual leave to the current agency (if the part-time positions are in different agencies) or credit the employee's annual leave account in the current position (if the part-time positions are in the same agency).

(6) An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c).

(i) An agency must establish a policy for determining when an employee in a continuing employment program with a mixed tour of duty will receive a lump-sum payment for annual leave. The agency may choose to pay an employee a lump-sum payment when he or she is assigned intermittent duty or hold the employee's annual leave in abeyance during intermittent duty and recredit it when the employee returns without a break in service to full-time or part-time employment. If the agency decides to hold the employee's annual leave in abeyance, it must also hold in abeyance the credit for any fractional pay period earned and recredit the annual leave on a pro rata basis, as provided in § 630.204 of this chapter, when the employee returns to full-time or part-time employment. In developing its policy, each agency must consider the likelihood that the employee will return to work, as well as the agency's mission requirements and staffing needs. The agency's policy must ensure that employees are treated in a fair and equitable manner.

§ 550.1204 Projecting the lump-sum leave period.

(a) A lump-sum payment must equal the pay an employee would have received had he or she remained in the Federal service until the expiration of the accumulated and accrued annual leave to the employee's credit. The agency must project the lump-sum period leave beginning on the first workday (counting any holiday) occurring after the date the employee becomes eligible for a lump-sum payment under § 550.1203 and counting all subsequent workdays and holidays until the expiration of the period of annual leave. The period of leave used for calculating the lump-sum payment must not be extended by any holidays under 5 U.S.C. 6103 (or applicable Executive or administrative order) which occur immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203; annual leave donated to an employee under the leave transfer or leave bank programs under subparts I and J of part 630 of this chapter; compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) of this chapter; or credit hours accumulated under an alternative work schedule established under 5 U.S.C. 6126.

(b) For employees whose annual leave was held in abeyance immediately prior to becoming eligible for a lump-sum payment, the agency must project the lump-sum payment beginning on the first workday occurring immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203, consistent with paragraph (a) of this section.

§ 550.1205 Calculating a lump-sum payment.

(a) An agency must compute a lump-sum payment based on the types of pay listed in paragraph (b) of this section, as in effect at the time the affected employee becomes eligible for a lump-sum payment under § 550.1203 and any adjustments in pay included in paragraphs (b)(2), (3), and (4) of this section. The agency must calculate a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the applicable hourly rate of pay, including other applicable types of pay listed in paragraph (b) of this section, or by using a mathematically equivalent method, such as multiplying weeks of annual leave by the applicable weekly rate of pay. If the agency calculates a lump-sum payment using weekly rates, the number of weeks of annual leave must be rounded to the fourth decimal place (e.g., 0.4444). The agency must convert an annual rate of pay to an hourly rate of pay by dividing the annual rate of pay by 2,087 (or 2,756 for firefighters, if applicable) and rounding it to the nearest cent, counting one-half cent and over as the next higher cent.

(b) The agency must compute a lump-sum payment using the following types of pay and pay adjustments, as applicable:

(1) The greatest of the following rates of pay:

(i) An employee's rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1465, or a retained rate of pay under subpart B of part 536 of this chapter;

(ii) A locality rate of pay under subpart F of part 531 of this chapter or similar provision or law, where applicable;

(iii) A special law enforcement adjusted rate of pay under subpart C of part 531 of this chapter, where applicable, including a rate continued under § 531.307 of this chapter; or

(iv) A continued rate of pay under subpart G of part 531 of this chapter.

(2) Any statutory adjustments in pay or any general system-wide increases in pay, such as adjustments under sections 5303, 5304, 5305, 5318, 5362, 5363, 5372, 5372a, 5376, 5382, or 5392 of title 5, United States Code, that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased rate on and after the effective date of the pay adjustment.

(3) In the case of a prevailing rate employee, the agency must include in the lump-sum payment the scheduled rate of pay under 5 U.S.C. 5343, 5348, or 5349 and any applicable adjustments in rates that are determined under 5 U.S.C. 5343, 5348, or 5349 that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased prevailing rate on and after the effective date of the rate adjustment.

(4) A within-grade increase under 5 U.S.C. 5335 or 5343(e)(2) if the employee has met the requirements of § 531.404 or § 532.417 of this chapter prior to the date the employee becomes eligible for a lump-sum payment under § 550.1203.

(5) The following types of premium pay (to the extent such premium pay was actually payable to the employee):

(i) Night differential under 5 U.S.C. 5343(f) for nonovertime hours at the percentage rate received by a prevailing rate employee for the last full workweek immediately prior to separation, death, or transfer;

(ii) Premium pay under 5 U.S.C. 5545(c) or 5545a if the employee was receiving premium pay for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the percentage rate received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. In cases where the amount of premium pay actually payable in the final pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of premium pay the employee received in that pay period; and

(iii) Overtime pay under 5 U.S.C. 5545b and § 550.1304 of this chapter for overtime hours in an employee's uncommon tour of duty (as defined in § 630.201 of this chapter), established in accordance with § 630.210 of this chapter. The uncommon tour of duty must be applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate overtime pay using the same methodology it used to calculate the employee's entitlement to overtime pay as provided in § 550.1304 of this chapter in the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of premium pay under § 550.1205(b)(5)(i)–(iv) in a lump-sum payment.

(6) Overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for overtime work that is regularly scheduled during an employee's established uncommon tour of duty, as defined in § 630.201(b)(1) of this chapter and established under § 630.210(a) of this chapter, for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1). The agency must include FLSA overtime pay in a lump-sum payment if an uncommon tour of duty was applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate FLSA overtime pay using the same methodology it used to calculate the employee's entitlement to FLSA overtime pay for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of FLSA overtime pay in a lump-sum payment.

(7) A supervisory differential under 5 U.S.C. 5755 based on the percentage rate (or dollar amount) received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203.

(8) A cost-of-living allowance and/or post differential in a nonforeign area under 5 U.S.C. 5941 if the employee's official duty station is in the nonforeign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(9) A post allowance in a foreign area under 5 U.S.C. 5924(1) and the *Standardized Regulations* (Government Civilians, Foreign Areas) if the employee's official duty station is in the foreign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(c) The head of an agency must prescribe regulations or standards for the inclusion of any other kinds of pay authorized in statutes other than title 5, United States Code, in a lump-sum payment. Such regulations or standards must be consistent with 5 U.S.C. 5551, 5552, 6306, and other applicable provisions of law.

(d) A lump-sum payment may not include any other pay not specifically listed in paragraph (b) of this section, except as provided in paragraph (c) of this section.

(e) An employee may not earn leave for the period covered by a lump-sum payment.

(f) A lump-sum payment is not subject to deductions for retirement under the Civil Service Retirement System or the Federal Employees' Retirement System established by chapters 83 and 84 of title 5, United States Code, respectively; health benefits under the Federal Employees Health Benefits program established by chapter 89 of title 5, United States Code; life insurance under the Federal Employees' Group Life Insurance program established by chapter 87 of title 5, United States Code; and savings under the Thrift Savings Plan established by subchapter III of chapter 84 of title 5, United States Code.

(g) For a reemployed annuitant who becomes eligible for a lump-sum payment under § 550.1203, the agency must compute the lump-sum payment using the annuitant's pay before any reductions required under § 831.802 of this chapter.

(h) A lump-sum payment is subject to garnishment under parts 581 and 582 of this chapter and to administrative offset (for recovery of debts to the Federal Government) under 31 U.S.C. chapter 37.

§ 550.1206 Refunding a lump-sum payment.

(a) When an employee who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund to the employing agency an amount equal to the pay included in the lump-sum payment under § 550.1205(b) that covers the period between the date of reemployment and the expiration of the lump-sum leave period, except as provided in paragraphs (b) and (c) of this section. The agency must compute the refund based on the pay used to compute the lump-sum payment under § 550.1205(b). However, annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment is not subject to refund if an agency reemploys the employee prior to the expiration of the lump-sum leave period. The agency must subtract such restored annual leave from the lump-sum leave period before calculating the refund. An agency may permit an employee to refund the lump-sum payment for annual leave in installments, but may not waive collection. If an agency permits the lump-sum refund to be paid in installments, the employee must refund the lump-sum payment in full within 1 year after the date of reemployment.

(b) An employee who is reemployed in a position listed in 5 U.S.C. 6301(2)(ii), (iii), (vi), or (vii) is not required to refund a lump-sum payment under paragraph (a) of this section.

(c) An employee who is reemployed in a position that has no leave system to which annual leave can be recredited is not required to refund a lump-sum payment under paragraph (a) of this section, except that individuals reemployed as Presidential appointees must refund a lump-sum payment and the annual leave will be held in abeyance, as provided in § 550.1207(e).

(d) An individual first hired by the District of Columbia government on or after October 1, 1987, who received a lump-sum payment upon separation from the District of Columbia government and who is employed by the Federal Government prior to the expiration of the lump-sum leave period must refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207.

(e) An employee who retired from the Federal Government and received a lump-sum payment under § 550.1203 of this chapter, and who is reemployed under a temporary appointment of less than 90 days prior to the expiration of the lump-sum leave period, is required to refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207. The employee may use the recredited annual leave during the temporary appointment.

§ 550.1207 Recrediting annual leave.

(a) When an employee pays a full refund to an agency under § 550.1206(a), the agency must recredit to the employee an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period. The recredited annual leave is available for use by the employee on and after the date the annual leave is recredited. The

agency must recredit annual leave as follows:

(1) When an employee is reemployed in the Federal service in a position covered by subchapter I of chapter 63 of title 5, United States Code, the employing agency must recredit an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period.

(2) When an employee is reemployed in the Federal service in a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, but is covered by a different leave system, the employing agency must recredit to the employee an amount of annual leave representing the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period, as determined under § 630.501(b) of this chapter. If the unexpired period of leave covers a larger amount of leave than can be recredited under the different leave system, the employee must refund only the amount that represents the leave that can be recredited.

(3) When an employee is reemployed prior to the expiration of the lump-sum leave period, the agency may not recredit to the employee the annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment. The agency must subtract such restored annual leave from the lump-sum leave period before it determines the amount of annual leave to recredit under paragraph (a)(1) of this section.

(b) Any annual leave the agency recredits to the employee under paragraph (a) of this section is subject at the beginning of the next leave year to the maximum annual leave limitation established by 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, for the position in which the employee is reemployed, except as provided in paragraphs (c) and (d) of this section.

(c) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which reemployed, and the employee's former maximum annual leave limitation was established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the amount of annual leave to be recredited under paragraph (a) of this section. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(d) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which the employee is reemployed, and the employee's former maximum annual leave limitation was established under an authority other than 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the employee's former maximum annual leave limitation. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(e) When an employee is reemployed in a position listed in 5 U.S.C. 6301(2)(x)–(xiii), the agency must recredit and hold in abeyance the amount of annual leave that would have been recredited under paragraph (a) of this section. The agency must include unused annual leave in a lump-sum payment when the employee becomes eligible for a lump-sum payment under § 550.1203. If the employee transfers from a position listed in 5 U.S.C. 6301(2)(x)–(xiii) to a position covered by subchapter I of chapter 63 of title 5, United States Code, or to a position under a different formal leave system to which his or her annual leave can be recredited, the employing agency must recredit the annual leave to the employee's credit as provided in paragraph (a) of this section.

(f) An agency must document the calculation of an employee's lump-sum payment as provided in § 550.1205(b) so as to permit the subsequent calculation of any refund required under § 550.1206(a) and any recredit of annual leave required under this section.

PART 591—ALLOWANCES AND DIFFERENTIALS

8. The authority citation for subpart B of part 591 continues to read as follows:

Subpart B—Cost-of-Living Allowance and Post Differential-Nonforeign Areas

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., 338.

§ 591.210 [Amended]

9. In § 591.210, the last sentence of paragraph (c)(1) is removed.

[FR Doc. 99–16992 Filed 7–7–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 99–051–1]

Brucellosis in Cattle; State and Area Classifications; Kansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

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

DATES: This interim rule was effective July 1, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 7, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–051–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–051–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS,

APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708; or e-mail: Valerie.E.Ragan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

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

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

After reviewing the brucellosis program records for Kansas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Kansas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Kansas.

Immediate Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

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

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

There are an estimated 37,000 cattle herds in Kansas that will be affected by this rule. About 98 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

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

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

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

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

PART 78—BRUCELLOSIS

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

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

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

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

Done in Washington, DC, this 1st day of July 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17357 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–11216; AD 99–14–06]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. This action requires initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found broken or with insufficient torque, replacement of all screws with new lag screws. In addition, this AD requires replacement of certain model Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This amendment is prompted by reports of broken Torx head blade root lag screws. The actions specified in this AD are intended to prevent blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: ''propeller@aol.com''. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. The LBA advises that they have received reports of broken Torx head blade root lag screws found during routine teardowns. The investigation revealed that the screws broke due to insufficient torque. This condition, if not corrected, could result in blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane.

MT-Propeller Entwicklung GMBH has issued Service Bulletin (SB) No. 17–A, dated March 5, 1999, that specifies procedures for inspections for Torx head blade root lag screws for torque values and breakage, and replacement of Torx head blade root lag screws, part number (P/N) A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The LBA classified this SB as mandatory and issued airworthiness directives (ADs) 1999–081/2 and 1999–082/2 in order to assure the airworthiness of these propellers in Germany.

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

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the AD requires initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found with insufficient torque or are broken, replacement of all screws with new lag screws. In addition, this AD requires replacement of Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The actions would be required to be accomplished in accordance with the SB described previously.

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–35–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–14–06 MT-Propeller Entwicklung GMBH: Amendment 39–11216. Docket 99–NE–35–AD.

Applicability: MT-Propeller Entwicklung GMBH Model MTV–9–B–C propellers with serial numbers (S/Ns) starting with 98 or less, equipped with CL250–27 or CL260–27 blades with S/Ns starting with letter ''A'' through ''P'', equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch); and Model MTV–3–B–C propellers with S/Ns starting with 98 or less, equipped with L250–21 blades with S/Ns starting with letter ''A'' through ''P'', equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or A–550–85 (4mm thread pitch). These propellers are installed on but not limited to Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55, and Technoavia SM–92 airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane, accomplish the following:

(a) For propellers with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), perform initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if necessary, replace with new lag screws, in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 17–A, dated March 5,1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS), or within 2 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 100 hours TIS, or within 12 months, whichever occurs first.

(3) Prior to further flight, if any Torx head blade root lag screws are found broken or with torque less than 64 foot-pounds, replace all Torx head blade root lag screws with new lag screws.

(b) For propellers with Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), perform a one-time inspection of Torx head blade root lag screws for torque values and breakage, and, if necessary, replace with lag screws, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5,1999, as follows:

(1) Inspect within 50 hours TIS, or within 2 months after the effective date of this AD, whichever occurs first.

(2) Prior to further flight, if any Torx head blade root lag screws are found broken or with torque less than 64 foot-pounds, replace all Torx head blade root lag screws with improved, hexagonal head blade root lag screws, P/N A–983–85.

(c) For propellers with Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), within 100 hours TIS, or within 12 months after the effective date of this AD, replace all Torx head blade root lag screws, P/N A–550–85, with improved, hexagonal head blade root lag screws, P/N A–983–85, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5,1999.

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

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

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

(f) The actions required by this AD shall be performed in accordance with the following MT-Propeller Entwicklung GMBH SB:

Document No.	Pages	Date
17–A	1–3	March 5, 1999
Total pages: 3.		

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 MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: ''propeller@aol.com''. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on July 23, 1999.

Issued in Burlington, Massachusetts, on June 23, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–16745 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990701179–9179–01]

RIN 0694–AB90

Expansion of License Exception CIV Eligibility for "Microprocessors" Controlled by ECCN 3A001

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements. Consistent with technological changes, this interim rule adjusts the License Exception CIV eligibility level for microprocessors controlled by Export Control Classification Number (ECCN) 3A001 from a composite theoretical performance (CTP) of equal to or less than 1200 million theoretical operations per second (MTOPS) to a CTP of equal to or less than 1900 MTOPS. License Exception CIV is available for exports and reexports to civil end-users for civil end-uses in Country Group D:1.

BXA will continue review of the technical levels for microprocessors and will adjust levels in the future, as needed, to account for changes in technology.

DATES: This rule is effective July 8, 1999. Comments on this rule must be received on or before August 9, 1999.

ADDRESSES: Written comments should be sent to Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAA, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on August 9, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004;

30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p. 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp. p. 294.

Supplement No. 1 to Part 774—[Amended]

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exceptions section to read as follows:

3A001—Electronic components, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: N/A for MT
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes, except 3A001.a.1.a, b.1, b.3 to b.7, .c to .f
CIV: Yes, except 3A001.a.1, a.2, a.3.a (for processors with a CTP greater than 1900 Mtops), a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f

* * * * *

Eileen M. Albanese,

Acting Assistant Secretary for Export Administration.

[FR Doc. 99–17355 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 980427104–8227–02; I.D. 120597B]

RIN 0648–AK29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Certification of Bycatch Reduction Devices; OMB Control Numbers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to prescribe additional procedures for the testing and certification of bycatch reduction devices (BRDs) for use in penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic. The use of BRDs in all such trawls became mandatory under the final rule implementing Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). This rule completes implementation of the Testing Protocol for BRD Certification and includes a paragraph providing details on the testing and certification procedures. It also adds four previously omitted measures to the list of measures that may be implemented or modified through the framework procedures contained in Amendment 2 for adjusting management measures. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirement associated with this rule and publishes the OMB control number for this collection. The testing and certification procedures prescribed by this rule are intended to foster the development of alternative BRDs that meet the bycatch reduction criterion for Spanish mackerel and weakfish, while minimizing inconvenience to fishermen and/or loss of shrimp. The addition of management measures that may be adjusted via the framework procedures is intended to fully implement the amendment's provisions for enhancing the ability of the South Atlantic Fishery Management Council (Council) and NMFS to react in a timely manner to changes in the fishery or to new data.

DATES: This rule is effective July 8, 1999, except that the amendment to § 622.48(h) is effective August 9, 1999.

ADDRESSES: Comments regarding the collection-of-information requirement associated with this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Bycatch Reduction Device Testing Protocol Manual* should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the EEZ of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 3, 1998, NMFS published and requested comments on a proposed rule (63 FR 30174) to implement the measures that are now incorporated in this final rule. The background and rationale for the proposed rule and associated measures are contained in the preamble to the proposed rule and are not repeated here.

Comments on the Proposed Rule

No comments on the proposed rule were received.

Changes From the Proposed Rule

In § 622.41(g)(3)(ii), the exemption language is revised to be more precise and to be consistent with similar provisions elsewhere in the regulations.

In the appendix containing an additional paragraph from the Testing Protocol for BRD Certification, NMFS changes the mandatory language requiring state directors to collect, review, and submit information to NMFS. NMFS has reviewed the administrative record and finds this change is consistent with the Council's intent and with OMB's collection-of-information approval based on the Testing Protocol Manual.

In addition, NMFS revises that paragraph to more accurately reflect the information that may be collected based on the manual's data collection forms approved by OMB.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the AA, determined that the measures implemented by this rule are necessary for the conservation and management of the shrimp fishery off the southern Atlantic states and that the measures are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not

have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

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 Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA—namely, the BRD certification process, consisting of an application for the testing of a new BRD, the testing itself, and the submission of the test results. This collection of information has been approved by OMB under OMB control number 0648–0345. The public reporting burden for this collection of information is estimated at 151 hours per application, testing, and submission of results. The estimate of the public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

The revisions in §§ 622.7(bb), 622.41(g)(1) and (g)(3), and the addition to the uncodified appendix containing the Testing Protocol for BRD Certification are essential for implementation of a procedure for testing alternative BRDs that, if certified, could result in improved finfish bycatch reduction and/or reduction in shrimp loss. At minimum, any BRD certified via this testing procedure would increase the approved BRD options available to participants in the fishery. This would give participants greater choice in selecting an approved BRD that is optimal for their particular fishing operation. Timely implementation of this rule will expedite BRD testing and potential certifications of additional BRDs which is in the best interest of the affected public. Accordingly, under 5 U.S.C. 553(d)(3), the AA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of these measures.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table, in paragraph (b), under 50 CFR, the following entry is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
622.41(g)(3)	–0345
* * * * *	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

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

4. In § 622.7, paragraph (aa) is added, and paragraph (bb) is reserved to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted on the testing of a BRD or the results of such testing, as specified in § 622.41(g)(3)(i).

(bb) [Reserved]

5. In § 622.41, the first sentence of paragraph (g)(1) is revised and paragraph (g)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(1) * * * Except as exempted in paragraph (g)(3)(ii) of this section, on a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. * * *

* * * * *

(3) *Certification of BRDs*—(i) A person who seeks to have a BRD certified for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit to the RD the results of the test conducted and recorded in accordance with the Testing Protocol for BRD Certification, which along with forms and procedures, is included in the *Bycatch Reduction Device Testing Protocol Manual* which is available from the SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, and from the RD. A BRD that meets the certification criterion, as determined under the Testing Protocol for BRD Certification, will be added to the list of certified BRDs in paragraph (g)(2) of this section.

(ii) A penaeid shrimp trawler that is authorized to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the Testing Protocol for BRD Certification is granted a limited exemption from the BRD requirement specified in paragraph (g)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

* * * * *

6. In § 622.48, paragraph (h) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp*. BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, and times and locations when the use of BRDs is required.

* * * * *

7. The Testing Protocol for BRD Certification published as an uncodified appendix to the final rule implementing Amendment 2 to the FMP on April 16, 1997 (62 FR 18536) is amended by

adding the following paragraph at the end thereof:

Appendix—Testing Protocol for BRD Certification

Note: This Appendix will not appear in the code of Federal Regulations.

* * * * *

Before conducting any certification test, or series of tests, in state waters, a person must meet any applicable state requirements for notification and approval. Persons planning to conduct certification tests in both state waters and the EEZ have two options. The person may submit an application for certification testing in the EEZ directly to the RD. Alternatively, if state approval is required, a person may submit the required application to conduct BRD testing in the EEZ to the appropriate state director or designee, and the state could forward copies to the RD for concurrent approval for EEZ waters. Under either option, the application to conduct BRD testing in the EEZ must identify the sponsor of the tests and include the information solicited by the Vessel Information Form and the Gear Specification Form. Once the RD determines that the application is complete and all applicable regulations are satisfied, the RD will issue the applicant a letter of authorization to conduct BRD testing in the EEZ.

[FR Doc. 99–17372 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 227

RIN 1010–AC51

Change to Delegated State Audit Functions

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations to allow States which choose to assume audit duties to do so for less than all of the Federal mineral leases within the State or leases offshore of the State.

EFFECTIVE DATES: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Ms. Shirley Burhop, State and Indian Compliance Division, Royalty Management Program (RMP).

I. Background

This rule amends regulations governing the delegation of royalty management duties to States. Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735, gives MMS the authority to delegate audit functions to States. Currently, 10 States have entered into the delegation agreements authorized by Section 205.

Regulations in 30 CFR part 227 implementing the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200, expanded the duties that States could assume. Those regulations at 30 CFR 227.101 prescribed that if a State wanted MMS to delegate the audit function to the State, then the State was required to audit all Federal mineral leases within that State and all 8(g) leases offshore of the State. We intended that States perform other delegable functions authorized by RSFA for *all* leases within that State and in all 8(g) leases offshore of the State. However, we do not believe it is either necessary or desirable in the case of the audit function. Typically auditing is done on a sampling basis, *i.e.* not all leases are audited.

This change allows States which are now delegated audit authority under FOGRMA to continue that audit authority without significantly altering their staffing, funding, or other operations. By removing the requirement that they exercise audit authority over all Federal mineral leases within the State, the States will again be able to work with us in those cases where State resources do not allow the State to cover their entire audit universe. Thus, the State will designate the limits of its audit activity each year through an annual audit work plan. This wording change will also enable the MMS to continue to assist a State in its audit efforts when necessary.

II. Statutory Authority

Authority for this change is granted by FOGRMA, 30 U.S.C. 1735, as amended by RSFA, Pub. L. 104–185, August 13, 1996, as corrected by Pub. L. 104–200. Authority regarding solid mineral leases, geothermal leases, and 8(g) leases is granted by Pub. L. 102–154.

III. Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which ended April 12, 1999. MMS received comments from one oil and gas trade association commenter during the comment period. We reviewed and analyzed the comments pertaining to this final rulemaking, and did not revise the language of the final rule. The specific comments are addressed below:

Comment—Regarding the Analysis section of the proposed rule preamble, the commenter questioned how a State could take on delegated functions without adequate staffing or funding. The commenter stated that ''the language in the proposed rule controverts the Delegation regulations,'' as stated at 30 CFR 227.103.

Response—The final rule enables States to perform delegated audit functions for some or all Federal leases within their State rather than being required to assume responsibility for all such leases. Our intent is to enable those States which face staffing and funding limitations to take on delegated audit duties to the extent they can perform such duties with available resources. Current regulations at 30 CFR 227.101 (1998) require a State to have the resources to audit its entire lease universe in order to take on any delegated audit duties.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Requesting States may incur additional costs for delegation responsibilities. However, these direct costs will be fully reimbursed by the Federal Government in accordance with their annual, approved audit plan each year. This rule change does not require the States to file any additional information or fees.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. States with delegated audit authority must follow the policies of the Department. States will coordinate their audit actions with the Bureau of Land Management and MMS.

(3) This rule does not alter the budgetary effects or entitlements, grants,

user fees, or loan programs or the rights or obligations of their recipients. Audits of Federal leases within State boundaries will be individually budgeted through an annual work plan proposal the State prepares and MMS approves. This is a process we have used effectively since 1985 and will continue under the rule.

(4) This rule does not raise novel legal or policy issues. We have had authority to delegate audit duties to States since 1983. Historically, States have audited as much of the Federal lease universe as practical for each State and MMS audited the remainder. We expect these circumstances of operation to continue under this rule.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The major impact of the rule will be on State governments, which are not small entities. There will be some effect on the oil and gas companies which are subject to audit, as various audit staffs, including MMS's Compliance Divisions, State delegations, and Indian Tribal delegations, may now audit Federal and Indian leases located within a particular State's boundaries. This is no change from the way in which MMS and delegated States and Tribes have audited companies in the past. As has been done in the past, MMS will continue to coordinate audit efforts of the various entities which might be involved in any particular audit in order to minimize disruptions to the companies being audited.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. States would initially incur the expense of delegated audit functions and MMS would later reimburse them. The maximum economic impact for audit delegation is estimated to be $5.5 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The audit of Federal leases is not a function which generates impacts on costs or prices to individuals or areas. States will review royalty calculation and payments to enforce existing Federal lease terms and royalty policies. States will conduct the audits as efficiently and economically as possible in accordance with Departmental policies.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The laws providing for the delegation of audit duties, FOGRMA and RSFA, do not provide for any other entity, except tribal governments, to conduct these duties.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule does not change valuation requirements, impose additional royalty collections or require new reporting forms. This rule merely gives State governments the option to conduct audits and investigations on less than all of the Federal mineral leases within State boundaries or section 8(g) leases on the OCS. The Federal Government will fully reimburse States for the costs they incur to conduct the audits and investigations in accordance with the State's annual, approved audit plan. We expect those costs to be no more than $5.5 million per year. County, local, or tribal governments will not perform the delegable audit functions on behalf of State governments; therefore, they will not be impacted by this rule.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have a significant takings implication. States seeking audit delegation from year to year will propose the level of effort they can expend auditing Federal leases. This method of operation will give States first choice in cooperatively planning annual work with MMS. This rule does not represent a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule allows States to continue to audit selected leases within legal boundaries. It does not alter roles, rights or responsibilities of States conducting delegated audits. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an additional information collection approval under the Paperwork Reduction Act of 1995. There is currently in place an approved information collection titled Delegation of Authority to States, OMB Control Number 1010–0088, which expires on June 30, 2000.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is proceeded by the symbol ''§'' and a number heading; for example:

§ 227.101 What royalty management functions may MMS delegate to a State?

(5) Is the description of the rule in the ''Supplementary Information'' section of this preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule

easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also E-mail your comments to this address: Exsec@ios.doi.gov.

List of Subjects in 30 CFR Part 227

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 19, 1999.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 227 is amended as follows:

PART 227—DELEGATION TO STATES

1. The authority citation for part 227 continues to read as follows:

Authority: 30 U.S.C. 1735; 30 U.S.C. 196; Pub. L. 102–154.

2. Revise § 227.101 to read as follows:

§ 227.101 What royalty management functions may MMS delegate to a State?

(a) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

(1) Receiving and processing production or royalty reports;

(2) Correcting erroneous report data; and

(3) Performing automated verification.

(b) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for some or all of the Federal oil and gas leases to you under this part:

(1) Conducting audits and investigations; and

(2) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(c) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337 (g), or solid mineral leases or geothermal leases on Federal lands within your State, MMS may delegate authority to conduct audits and investigations for some or all such Federal leases.

[FR Doc. 99–17238 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–043–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its statutes pertaining to the Land Reclamation Committee to satisfy a required program amendment at 30 CFR 920.16(l). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153. E-Mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79449). You can find later actions on conditions of approval and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By letter dated August 22, 1997 (Administrative Record No. MD–578.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to a required amendment at 30 CFR 920.16(l). Maryland is revising the 1997 Laws of Maryland, Chapter 223 (House Bill 245), at section 15–204(a)(4) to require that Land Reclamation Committee (LRC) members recuse themselves from proceedings that may affect their direct or indirect financial interests.

We announced receipt of the proposed amendment in the September 19, 1997, **Federal Register** (62 FR 49183), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 20, 1997.

During our review of the amendment, we identified concerns with Maryland's submission. In a letter dated January 29, 1998 (Administrative Record No. MD–578–06), we informed Maryland that it must amend its program to require that LRC members file a statement of employment and financial interests. Since Maryland did not take further action, it was not necessary to reopen the comment period.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment. Any revisions we do not specifically discuss below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment.

30 CFR 920.16(l) required Maryland to amend its program to require members of the LRC to: (1) recuse themselves from proceedings that affect their direct financial interest and (2) file a statement of employment and financial interest. In response, Maryland proposed to revise Chapter 223, 1997 Laws of Maryland, at section 15–204(a)(4) to require that LRC members recuse themselves from proceedings that may affect their direct or indirect financial interests. We find that the proposed revision is no less effective than the Federal regulation at 30 CFR 705.4(d) and satisfies the first part of the required amendment at 30 CFR 920.16(l).

In its submittal letter, Maryland stated that it is presently requiring that LRC members file a Federal OSM employment and financial interest statement. Maryland did not, however, provide supporting documentation. We find that Maryland's program is less effective than the Federal regulations at 30 CFR 705.11(a) and 705.17(a).

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(I), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The U.S. Department of Labor, Mine Safety and Health Administration and the U.S. Department of the Army, Army Corps of Engineers, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

V. Director's Decision

Based on the above findings, we approve Maryland's proposed amendment as submitted on August 22, 1997. As discussed above, Maryland's proposed revision satisfies the first part of the required amendment at 30 CFR 920.16(l). However, the second part of the amendment has not been satisfied. Therefore, Maryland continues to be required to amend its program to require each member of the Land Reclamation Committee to file a statement of employment and financial interest to be no less effective than 30 CFR 705.11(d). We are removing the required amendment at 30 CFR 920.16(l) to the extent that Maryland has amended its program to require that LRC members recuse themselves from proceedings affecting their financial interests.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 23, 1999.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 22, 1997	July 8, 1999	Chapter 223, 1997 Laws of Maryland, Section 15–204(a)(4).

3. Section 920.16 is amended by revising paragraph (l) to read as follows:

§ 920.16 Required program amendments.

* * * * *

(l) By July 10, 2000, Maryland must amend its program to be no less effective than 30 CFR 705.11(a) and 705.17(a) by requiring each member of the Land Reclamation Committee to file a statement of employment and financial interest.

[FR Doc. 99–17296 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–37–1–7392a; FRL–6372–7]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are approving a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule for Albuquerque/Bernalillo County. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the Albuquerque/Bernalillo County Air Quality Control Board (AQCB) to implement and enforce the Federal transportation conformity requirements in the Albuquerque/Bernalillo County area level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. Our final approval action is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision sent under 40 CFR part 51, subpart W (conformity of general Federal actions) on September 13, 1996 (61 FR 48407).

We approve this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on September 7, 1999 without further notice, unless EPA receives adverse comment by August 9, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, City of Albuquerque, One Civic Plaza, Albuquerque, New Mexico 87102, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: We have outlined the contents of this notice below for your reading convenience:

I. Background

A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What is transportation conformity?
D. Why must the State send a transportation conformity SIP?
E. How does transportation conformity work?

II. Approval of the Albuquerque/Bernalillo County Transportation Conformity Rule

A. What did the State send?
B. What is EPA approving today and why?
C. How did the AQCB satisfy the interagency consultation process (40 CFR 93.105)?
D. Why did the AQCB exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
E. What parts of the rule are excluded?

III. Opportunity for Public Comments

IV. Administrative Requirements

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice,

and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans. The Government does not reproduce the text of the federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register**, and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State Governor sent a transportation conformity SIP on December 19, 1994, in behalf of Albuquerque/Bernalillo County Air Quality Control Board (AQCB). We approved this SIP on November 8, 1995 (60 FR 56241). We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the Albuquerque/Bernalillo County Transportation Conformity Rule

A. What Did the State Send?

On December 9, 1998, the Governor of New Mexico in behalf of AQCB sent a SIP revision that includes the Albuquerque/Bernalillo transportation conformity and consultation rule. The AQCB adopted this SIP revision on May 13, 1998, after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Albuquerque/Bernalillo County transportation conformity rule that the Governor of New Mexico sent us on December 9, 1998, except for New Mexico Administrative Code (NMAC) Title 20, Chapter 11, Part 03, sections I.2.3, II.2.4, II.7.3—7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2. The rationale for exclusion of these sections are discussed in section II–E of this action. The AQCB has adopted the Federal rules in verbatim form except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the state's rules apply equally to nonfederal as well as Federal entities. The AQCB's transportation conformity rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the AQCB has fully adopted the Federal Transportation Conformity Rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the AQCB has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Albuquerque/Bernalillo County general conformity SIP on September 13, 1996 (61 FR 48407).

C. How Did the AQCB Satisfy the Interagency Consultation Process (40 CFR 93.105)?

Our rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts by meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for

the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The AQCB developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from its rule. As a first step, the AQCB established an *ad hoc* multi-agency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The AQCB served as the lead agency in coordinating the multi-agency efforts for developing the consultation rule. The committee met approximately biweekly and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the Albuquerque/Bernalillo County and is codified under 20 NMAC 11.03.II.3. We have determined that the AQCB adequately included all elements of 40 CFR 93.105 in their rule and it meets the EPA SIP requirements.

D. Why Did the AQCB Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The AQCB excluded 40 CFR 93.102(d) from its rule. This section allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. However, Sierra Club challenged this section of the rule arguing that allowing a 12 month grace period was unlawful under the Act. On November 4, 1997, the United Sates Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency,* No. 96.1007, cited EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the AQCB has excluded this section from its rule. We agree with the AQCB's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency,* No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 40 CFR 93.121(a)(1), and 40 CFR 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 40 CFR 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the NEPA process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's (Albuquerque/Bernalillo County's) SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the AQCB has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the AQCB, we believe the AQCB would have removed these unlawful sections from its SIP. The AQCB has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time and disapprove the entire transportation conformity SIP.

The AQCB will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the AQCB rules from this SIP approval action. As a result, we are not taking any action on 20 NMAC 11.03, sections I.2.3, II.2.4, II.7.3–7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2 of the Albuquerque/Bernalillo County transportation rules. The conformity determinations affected by these sections must comply with the relevant requirements of the statutory provisions of the Clear Air Act underlying the court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in the Albuquerque/Bernalillo County area should comply with the requirements of the revised Federal rule until corresponding provisions of the State's conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on September 7, 1999 without further notice unless we receive adverse comment by August 9, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local

and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

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

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (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.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, 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.

The 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 preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Dated: June 9, 1999.

W.B. Hathaway,

Acting Regional Administrator, Region 6.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart GG—New Mexico

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

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

2. Section 52.1620(c) is amended by adding the following citation and part 3 entry to the end of the first table to read as follows:

§ 52.1620 Identification of Plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board (AQCB)				
Part 03	Transportation Conformity.	07/01/98	July 8, 1999. 64 FR 36790.	(1) No action is taken on sections I.2.3., II.2.4, II.7.3–7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2. and (2) this rule supersedes Regulation 42 codified under Albuquerque-Bernalillo County, Air Quality Control Regulations.

[FR Doc. 99–17204 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–56–1–7391a; FRL–6372–6]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are approving a revision to the Texas State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level per 40 Code of Federal Regulations (CFR) part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. Our final approval action is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision sent under 40 CFR part 51, subpart W (conformity of general Federal actions) on March 11, 1998 (63 FR 11833).

We approve this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on September 7, 1999, without further notice, unless EPA receives adverse comment by August 9, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

We have outlined the contents of this document below for your reading convenience:

I. Background
- A. What is a SIP?
- B. What is the Federal approval process for a SIP?
- C. What is transportation conformity?
- D. Why must the State send a transportation conformity SIP?
- E. How does transportation conformity work?

II. Approval of the State Transportation Conformity Rule
- A. What did the State send?
- B. What is EPA approving today and why?
- C. How did the State satisfy the interagency consultation process (40 CFR 93.105)?
- D. Why did the State exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
- E. What parts of the rule are excluded?

III. Opportunity for Public Comments

IV. Administrative Requirements

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The Government does not reproduce the text of the Federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State of Texas sent a transportation conformity SIP on November 6, 1994, and we approved this SIP on November 8, 1995 (60 FR 56244). We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the State Transportation Conformity Rule

A. What did the State Send?

On December 10, 1998, the Governor of Texas sent a SIP revision that includes the State's transportation conformity and consultation rule. The Texas Natural Resource Conservation Commission (TNRCC) adopted this SIP revision on November 18, 1998, after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Texas transportation conformity rule that the Governor of Texas sent us on December 10, 1998 except for the incorporation by reference of sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 92.124(b) of 40 CFR into 30 Texas Administrative Code (TAC) 114.26(c). The rationale for exclusion of these sections are discussed in Section II.E of this action. The TNRCC has adopted the Federal rules by ''incorporation by reference'' except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

''Incorporation by Reference'' (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to nonfederal entities as well as Federal entities. The TNRCC Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the State has fully adopted the Federal transportation conformity rules as described in 40 CFR

part 51, subpart T and 40 CFR part 93, subpart A. Also, the TNRCC has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Texas general conformity SIP on March 11, 1998 (63 FR 11833).

C. How did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

Our rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR. As a first step, the State established an ad hoc multiagency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multiagency efforts for developing the consultation rule. The committee met approximately biweekly and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Texas and is codified under section 114.260(d) of the State rule. We have determined that the State adequately included all elements of 40 CFR 93.105 and meets the EPA SIP requirements.

D. Why did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The State excluded 40 CFR 93.102(d) from its IBR. Section 93.102(d) allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. The Sierra Club challenged this section of the rule arguing that allowing a 12-month grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency,* No. 96–1007, cited EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. We agree with the State's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency,* No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the TNRCC has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the TNRCC, we believe the TNRCC would have removed these sections from its IBR. The TNRCC has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The TNRCC will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR at 30 TAC 114.260(c) under the State conformity rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Texas should comply with the requirements of the revised Federal rule until corresponding provisions of the Texas conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules''

section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on Septmber 7, 1999, without further notice unless we receive adverse comment by August 9, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (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.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, 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.

The 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 preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: June 9, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

Subpart SS—Texas

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

Authority: 42 U.S.C. 7401–7671 *et seq.*

2. In § 52.2270 the table in paragraph (c) is amended by removing section 114.27 and adding section 114.260 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
*	*	*	*	*
Section 114.260	Transportation Conformity.	12/10/98	July 8, 1999, 64 FR 36794.	1. No action is taken on the portions of 30 TAC 114.260 that contain 40 CFR 93.102(c), 93.104(d) ,93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). 2. TNRCC order (Docket No.98–0418 RUL) November 23, 1998.
*	*	*	*	*

[FR Doc. 99–17202 Filed 7–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300892; FRL–6090–3]

RIN 2070–AB78

Fosetyl-Al; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the fungicide fosetyl-Al (aluminum tris(O-ethyl phosphonate)) in or on the raw agricultural commodities bananas at 3.0 parts per million (ppm), blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm. Rhone-Poulenc Ag Company and the Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 8, 1999. Objections and requests for hearings must be received by EPA on or before September 7, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300892], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300892], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or

ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300892]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7740; e-mail: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7,1998 (63 FR 36s681) (FRL–5795–6) and January 29, 1999 (64 FR 4650) (FRL–6055–8), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP#5E4434, 5E4559, 7E4872) for tolerances by Interregional Research project Number 4 (IR–4), New Jersey Agricultural Research Station, Rutgers University, New Brunswick, New Jersey 08903, and pesticide petition (PP#8E4969) for a tolerance by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These notices included summaries of the petitions prepared by Rhone-Poulenc Ag Company, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.415 be amended by establishing tolerances for the fungicide fosetyl-Al, in or on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm. Since the tolerance for blueberries expired on December 31, 1998, after the notice of filing was published in the **Federal Register**, this rule re-establishes the blueberry tolerance, with an expiration date of December 31, 2000. Registration for use of fosetyl-Al on grapes will be limited to areas east of the Rocky Mountains, based on the geographical representation of the residue data submitted. Persons seeking geographically broader registration should contact the Registration Division at the address provided above.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fosetyl-Al and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances of fosetyl-Al on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts 0.20 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

[Technical grade fosetyl-Al has low acute oral (IV), dermal (III), and inhalation (III) toxicity. It is non-irritating to the skin (IV) and severely irritating to the eyes (I). It is not a skin sensitizer. There were no acute neurotoxicity tests performed. The acute oral LD_{50} for rats is >5,000 milligrams per kilogram (mg/kg), the acute dermal LD_{50} for rats is >3,000 mg/kg, and the acute inhalation LC_{50} for rats is 1.73 milligrams per liter (mg/l).

The subchronic toxicity studies included a 21-day dermal toxicity study in rats whose no observed adverse effect level (NOAEL) was greater than the limit dose of 1,000 milligrams per kilogram per day (mg/kg/day). The NOAEL was 1,500 mg/kg/day, the highest dose tested (HDT) and the lowest observed adverse effect level (LOAEL) was >1,500 mg/kg/day. The other subchronic studies were two 3-month oral toxicity studies, one using dogs and the other using rats. Treatment-related effects included slightly increased medullary hematopoiesis in the spleen of rats and decreased serum potassium in dogs, both at LOAELs of 1,250 mg/kg/day. The NOAELs were 482 and 250 mg/kg/day in rats and dogs, respectively.

The following chronic toxicity and/or carcinogenicity studies were performed. In a chronic toxicity feeding study using dogs, the NOAEL of 250 mg/kg/day was based on testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules) at the LOAEL of 500 mg/kg/day. In a combined chronic toxicity/carcinogenicity study using rats, the NOAEL of 400 mg/kg/day was based on urinary bladder pathology (tumors) and increased urine protein at the LOAEL of 1,500 mg/kg/day. In a carcinogenicity study in mice, the NOAEL of 409 mg/kg/day was based on a slight increase in white blood cells at the LOAEL of 1,672 mg/kg/day. There was no evidence of carcinogenicity in the mouse. The Agency classified fosetyl-Al as a Group C carcinogen (possible human carcinogen). A subsequent review concluded that fosetyl-Al was not amenable to classification using the current Agency guidelines and determined that the tumors produced in rats occurred under extremely high doses, under conditions not anticipated to occur outside of the experimental lab. Therefore, it was concluded that fosetyl-Al is not likely to pose a carcinogenic hazard to humans.

Results from five acceptable mutagenicity studies indicate that fosetyl-Al was not mutagenic in bacterial or cultured mammalian cells and did not cause DNA damage in bacterial or primary rat hepatocytes.

Therefore, the available data indicate that fosetyl-Al is not a mutagen.

In a developmental toxicity study using rats, maternal toxicity occurred at four times the limit dose. The maternal LOAEL was 4,000 mg/kg/day, based on decreased mean body weights and body weight gain, and increased maternal mortality, and the NOAEL was 1,000 mg/kg/day (limit dose). The developmental LOAEL was also 4,000 mg/kg/day, based on decreased litter and mean fetal body weight, increased resorptions, malformations, and skeletal variations, and the developmental NOAEL was 1,000 mg/kg/day (limit dose). In a developmental toxicity study using rabbits there was no evidence of developmental toxicity at the HDT of 500 mg/kg/day, so the NOAEL is considered to be 500 mg/kg/day and the LOAEL was not established. In this same study the maternal LOAEL was 250 mg/kg/day, based on decreased mean body weight, and the NOAEL was 125 mg/kg/day. A three-generation reproductive toxicity study using rats did not indicate any concern for pre- or post-natal effects in offspring or for reproductive effects. The parental/systemic LOAEL was 600 mg/kg/day, based on decreased body weight gains of the F_{2b} generation, and urinary tract changes in adults, and the parental/systemic NOAEL was 300 mg/kg/day. In this same study the reproductive (offspring) LOAEL was 600 mg/kg/day, based on decreased litter and pup body weight (day 8) in both matings of each generation, and the reproductive (offspring) NOAEL was 300 mg/kg/day. The *in utero* (developmental) NOAEL in this study was >1,200 mg/kg/day (the HDT). Therefore, there was no evidence of increased sensitivity due to prenatal or postnatal exposure to fosetyl-Al.

A dermal absorption factor is required only for long-term dermal risk assessment due to the selection of an oral value. The Agency estimated a dermal absorption factor of 17% based on the ratio of the oral LOAEL (250 mg/kg/day), and the dermal LOAEL (1500 mg/kg/day) in rabbits. Two metabolism studies using rats were evaluated. The first study showed that fosetyl-Al technical was rapidly metabolized to carbon dioxide (60%, recovered in exhaled air), and phosphite (phosphorous acid) (29 to 30%, excreted in the urine and feces). The second study examined metabolism of the phosphite metabolite, showing most of it to be excreted in the urine (59–65%) and feces (30 to 32%).

Overall, the quality of the toxicology data base is good and the confidence in the hazard and dose responses is high. There are no toxicology data gaps.

B. Toxicological Endpoints

1. *Acute toxicity.* No appropriate endpoint attributable to a single dose exposure was identified in acute oral toxicity studies. Therefore, an acute Reference Dose (RfD) was not established.

2. *Short-and intermediate-term toxicity.* In the 21-day dermal toxicity study using rats, no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications. Therefore, no endpoint value is calculable.

3. *Chronic toxicity.* EPA has established the chronic RfD for fosetyl-Al at 2.5 mg/kg/day. This RfD is based on testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules) in 2 of 6 rats. The endpoint was observed in the 2-year chronic toxicity using dogs. In this study the NOAEL was 250 mg/kg/day and the uncertainty factor was set at 100. The FQPA factor was determined to be 1× because:

(1) The toxicology data base is complete.

(2) there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies,

(3) a developmental neurotoxicity study is not required,

(4) food exposure estimates are unrefined (that is, tolerance level residues and 100% crop treated assumed) and likely result in an overestimate of the actual food exposure,

(5) the Agency models used for ground and surface drinking water exposure estimates produce upper-bound concentration estimates,

(6) the current residential use pattern is not of concern since no potential hazard was identified for short- or intermediate-term exposure (no risk assessment is required) and long-term exposure is not expected with this use. As a result of the 1x FQPA factor, the chronic population adjusted dose (CPAD) is the same as the RfD.

4. *Carcinogenicity.* The Agency has determined that fosetyl-Al is unlikely to pose a cancer hazard to humans because the effects produced in rats occurred at extremely high doses, under conditions not anticipated to occur outside of the laboratory. Therefore, under the expected exposure conditions for this use, fosetyl-Al is unlikely to pose a carcinogenic risk to humans.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.415) for residues of fosetyl-Al in or on a variety of raw agricultural commodities. These tolerances range from 0.1 part per million (ppm) on caneberries, fresh ginseng root, and pineapple to 100 ppm on the leafy vegetables (except brassica vegetables) group. A time-limited tolerance for blueberries at 40 parts per million expired on December 31, 1998. Risk assessments were conducted by EPA to assess dietary exposures from fosetyl-Al as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Food exposure for various subgroups of the U.S. population was estimated through the use of the Dietary Exposure Evaluation Model (DEEM) software. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1991 nationwide Continuing Surveys of Food Intake by Individuals. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. The Agency assumed 100% crop treated and tolerance level residues for all crops with tolerances as well as for the crops which are being evaluated in this action (i.e., bananas, grapes, and macadamia nuts). The most highly exposed group, children (1–6 years), is at 6% of the chronic CPAD. Of the female subgroups, females (13+/nursing) has the highest exposure at 4% of the CPAD. The exposure for the U.S. population is 3% of the CPAD. Foods that contribute most to the exposure are: lettuce, apples, tomatoes, broccoli, celery, strawberries, spinach, and cabbage.

The Agency does not consider the chronic dietary food risk to exceed the Agency's level of concern.

iii. *Short- and intermediate-term exposure and risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value was calculated and there is no expectation of short- or intermediate-term risk.

iv. *Cancer exposure and risk.* Carcinogenicity risk assessments are required for a food-use pesticide if a toxicological study has indicated the possibility of cancer occurring as a result of an exposure (usually chronic).

The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxicological endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

i. *Acute exposure and risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Of all of the crops for which fosetyl-Al is registered, its use on turf produces the highest estimated environmental concentrations (EECs). As a result, the EECs generated from use on turf are the ones used for comparison with the DWLOCs in this risk assessment. For surface water, the Agency's Generic Estimated Environmental Concentration (GENEEC) model has provided a 56-day EEC of 9 µg/L. As no data were available on the aerobic aquatic metabolism of fosetyl-Al (a GENEEC input), the aerobic soil metabolism half-life of 3 hours (0.125 day) was multiplied by a factor of 2 to use as a GENEEC input. Multiplying by 2 to account for a change in medium (aerobic soil to aerobic aquatic conditions) is a standard practice for surface water modeling in the absence of data when the pesticide is stable to hydrolysis. For ground water, the Screening Concentration in Ground Water (SCI-GROW2) model-derived concentration of 4.6×10^{-3} micrograms per liter (µg/L) can be used for chronic risk assessment. For this risk assessment, the surface water EEC of 9 µg/L was compared with the DWLOCs to determine whether or not fosetyl-Al residues in drinking water result in an unacceptable dietary exposure. The surface water EEC was chosen because it exceeds the ground water EEC.

Fosetyl-Al is not expected to reach ground or surface water under most conditions. Even if it reaches surface water, it is expected to degrade rapidly. In ground water, it could persist because of potentially low microbial content. Biodegradation is the only apparent means of fosetyl-Al dissipation. Fosetyl-Al rapidly degrades in both aerobic and anaerobic soil to degradates that are widespread in nature (Al^{+3}, phosphate, and ethanol). Under almost all uses, the degradation is expected to be so rapid that fosetyl-Al will not have time to move in soil, despite being highly soluble in water (120 µg/L) and potentially mobile in soil. As it is stable to abiotic hydrolysis, fosetyl-Al could persist in pristine receiving waters with low microbial content.

Parent fosetyl-Al is the only compound included in EFED's assessment. At this time the Agency has no reason to believe that there are toxicologically significant degradates to be included in the risk assessment.

The modeling results lead to the following maximum water exposures and the following DWLOCs for the U.S. population and three appropriate subgroups:

1. For the U.S. population the maximum water exposure would be 2.42 mg/kg/day and the DWLOC would be 85,000 µg/L.

2. For the females (13+) subgroup, the maximum water exposure would be 2.40 mg/kg/day and the DWLOC would be 72,000 µg/L.

3. For the infants/children subgroup, the maximum water exposure would be 2.34 mg/kg/day and the DWLOC would be 23,000 µg/L.

4. For the non-Hispanic other than Black or White subgroup, the maximum water exposure would be 2.40 mg/kg/day and the DWLOC would be 84,000 µg/L.

The Agency therefore concludes that the residues in water, as estimated by the models, are not a significant contribution to aggregate exposure.

iii. *Short- and intermediate-term toxicity.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

iv. *Cancer exposure and risk.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

3. *From non-dietary exposure.* Fosetyl-Al is currently registered for use on the following residential non-food sites: lawn, turf, and ornamental plants.

i. *Acute exposure and risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD could not be calculated, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Long-term (chronic) exposure is not expected for residential uses. In addition, the Agency does not consider incidental hand-to-mouth ingestion by toddlers a concern since chronic exposure via this route is highly unlikely and because fosetyl-Al has a relatively short half-life.

iii. *Short- and intermediate-term exposure and risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

iv. *Cancer exposure and risk.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

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

EPA does not have, at this time, available data to determine whether fosetyl-Al has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fosetyl-Al does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fosetyl-Al has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

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

1. *Acute risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not

established, and their is no expectation of acute risk.

2. *Chronic risk.* Chronic risk estimates associated with exposure to fosetyl-Al in food and water do not exceed HED's level of concern. The DEEM chronic exposure analysis showed that for the U.S. general population, 3% of the CPAD is occupied by dietary (food) exposure. For the most highly exposed subgroup, children 1–6 years old, 6% of the CPAD is occupied by dietary (food) exposure. The estimated average concentrations of fosetyl-Al in surface and ground water are less than HED's DWLOC for fosetyl-Al as a contribution to chronic aggregate exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-Al residues.

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

Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

4. *Aggregate cancer risk for the U.S. population.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

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

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

1. *Safety factor for infants and children.* The Agency has determined that the FQPA factor should be 1x because:

1. The toxicology data base is complete.

2. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies.

3. A developmental neurotoxicity study is not required.

4. Food exposure estimates are expected to be unrefined (that is, tolerance level residues and 100% crop treated assumed) and will likely result in an overestimate of the actual dietary exposure.

5. The Agency models used for ground and surface drinking water exposure estimates produce upper-bound concentration estimates.

6. The current residential use pattern is not of concern since no potential hazard was identified for short- or intermediate-term exposure (no risk assessment is required) and long-term exposure is not expected with this use. As a result of the 1x FQPA factor, the CPAD is the same as the RfD.

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

2. *Acute risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fosetyl-Al from food will utilize up to 6 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fosetyl-Al in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- and intermediate-term risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

5. *Aggregate cancer risk for U.S. population.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is parent fosetyl-Al. This conclusion was based on the results of metabolism studies performed on the following commodities: pineapples, grape vines, tomatoes , citrus, and apples. Residues of fosetyl-Al are not systemic; therefore, residues will be on the surface of plants. There are no feed items associated with preexisting tolerances or with bananas, grapes, or macadamia nuts; therefore, the nature of the residue in animals is not germane to this action. Section 40 CFR 180.6(a)(3) applies to this action. That is, it is not possible to establish with certainty whether finite residues will be incurred in animal commodities, but there is no reasonable expectation of finite residues.

B. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of the proposed tolerances in/on bananas, blueberries, grapes, and macadamia nuts.

The gas chromatography/flame photometric detection, phosphorous-specific (GC/FPD-P) method is adequate to enforce the proposed tolerances on bananas and grapes. This method is an adaptation of the tolerance enforcement method for fosetyl-Al on pineapples (Pesticide Analytical Method (PAM) II, Food and Drug Administration, June 1986). The limit of quantitation (LOQ) and limit of detection (LOD) for the method are 0.10 and 0.05 ppm, respectively.

Method SOP–90113, dated 6/8/90 (a modified version of Rhone-Poulenc method 163) is used for the blueberry analysis. The method has been approved for publication in PAM II.

A modification of the GC/FPD-P method is adequate to enforce the proposed tolerance on macadamia nuts. This method is similar to the banana method in the extraction, derivitization, separation, and detection steps. Because of the macadamia nut matrix, more-involved cleanup steps are necessary.

Given the similarity of the macadamia nut method, an Agency pesticide method validation (PMV) will not be required. The LOQ and LOD for the method were not specified.

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

C. Magnitude of Residues

1. *Bananas.* With bananas, seven field trials were conducted in Central and South America, from Mexico to Ecuador. These locations represent the climatic regions where bananas are grown for export to the United States. Over 96% of the bananas imported into the U.S. come from these countries. Bananas received two types of treatment: foliar and tree injection. In addition, bagged and unbagged samples were treated. The unbagged samples receiving foliar applications were the only ones with appreciable residues. Fourteen samples were treated at the 0.9x rate. Ten of these samples had quantifiable residues. The average of these ten samples was 0.58 ppm. Residues ranged up to 1.99 ppm. Four samples were treated at the 1.8x rate. The mean for these samples was 0.69 ppm. Residues ranged from 0.38 to 1.22 ppm. Of the unbagged samples receiving injection treatments (0.9x rate, 18 samples total), all samples had residue levels at or below the LOQ of 0.10 ppm. Four unbagged samples received a 1.8x injection treatment. Residue levels were below the LOQ for all four of these samples, as well. Of the 28 bagged samples, 26 had residue levels which were below the LOQ. The other 2 had residues which were slightly over the LOQ (0.11 and 0.13 ppm). A residue decline study was also performed. Mean residues (2 samples at each PHI) in the foliar-treated unbagged samples declined as follows: 0-day pre-harvest interval (PHI), 0.35 ppm; 3-day PHI, 0.22 ppm; 7-day PHI, 0.27 ppm; and 14-day PHI, <0.10 ppm. The Agency has a high level of confidence in the data.

2. *Blueberries.* Sufficient data to support a permanent tolerance for residues of fosetyl-Al in/on blueberries have not yet been submitted by the registrant. However, one study that was performed on blueberries in Michigan was submitted. This study showed a maximum residue of 32.7 ppm of fosetyl-Al in blueberries 30 days after an application of fosetyl-Al at the maximum label rate of 4 lb. active ingredient per acre and supports the time-limited tolerance of 40 ppm in/on blueberies. Two additional acceptable magnitude of residue studies must be submitted before the time-limited tolerance can be converted to a permanant tolerance.

3. *Grapes.* Four field trials were conducted in regions east of the Rocky Mountains, 2 to 3 specimens being collected from each plot. Five additional field trials were conducted west of the Rocky Mountains, three specimens being collected from each of these plots. Although the registration is for regions east of the Rocky Mountains, the tolerance was set at a level (10 ppm) that took into account the higher values which were obtained in the field trials that were performed west of the Rocky Mountains. The petitioner proposed a tolerance of 10 ppm because in extreme drought conditions residues will be higher. Although drought conditions are rare east of the Rocky Mountains, they are still possible. Among the 10 samples from the eastern field trials, one had a residue level below the LOQ of 0.50 ppm and the others had residues ranging from 0.52 to 2.45 ppm. The mean residue levels of these samples was 1.2 ppm. Among the 15 samples from the western field trials, residues ranged from 1.7 to 18 ppm. The Agency has a high level of confidence in the submitted field trial data.

4. *Macadamia nuts.* Despite the fact that only 2 field trials were performed and storage stability was poor, fosetyl-Al is not highly systemic and macadamia nuts have hard, impervious shells. As a result, no residues were expected to be detected, and none were found. Although limited residue data were provided, the Agency is confident that residues will not exceed a 0.20 ppm tolerance. The registrant initially requested that this tolerance be set at 0.3 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican international residue limits established for fosetyl-Al; therefore, the magnitude of the residue is not of concern for this action.

E. Rotational Crop Restrictions

None of the crops affected by this rule is grown in rotation with other crops. Therefore, rotational crop restrictions are unnecessary.

IV. Conclusion

Therefore, tolerances are established for residues of fosetyl-Al in or on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm.

V. Objections and Hearing Requests

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

Any person may, by September 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the **''ADDRESSES''** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator

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

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300892] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov

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

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

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

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

C. Executive Order 13084

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

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

VIII. Submission to Congress and the Comptroller General

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 1999.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. By revising § 180.415 to read as follows:

§ 180.415 Aluminum tris (O-ethylphosphonate); tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Avocados	25	None
Bananas	3.0	None
Blueberries	40	12/31/00
Brassica (cole) leafy vegetables group.	60	None
Caneberries	0.1	None
Citrus	0.5	None
Cucurbit vegetables group.	15	None
Ginseng root, fresh.	0.1	None
Hops, dried	45	None
Leafy vegetables (except brassica vegetables) group.	100	None
Macadamia nuts.	0.20	None
Pineapple	0.1	None
Pineapple fodder.	0.1	None
Pineapple forage.	0.1	None
Pome fruit	10	None
Onions, dry bulb.	0.5	None
Strawberries	75	None
Tomatoes	3	None

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

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the fungicide aluminum tris (*O*-ethylphosphonate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	0.1
Grapes	10

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

[FR Doc. 99–17351 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–F–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–300]

Organization and Delegation of Powers and Duties; Delegations to the Commandant, United States Coast Guard and Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, authority to implement new ownership requirements for eligibility of vessels measuring less than 100 feet to receive a fishery endorsement to operate in certain fisheries. The Secretary also delegates the authority to assess penalties for fishery endorsement violations to the Commandant, United States Coast Guard. The authority to issue and implement regulations for vessels 100 feet and greater is delegated to the Administrator, Maritime Administration. This rule adds two new paragraphs to 49 CFR 1.46 and 1.66 to reflect these delegations of authority.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590; or Ms. Blane Workie, Office of the General Counsel, C–50, (202) 366–9314, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The American Fisheries Act (Public Law 105–277) (''the Act'') amends current law regarding the ownership requirements for eligibility of a vessel to receive a fishery endorsement to operate in certain fisheries and under certain terms and conditions. The Secretary delegates to the Coast Guard the authority to issue and administer regulations implementing the new requirements for vessels measuring less than 100 feet. Regulations affecting vessels measuring 100 feet and greater will be developed and administered by the Maritime Administration. The Act requires the publication of these regulations by April 1, 2000.

The Act also outlines procedures for implementation and penalties for non-compliance. The Secretary delegates to the Coast Guard the authority to assess penalties for willful noncompliance with the new requirements under the American Fisheries Act because the Coast Guard has current authority, resources, and expertise to assess penalties.

The delegations should be made to the Commandant and to the Maritime Administrator as provided in this amendment to 49 CFR part 1 because the Coast Guard and the Maritime Administration have the requisite expertise, capability, and responsibility for the duties prescribed in the American Fisheries Act. Indeed, the Coast Guard is currently administering documentation requirements for vessels under 100 feet and has resources in place to effectively carry out the American Fisheries Act. Additionally, the Maritime Administration has a long history of administering certain maritime laws that require detailed scrutiny of ownership and control issues as they relate to U.S. citizenship requirements. The Maritime Administration's oversight of the new requirements for vessels 100 feet and greater is a natural extension of its current administration of citizenship enforcement.

We publish this rule as a final rule, effective on the date of publication. Since this amendment relates to departmental management, organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the

amendment expedites the ability of the Coast Guard and the Maritime Administration to ensure that vessels meet new eligibility requirements for fishery endorsements, the Secretary finds good cause under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, amend part 1 of title 49, Code of Federal Regulations, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Amend section 1.46, by adding new paragraph (sss), to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(sss) Carry out the functions and exercise the authorities vested in the Secretary by sections 203(b), 203(d), and 213(g) of division c, title II, Public Law 105–277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring less than 100 feet; and by 203(f) of division c, title II, Public Law 105–277.

3. Amend section 1.66, by adding new paragraph (dd), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(dd) Carry out the functions and exercise the authorities vested in the Secretary by sections 202(b), 203(b), 203(g), and 213(g) of division c, title II, Public Law 105–277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring 100 feet and greater.

Issued in Washington, DC this 28th day of June, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–17306 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 177 and 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases (Chlorine)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration; limited stay of implementation date; correction; request for comments.

SUMMARY: On May 24, 1999, RSPA published a final rule to revise regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions included new inspection, maintenance, and testing requirements for cargo tank discharge systems; revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia; and revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when away from the motor vehicle during delivery. This document responds to a petition for reconsideration, delays implementation of one provision of the final rule as it applies to chlorine unloading operations, and corrects an instruction in the final rule.

DATES: *Effective Dates:* This final rule is effective July 8, 1999. The effective date for the final rule published on May 24, 1999, remains July 1, 1999. *Implementation Date:* The implementation date for § 177.840(t) as it applies to chlorine cargo tanks is delayed until January 1, 2000.

Comment Date: Submit comments on or before September 7, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket number RSPA–97–2718 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System on the Internet at ''http://dms.dot.gov'' or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the docket management system through the DOT home page (http://dms.dot.gov).

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, (202) 366–8553; or Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

On May 24, 1999, the Research and Special Programs Administration (RSPA; ''we'') published a final rule under Docket No. RSPA–97–2718 (HM–225A) (64 FR 28030). The final rule revised regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions include new inspection, maintenance, and testing requirements for cargo tank discharge systems, including delivery hose assemblies, and revised unloading attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia to take account of certain unique operating characteristics.

Further, the final rule revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when unloading duties require the person to be away from the motor vehicle during delivery.

The final rule allows two-years for development and testing of emergency discharge control technology. After two years, newly manufactured MC 331 cargo tank motor vehicles must be equipped with emergency discharge control equipment that conforms to the performance standards; MC 330, MC

331 and certain nonspecification cargo tank motor vehicles already in service must be retrofitted at their first scheduled pressure test after the two-year period. These revisions are intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with.

II. Negotiated Rulemaking Process

The May 24, 1999 final rule was developed through a negotiated rulemaking. In a negotiated rulemaking, representatives of interests affected by a regulation meet as an advisory committee to discuss the safety issues and to identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a notice of proposed rulemaking to be made by the agency. This process is intended to give parties the opportunity to find creative solutions, improve the information data base for decisions, produce more acceptable rules, enhance compliance, and reduce the likelihood of court challenges.

For this rulemaking, in addition to the Department of Transportation (DOT), the negotiated rulemaking committee consisted of persons who represent the interests affected by this rulemaking, including businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies.

From the beginning, our goal has been an open and inclusive process that would enable anyone with an interest in the rulemaking to provide information and to comment on proposals. The document announcing our intention to establish a negotiated rulemaking committee (63 FR 30572; June 4, 1998) listed those interests that we believed should be represented on the Committee and invited commenters to identify other interests that should also be represented. The document identified the Compressed Gas Association and National Tank Truck Carriers as organizations that should be included on the Committee to represent the interests of manufacturers and transporters of liquefied compressed gases other than liquefied petroleum gas and anhydrous ammonia. We received no comments suggesting that additional representation should be considered.

Once the Committee was established, interested parties who were not selected for membership were invited to attend Committee meetings, which were open to the public, and to caucus with Committee members representing their interest on the Committee. Interested parties could also address the Committee, submit written comments on issues of concern, and participate in the informal work groups that were established by the Committee to address certain technical issues and draft regulatory text. Representatives of the Chlorine Institute participated in several meetings of the negotiated rulemaking committee. They were provided with draft rulemaking documents and encouraged to provide us with comments and suggestions to address any concerns. Their suggestion to incorporate the Chlorine Institute's Pamphlet 57 entitled ''Emergency Shut-off Systems for Bulk Transfer of Chlorine'' into the HMR was adopted, as were several suggestions for changes to the draft to reflect the unique nature of chlorine unloading operations. These suggestions were part of the notice of proposed rulemaking (NPRM) published on March 22, 1999 (64 FR 13856).

The Chlorine Institute submitted formal comments on the NPRM on April 21, 1999. On April 28, 1999, we met informally with representatives of the Chlorine Institute to clarify their comments and to discuss alternatives for addressing their concerns. All but one of the comments submitted by the Chlorine Institute were accommodated in the May 24 final rule.

III. Petition for Reconsideration

On June 17, 1999, the Chlorine Institute filed a petition for reconsideration and motion for partial stay of the final rule. (The petition for reconsideration and motion for partial stay of the final rule is reprinted as Appendix A to this final rule. The attachments to the Chlorine Institute's petition can be reviewed by accessing the Docket Management System through the DOT home page (*http://dms.dot.gov*) or in person at the Dockets Management System at the address indicated above.) The Chlorine Institute seeks reconsideration of two provisions of the May 24, 1999 final rule as they apply to cargo tanks used to transport and deliver chlorine. Specifically, the Chlorine Institute requests reconsideration of the requirement in § 173.315(n)(2) for emergency discharge control equipment that operates without human intervention to be certified by a Design Certifying Engineer (DCE). In addition, the Chlorine Institute seeks reconsideration and a stay of the requirement in § 177.840(t) that, until a chlorine cargo tank is equipped with emergency discharge control equipment that conforms to requirements in the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product.

IV. Petition Partially Denied

In § 173.315(n), the May 24, 1999 final rule established emergency discharge control system requirements for cargo tanks in liquefied compressed gas service. Cargo tanks transporting materials that are poisonous by inhalation, including chlorine, are required to be equipped with a means to automatically stop product flow without human intervention within 20 seconds of an unintentional release caused by a complete delivery hose separation, also referred to as a passive shut-down capability. This section also makes clear that the design for a passive shut-down capability, including systems installed prior to July 1, 2001, must be certified by a DCE. The certification must consider any specifications of the original component manufacturer and must explain how the passive shut-down capability operates. It must also outline the parameters (e.g., temperature, pressure, types of product) within which the passive shut-down capability is designed to operate. All components of the discharge system that are integral to the design must be included in the certification.

The Chlorine Institute asserts that the May 24, 1999 final rule imposes a ''new, unnecessary and wholly unjustified set of additional regulatory requirements'' for cargo tanks used to transport and deliver chlorine. The Chlorine Institute states that, because chlorine is unloaded by pressure rather than by pump, the emergency discharge control system on chlorine cargo tanks, of which an excess flow valve is a key component, has operated successfully for 40 years. In light of its ''flawless'' unloading experience, the Chlorine Institute states that there is no possible benefit to requiring the emergency discharge control system on a chlorine cargo tank to be certified by a DCE. The Chlorine Institute also notes that the excess flow valve used on chlorine cargo tanks was extensively tested in the 1960s before it was put into widespread service. According to the Chlorine Institute, test results (included with the petition as an appendix) indicate that there will always be sufficient internal pressure in the cargo tank to assure that the excess flow valve will operate. The Chlorine Institute continues, ''Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or

would be certified by a 'Design Certifying Engineer' who would have had no part in its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in the chlorine situation, and would add nothing to the safety of chlorine unloading.''

The Chlorine Institute asserts that excess flow valves have functioned successfully in chlorine cargo tanks since the 1960s and that tests conducted before they were placed in widespread service demonstrate that an excess flow valve will close at a pressure well below the pressure differential that would be experienced in a complete hose separation during unloading. However, the requirement in the May 24 final rule is for certification of the emergency discharge control system, of which the excess flow valve is only one component. System certification was a key issue in the HM–225A negotiated rulemaking. As individual component manufacturers noted, an excess flow valve is only required to close if its flow rating, as established by the manufacturer, is exceeded. Manufacturers of excess flow valves who participated in the negotiated rulemaking advised that, in addition to restrictions in downstream piping caused by pumps, other variables may restrict the circumstances under which an excess flow valve will operate. Such variables include other restrictions in the discharge system (e.g., branching, elbows, reductions in pipe diameter), low operating pressures, or a partially closed valve downstream from the excess flow valve, all of which restrict the rate of flow through the excess flow valve. For this reason, the final rule included the requirement that the entire emergency discharge control system rather than individual components of the system be certified to meet the new performance standard. All components of the discharge system that are integral to the design must be included in the certification. Further, the certification must specify the parameters (e.g., temperature, pressure, types of product) within which the system is designed to operate.

Because of the requirement that the entire emergency discharge control system rather than individual components of that system be certified, the May 24 final rule recognizes that component manufacturers may be reluctant to provide a performance certification for a system of which their component is only a part. Thus, the final rule requires that the certification be provided by a DCE, who may be employed by a cargo tank manufacturer, a component manufacturer, a cargo tank owner or operator, or a third party. The DCE need not have had any part in the actual design of the emergency discharge control system being certified. Rather, the DCE is expected to review design specifications and test results and to conduct any additional tests deemed necessary to verify that the system operates as designed within the parameters specified for its operation. The design for each type of emergency discharge control system is certified once by a DCE; provided the system is installed according to the certification, the single DCE certification serves for all cargo tanks equipped with that type of system.

The Chlorine Institute proposes that we remove cargo tanks unloading chlorine by pressurization from the May 24 final rule requirements. This part of the petition for reconsideration is denied. We recognize that unintentional releases of liquefied compressed gases as a result of complete hose separations during unloading are infrequent occurrences. However, an unintentional release of a gas that is poisonous by inhalation, such as chlorine, which is a PIH Hazard Zone B material, may have very serious consequences if it is not controlled quickly. The requirement in the May 24 final rule for a passive shut-down capability on chlorine cargo tanks is designed to address potential risks to public safety associated with low-probability/high consequence events. The Chlorine Institute has not provided sufficient information to justify its request for an exception from this requirement.

As an alternative, the Chlorine Institute suggests that RSPA clarify that, ''by virtue of [its] 40 years of flawless operation'' and based on the results of tests conducted on railroad tank car systems in the 1960s, the chlorine excess flow valve is certified within the meaning of the May 24 final rule. This part of the petition for reconsideration is also denied.

We do not believe that DOT certification of components or systems installed on cargo tanks is either appropriate or necessary. The principle of cargo tank design certification by a DCE is well-established in the HMR, and this method for independent certification of compliance with the cargo tank regulations works well.

Further, certification of the excess flow valve would not meet the requirements for certification established in the May 24 final rule. First, the rule requires certification of emergency discharge control systems, not individual components of those systems. Second, the certification must include a description of each emergency discharge control system and the parameters within which the system is designed to operate. Neither of these requirements is satisfied by the Chlorine Institute's proposal.

V. Petition Partially Granted and Request for Comments

Section 177.840(t) of the May 24, 1999 final rule requires that, until a cargo tank in chlorine service is equipped with emergency discharge control equipment in conformance with the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product. The Chlorine Institute notes that chlorine is unloaded from a valve located on top of the cargo tank. To be within arm's reach of a means to shut down unloading, a person must ''perch precariously atop than [sic] tank for the several hours necessary to complete the unloading process.''

The May 24 final rule requires chlorine being unloaded from cargo tanks after July 1, 2001 to comply with procedures set forth in section 3 of the Chlorine Institute's Pamphlet 57. (This provision does not apply to unloading of cargo tanks that are equipped with emergency discharge control systems certified in accordance with § 173.315(n) of the May 24 final rule.) Facilities equipped for unloading in conformance with Pamphlet 57 have a remote location from which the unloading operation can be shut down in the event of an unintentional release or other emergency. For these facilities, the requirement to be within arm's reach of a means to shut down unloading is met when the person attending the unloading operation is within arm's reach of the remote shut-down location. However, not all facilities are equipped for unloading in conformance with Pamphlet 57.

We agree with the Chlorine Institute that additional time is necessary to consider alternatives to the requirement in § 177.840(t) that the person attending a chlorine cargo tank be within arm's reach of a means to shut down the unloading operation. Therefore, the petition for a stay of the implementation date of this provision of the May 24 final rule is granted. The implementation date for § 177.840(t), as it applies to chlorine unloading at facilities that do not conform to Pamphlet 57, is delayed to January 1, 2000. During that time, we will consider viable alternatives that may be proposed by interested parties for monitoring the unloading of chlorine from cargo tanks that are not equipped with an emergency discharge control system

certified in conformance with § 173.315(n) of the May 24 final rule.

In addition, we are requesting comments on issues raised in the Chlorine Institute's petition for reconsideration. Specifically, we wish to know:

(1) How many cargo tanks are affected by the transition provision in § 177.840(t) as it applies to chlorine unloading?

(2) How many facilities at which unloading of cargo tanks is performed by carrier personnel are not yet equipped for unloading in conformance with Pamphlet 57?

(3) How many unloading operations are conducted at such facilities each year?

(4) Are there other ways to conduct chlorine unloading operations that will achieve an equivalent level of safety as required by § 177.840(t)?

(5) Are all cargo tanks engaged in transporting chlorine fitted with the same piping configuration, or are there significant differences?

(6) What other issues should we consider in resolving this issue?

VI. Correction

In the May 24, 1999 final rule, instruction 19 incorrectly redesignated several paragraphs in § 180.407. This redesignation is corrected in this final rule.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this final rule addressing the delay in implementation of the transition provision affecting monitoring of chlorine unloading operations. However, a final regulatory evaluation was prepared in support of the final rule published on May 24, 1999. The final regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under item (ii) above and preempts state, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. Thus, RSPA lacks discretion in this area, and preparation of a Federalism assessment is not warranted. The effective date of Federal preemption for these requirements is October 6, 1999.

C. Executive Order 13084

This final rule has not been analyzed in accordance with the principles and criteria in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because revised rules and regulations in this final rule are not expected to significantly or uniquely affect communities of Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. RSPA conducted this assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment. Thus, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This final rule imposes no new information collection burdens. The requirements for information collection included in the May 24, 1999 final rule are approved by the Office of Management and Budget under OMB control number 2137–0595. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

F. Regulation Identifier Number (RIN)

A regulation identifier 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 containing in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not mandate business process changes or require modifications to computer systems. Because this rule apparently does not affect organizations' ability to respond

to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements.

I. Environmental Assessment

RSPA did not perform an environmental assessment of this final rule. RSPA did conduct an environmental assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment.

List of Subjects

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR parts 177 and 180 as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53

2. In § 177.840, in paragraph (t) the last sentence is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(t) * * * For chlorine cargo tanks unloaded after December 31, 1999, the qualified person must remain within arm's reach of a means to stop the flow of product except for short periods when it is necessary to activate controls or monitor the receiving container.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

3. In rule document 99–12860, beginning on page 28030 in the issue of Monday, May 24, 1999, make the following correction:

§ 180.407 [Corrected]

On page 28051, column 2, in amendatory instruction 19., beginning in the second line, correct ''existing paragraphs (h)(4) through (h)(8) are redesignated as paragraphs (h)(5) through (h)(9), respectively'' to read ''existing paragraph (h)(4) is redesignated as paragraph (h)(5)''.

Issued in Washington, DC on June 29, 1999, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Administrator.

Appendix A to the Preamble

Expedited Consideration Requested

Before the United States Department of Transportation, Research and Special Programs Administration

Docket No. RSPA–97–2718 (HM–225A)

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases

Motion for Partial Stay of the Final Rule and Petition of the Chlorine Institute, Inc. for Reconsideration and Clarification of the Final Rule

I. Introduction

Pursuant to the provisions of 49 CFR § 106.35, the Chlorine Institute, Inc., hereby files this Motion for Partial Stay and Petition for Reconsideration and Clarification of the final rule issued in this docket.

The final rule issued on May 24, 1999, (64 F.R. 28030) creates a new, unnecessary, and wholly unjustified set of additional regulatory requirements for MC 330 and MC 331 cargo tank motor vehicles when unloading chlorine. These new regulatory requirements are unsupported by the record of this docket, and ignore 40 years of flawless chlorine unloading experience. The Chlorine Institute, Inc. submits that these requirements should either be withdrawn, or so modified as to remove their more onerous provisions.

II. Background of the Rulemaking

Section 178.337–11(a)(1)(i) of Title 40 CFR provides that with respect to cargo tank motor vehicles used to transport chlorine, as well as other compressed gases:

Each internal self-closing stop valve and excess flow valve must automatically close if any of its attached hoses are sheared off or if any attached hoses or piping are separated.

In it final rule in Docket HM–225 issued August 18, 1997, RSPA noted that ''efforts undertaken by the affected industries (not including the chlorine industry) to achieve increased efficiency in the unloading of hazardous materials by the installation of pumps on specification MC 330 and MC 331 cargo tank motor vehicles prevent emergency discharge control systems from operating properly under all temperatures and pressures routinely encountered during normal conditions or transportation.'' (62 F.R. 44039) In the same document, RSPA noted that the problems encountered by MC 330 and MC 331 cargo tank motor vehicles using pumps to unload did not exist when pressure, rather than pumps, were employed. Thus, RSPA held:

Unloading systems that employ pressure rather than a pump to unload such as a gas compressor mounted on specification MC 330 and MC 331 cargo tank motor vehicles should not be affected by the problem identified with unloading of liquefied compressed gases by use of pumps, provided the operating pressure of the compressor, the flow rate of product through valves, piping, and hose, and the setting of the emergency feature conform to requirements in § 178.337–11(a)(1)(v). Vehicles unloaded by pressure and conforming to the requirements of § 178.337–11(a)(1) are not subject to the temporary regulations specified in § 171.5. (62 F.R. 44039)

Throughout the HM–225A rulemaking procedures that followed the HM–225 final rule, there was never any doubt but that chlorine is unloaded under pressure within the meaning of the HM–225 final rule. Further, there never has been any question but that the excess flow valves used on MC 330 and MC 331 cargo tank motor vehicles transporting chlorine (CI Drawings 101 and 104) comply fully with § 178.337–11(a)(1)(v). In addition, the Chlorine Institute is unaware of, and the record herein fails to disclose, a single incident in the 40 years these valves have been in use in chlorine service where such excess flow valve has failed to operate properly.

III. The Final Rule

While the HM–225 and HM–225A rulemaking procedures focused almost entirely on the failures of pump unloading systems involving liquefied petroleum gas and anhydrous ammonia, the final rule places regulatory requirements on pressure unloading chlorine cargo tank motor vehicles as well. It is not surprising therefore that the final rule is ill-considered and erroneous as it applies to chlorine unloading.

The final rule impacts chlorine motor vehicle unloading in two fundamental respects. First, the new section 173.351(n)(2) requires that a ''Design Certifying Engineer'' certify that the excess flow valve so long and so successfully used on MC 330 and MC 331 cargo tank motor vehicles is, in fact properly designed and will operate within the necessary parameters to satisfy the rule.

Secondly, section 177.840(t) requires that until the chlorine cargo tank transfer system is certified, a qualified person must be within arms length of the chlorine cargo tank's valve located on the top of the cargo tank. Thus, the qualified person must perch atop the tank to meet the requirement. It must be noted, of course, this requirement does not apply when the tank is being unloaded after the tank has been separated from the motive power unit and that unit has left the facility.

With respect to the design certification requirement for chlorine cargo tanks, the final rule is wholly unwarranted. With respect to the arms length requirement, it is not only unwarranted, it creates an unsafe condition while only partially attaining its ill-considered objective.

IV. Reasons for Reconsidering the Final Rule

As noted above, the problems that gave rise to the HM–225 rules, and ultimately to this docket, have nothing to do with the unloading of chlorine. Chlorine, unloaded by pressure rather than by pump, has not been

released during the unloading process. The excess flow valves have operated successfully for 40 years, and there is no allegation that chlorine cargo tank vehicles equipped with those valves do not comply fully with § 178.336–11(a)(1)(i).

What possible benefit, therefore, follows from a certification by a ''Design Certifying Engineer'' that the valve will properly operate when it has properly operated for 40 years? The answer, of course, is none.

In addition to its flawless operation, the excess flow valve used on chlorine cargo tank motor vehicles was extensively tested in the 1960's before it was put into widespread service. As the materials attached hereto as Appendix A demonstrate, the excess flow valve, peer CI Drawings 101 and 104 will close at a pressure of 9 psig, a value well below the pressure differential that would be experienced in a complete hose separation during unloading. Since, as previously noted, chlorine is unloaded by pressurizing the tank, there will always be sufficient internal pressure to ensure that the excess flow valve will operate as required.

Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or would be certified by a ''Design Engineer'' who would have had no part of its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in this chlorine situation, and would add nothing to the safety of chlorine unloading.

The arms length requirement discussed above suffers from two major flaws. First, the majority of chlorine MC 330 and MC 331 tanks are unloaded after the motive power has been detached and has left the receiving facility. Thus, under sections 171.8, 177.834, and 178.337–11, the detached tank is no longer a cargo tank within the meaning of the Hazardous Materials Regulations, and is no longer subject to the provisions of the final rule.

Of greater importance is the fact that, unlike propane and ammonia tanks, the chlorine tank is unloaded from a valve located atop the tank. Accordingly, for a person to be within arms length of the valve during unloading he or she must perch precariously atop the tank for the several hours necessary to complete the unloading process. This requirement reflects the fact that the chlorine tank was never really considered during the rulemaking process, and appears in the final rule unexpectedly and inappropriately. Further, since the arms length provisions of the final rule become effective on July 1, 1999, a serious safety issue is present.

In view of the safety concerns raised with respect to chlorine unloading, the final rule should be stayed insofar as it would require persons to stand atop chlorine MC 330 or MC 331 cargo tank motor vehicles during chlorine unloading.

V. Proposed Solution

The Chlorine Institute participated in this rulemaking in only a minor way for the reasons described above. The Institute has no desire to complicate this matter to any degree greater than is necessary to overcome the obvious and serious problems discussed herein. Thus, the Institute proposed to resolve the problems created by the final rule in the simplest and least disruptive way possible.

The genesis of the problems raised by the final rule is the requirement that the chlorine excess flow valve be certified by a ''Design Certifying Engineer.'' A clarification of the final rule by RSPA that acknowledges that the chlorine excess flow valve, by virtue of the materials attached in Appendix A, and by virtue of the 40 years of flawless operation, has been certified within the meaning of the rule would eliminate all problems associated with implementation of the rule.[1]

To be sure, such a clarification would not deal with the obvious problem that the rules should never have addressed pressurized unloading in the first place. But, at least it would eliminate the serious practical problems facing the industry as a result of the ill-advised inclusion of the chlorine in the rulemaking process, and would remove the requirement for a qualified person to perch atop a cargo tank for the minimum period of three necessary to unload a chlorine cargo tank.

VI. Conclusion

In view of the foregoing, the Institute submits that the final rule be modified so as to remove cargo tanks and cargo tank motor vehicles unloading chlorine by pressurization from the requirements of the rule. In the alternative, the Institute requests that RSPA clarify the final rule so as to determine that chlorine excess flow valves in use on MC 330 and MC 331 chlorine cargo tank motor vehicles have been certified within the meaning of the rule.

In addition, inasmuch as the arms length requirements of the rule become effective on July 1, 1999, and enforcement of those provisions could cause serious risks to persons unloading chlorine, the Institute moves that those requirements be stayed while this petition is reviewed by RSPA.

Respectfully submitted,

Paul M. Donovan,

LaRoe, Winn, Moerman & Donovan, 3900 Highwood Court, N.W., Washington, DC 20007, (202) 298–8100, Attorney for Petitioner.

Dated at Washington, DC, June 17, 1999.

[FR Doc. 99–17124 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–60–P

[1] It must be noted, of course, that the excess flow valve discussed herein is designed to, and does operate in the event of a complete separation of the unloading hose. In this regard it fully satisfies the provisions of 49 CFR § 178.337–11(a)(1)(1). Chlorine Institute Pamphlet 57 referenced by RSPA in this rule, contains a system for dealing with incidents that do not involve a complete separation and therefore do not trigger the requirements of § 178.337–11(a)(1)(i).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. 99–5928]

RIN 2127–AH10

Tire Identification and Recordkeeping; Tire Identification Symbols

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA's tire identification and recordkeeping regulation requires new tire manufacturers and tire retreaders to mark a tire identification number on one sidewall of each tire they produce. The number is composed of the manufacturer's or retreader's identification code, a tire size symbol, an optional descriptive code, and the date of manufacture, which includes the date of retreading. The date is reflected in the last 3 digits of the number.

In response to petitions for rulemaking, the agency is amending the regulation to require the date to be expressed in 4 digits instead of the currently required 3, and to reduce the minimum size of the digits from the currently required minimum of 6 millimeters (mm) (¼ inch) to 4 mm (5⁄32 inch). The 4-digit date code will permit better traceability of tires during recalls and allow easier identification of older tires. Reducing the size of the date code from 6 mm to 4 mm will relieve manufacturers and retreaders of the burden they might otherwise incur by having to redesign their tire molds to accommodate the additional digit, without significantly affecting the readability of the date code digits. Finally, these amendments will enhance harmonization by bringing the U.S. tire date code requirements into harmony with the new United Nations' Economic Commission for Europe regulation and the International Organization for Standardization recommended practice.

DATES: *Effective date*: The amendments in this final rule become effective July 2, 2000. Optional early compliance is permitted, commencing on the date of publication of this final rule in the **Federal Register**.

Petitions for reconsideration of this final rule must be received by this agency not later than September 7, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400

Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–8525; fax (202) 493–2739.

SUPPLEMENTARY INFORMATION:

A. Background.

Section 574.5 of Title 49, Code of Federal Regulations, Tire identification requirements, sets forth the methods by which new tire manufacturers and new tire brand name owners identify their tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners identify tires for use on motor vehicles. The purpose of these requirements is to facilitate the notification of tire purchasers if their tires were found to be defective or not in compliance with applicable Federal motor vehicle safety standards.

Section 574.5 requires each new tire manufacturer and each tire retreader to mold a Tire Identification Number (TIN) into or onto one sidewall of each tire produced, in the manner and location specified in the section and as depicted in the regulation. The TIN is composed of four groups of letters and/or numbers:

(1) The first group of two or three symbols, depending on whether the tire is new or retreaded [1], represents the manufacturer's identification mark assigned to such manufacturer by NHTSA in accordance with § 574.6;

(2) The second group of no more than two symbols represents the tire size for new tires or, for retreaded tires, the retread matrix in which the tire was processed. If no matrix was used, the second group represents a tire size code;

(3) The third group, consisting of no more than four symbols, may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire was produced for a brand name owner, the third grouping must identify such brand name owner; and

(4) The fourth group, composed of three symbols, identifies the week and year of manufacture. The first two symbols identify the week of the year, starting with ''01'' to represent the first full week of the calendar year, and the third symbol represents the year. For example, ''218'' would represent the 21st week of 1998.

[1] New tire manufacturers are assigned a 2-digit identification mark, while tire retreaders are assigned a 3-digit identification mark.

NHTSA originally proposed the requirement for a TIN in response to the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) [2]. Those amendments required, among other things, that manufacturers and brand name owners of new and retreaded motor vehicle tires maintain records of the names and addresses of the first retail purchasers of tires in order to facilitate notification of those purchasers if the tires were found to be defective or noncompliant.

The agency believed that an essential element of an effective defect or noncompliance notification system for tire purchasers was an effective method of tire identification. Accordingly, on July 23, 1970, we published a Notice of Proposed Rulemaking (NPRM) (35 FR 11800) proposing to establish a tire identification system. The proposed system provided a means of identifying the manufacturer of the tire, the DOM, the tire size and, at the option of the manufacturer, additional information to further describe the type or other significant characteristics of the tire. The proposed TIN was composed of four groups of symbols: the first group contained the manufacturer's identification mark which would be assigned by NHTSA; the second group identified the tire size by a two-symbol code; the third group of four symbols identified the tire's DOM, the first two symbols of which would indicate the week, and the last two the year; and the fourth grouping reflected the manufacturer's optional description of the tire. The symbols were to be a minimum of 1/4 inch high and were to appear on both sidewalls of the tire.

In a final rule published on November 10, 1970 (35 FR 17257), the agency revised the requirements proposed in the NPRM in response to the suggestions of various commenters. We reversed the order of the manufacturer's optional information and the DOM, so that the latter would appear in the fourth grouping and the manufacturer's optional information would appear in the third grouping. We also provided that the TIN need only appear on one sidewall, and that the symbols need only be 5/32 inch high on tires with a bead diameter of less than 13 inches or less than 6 inches cross section width. Many commenters requested that the date code be expressed in alpha-numeric form in order to reduce the date symbol to two digits. NHTSA

[2] The National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, was originally codified at 15 U.S.C. 1581 *et seq.* However, it was recodified in 1995 and is now found at 49 U.S.C. 30101 *et seq.*

declined to adopt the alpha-numeric system because it could be confusing to the public and because retreaders may not be able to easily determine the age of the casing to be retreaded. In order to shorten the stencil plate, however, we reduced the date code group from four digits to three.

B. The Petitions

(1) *Rubber Manufacturers Association* (RMA). The RMA is the primary national trade association for the finished rubber products industry in the U.S. The RMA petitioned the agency to amend 49 CFR 574.5 to permit a 4-digit date code and to reduce the size of the lettering from 6 mm (¼ inch) to 4 mm (5/32 inch).

The RMA explained that the ISO Technical Committee 31 on tires recommended the approval of a 4-digit DOM code, beginning in January 2000. RMA further stated that the United Nations' Economic Commission for Europe (ECE) has also authorized the use of a 4-digit date code commencing in January 2000. RMA suggested that if a 4-digit date code were adopted, the first 2 digits would represent the week and the last 2 the year of manufacture. For example, 0100 would mean the first full week of January 2000. RMA further suggested that an appropriate phase-in period be allowed during which use of either the 3 or 4 digit date code would be permitted. In order to avoid having to modify existing molds, RMA suggested that the addition of the fourth digit be offset by reducing the minimum size of the digits from 6 mm (¼ inch) to 4 mm (5/32 inch), regardless of tire size. Finally, RMA stated that such modification would bring the U.S. requirements into harmony with the ECE regulation and the recommendation by the committee of the International Organization for Standardization (ISO), and would allow better traceability and identification of older tires.

(2) *European Tyre and Rim Technical Organisation* (ETRTO). Based in Brussels, Belgium, the ETRTO is the European standardization authority for the establishment and promulgation of interchangeability standards for pneumatic tires, rims, and valves. The ETRTO submitted a petition for rulemaking, nearly identical to that of the RMA, which cited the ECE regulations and the ISO recommendations and suggested amending § 574.5 to permit a 4-digit date code effective in January 2000. The first 2 digits would represent the week and the last 2 would represent the year of manufacture. Again, in order to avoid modification of existing tire molds, ETRTO requested reduction of the

height of the digits from 6 mm (¼ inch) to 4 mm (5⁄32 inch), regardless of tire size. ETRTO also asserted that the requested amendments would bring U.S. requirements into line with the ECE regulations and ISO recommendations, and that the amendments would allow better traceability of tires and identification of old tires.

C. Notice of Proposed Rulemaking

NHTSA granted the petitions and published an NPRM on October 19, 1998 (63 FR 55832), proposing to amend the date of manufacture grouping in the TIN to increase the digits in the group from 3 to 4. We also proposed to reduce the minimum size of the numbers in the date code from 6 mm (¼ inch) to 4 mm (5⁄32) inch. An effective date of January 1, 2000 was proposed. We stated in the NPRM that we believed that these proposed amendments to the date code would permit better traceability of tires in the event of a recall and would enhance harmonization of the date code with the ECE and ISO regulation and practice.

D. Comments on the NPRM

The agency received comments from CIMS of Akron, OH, which provides tire identification services to the tire and retread industries; Advocates for Highway and Auto Safety (Advocates), of Washington, DC; Consumer Federation of America (CFA), also of Washington, DC; two comments from the International Tire and Retreaders Association, Inc. (ITRA), of Louisville, KY, a member organization representing companies in the tire and transportation industries; and the Oliver Rubber Company for the Tread Rubber and Tire Repair Materials Manufacturer's Group (TRMG), a trade association composed of companies that manufacture tread rubber for use in retreading tires, repair materials for use in repairing tires, and related products and services. Significant issues submitted by the commenters are summarized as follows:

(1) Increasing the DOM Digits From 3 to 4

All commenters on this issue supported adding a fourth digit to the date code. CIMS stated that this would help eliminate some confusion in trying to determine the actual date of manufacture of a tire. ITRA and TRMG both fully supported the proposal to increase the number of digits from 3 to 4. ITRA stated that the new markings would give a clear understanding of the actual decade in which the tire was produced and eliminate any confusion that was brought about as a result of the old markings. TRMG also fully supported the proposal to increase the number of digits from 3 to 4, stating that the new markings would clearly show the decade in which the tire was produced and eliminate any confusion that has occurred with the present system.

(2) Reducing the Size of the Numbers

ITRA was concerned about the reduction in the size of the numbers insofar as assuring that 4 mm would be a minimum size rather than a specifically-required size, thus allowing molded or branded numbers to be of a larger size when considered necessary. ITRA also indicated support for the proposal to permit use of the 4-digit date code prior to its mandatory compliance date.

TRMG, whose members are also members of ITRA, supported the comments of ITRA and urged that the proposed 4 mm size be a minimum size, thereby permitting the use of larger sizes when necessary or desirable.

Advocates opposed our proposal to reduce the size of the numbers, arguing that we are proposing to reduce the size of the digits by ⅓ while the number of older people in the United States is increasing. Advocates stated that, as people age, they tend to experience a wide variety of visual pathologies such as cataracts, glaucoma, macular degeneration, and other degradations of static acuity, which is especially common among older people with diabetic-related disorders. Advocates stated that hundreds of thousands of people may have excellent static acuity of 20/20 Snellen, yet have extraordinarily poor contrast vision or Contrast Sensitivity Function (CSF). Thus, Advocates asserted that because tire sidewall information consists of letters and numerals in black-on-black relief, the lowest possible contrast conditions, reduction in the size of the numerals will result in a significant portion of the population being unable to read the date code. Advocates further suggested that the proposal was not consistent with the philosophy underlying the Americans With Disabilities Act (ADA).

CFA asserted that the TIN figures should be increased in size rather than decreased. CFA urged NHTSA to develop more pronounced ways to display information on tire sidewalls, thereby making it easier for consumers who know about it to use it or attract the attention of those that are not aware of it. CFA argued that NHTSA needs to require safety and performance information to be prominently and clearly displayed in order to encourage the marketplace, rather than regulation, to produce safer and better performing products. In closing, CFA stated that it concurs with the positions taken by Advocates, summarized above.

Although CIMS did not specifically oppose reduction of the size of the numbers, it commented that ''(e)xperience would tell whether this keeps the same readability or decreases it if the change is made.''

(3) Marking the TIN on Both Sidewalls

CIMS suggested that the TIN be marked on both sidewalls, citing as an example a particular tire recall in which many dealers were required to raise the vehicle on a hoist in order to check the TIN that appeared on the inside of the mounted tire. CIMS asserted that although the industry sought to limit the TIN to one sidewall to avoid the cost and safety considerations of changing it each week on both sides of the tire, it would be easier both for the purchaser of the tire and the tire dealer in the event of a recall. CIMS argued that registration percentages are too low, resulting in many recalled tires remaining in service, possibly because the purchaser did not receive the notification because it was too difficult for anyone to check the TIN.

(4) Keep Current Requirements for Retreads

CIMS stated that NHTSA did not solicit comments or information with respect to the problems of retreaders. CIMS pointed out that many retreaders are small businesses and that any changes could result in increased costs to them. CIMs argued that retreaded tires are not kept in the pipeline as long as new tires, therefore it seems unnecessary for retreaders to incur the additional cost of this change. Even if this change would result in only a minor materiel charge, CIMS asserted that there would be a significant retooling charge to retreaders and suppliers. Finally, CIMS stated that retreaders who still use hand-punched tins would have to change their dies to add the additional digit when they punch in the TIN. CIMS stated that this would increase costs, including increased labor costs.

E. Discussion

(1) 4-Digit Date Code

NHTSA continues to believe that a 4-digit date code would aid in the identification of tires during recall campaigns. As discussed in the Background section above, we originally proposed a 4-digit date code for the TIN, but in response to suggestions of

commenters, reduced the code from 4 digits to 3 in order to shorten the stencil plate to conserve sidewall space. The 3-digit code presented no identification problems during the 1970's because the requirement was new and tires with date codes were obviously built in that decade. There still were no problems in the 1980's because it was easy to distinguish between the newly popular radial tires and the bias-ply tires of the 1970's.

In the 1990's, however, the physical differences between radial tires produced in the previous decade were not readily apparent. One could not be sure, therefore, in which decade a given tire was produced. Accordingly, we believe that in order to avoid any further confusion as to when a tire was produced, the time has come to add a 4th digit to the date code. As stated in the Comments section above, all commenters on the issue, as well as the petitioners, RMA and ETRTO, support adding a 4th digit to the date code. NHTSA has decided to require that a 4th digit be added to the date code grouping of the TIN so that the week of manufacture will be expressed in the first 2 digits and the year of manufacture will be expressed in the last 2 digits.

(2) Reducing Digit Size

As discussed in section A(1) above, the agency established a defect and noncompliance notification system in accordance with amendments to the Safety Act of May 22, 1970. Thus, in our NPRM of July 23, 1970, we explained that the amendments to the Safety Act required tire manufacturers, retreaders, and brand name owners to maintain records of the names and addresses of new and retreaded tire purchasers ''*in order to facilitate notification to that purchaser in the case of defective tires or tires that do not comply with an applicable Federal motor vehicle safety standard*'' (35 FR 11800) (emphasis added). We also explained that the tire identification system that we proposed in that NPRM was intended to provide ''a suitable method of identifying the tires involved.'' Id.

Advocates and CFA opposed reducing the size of the numbers in the TIN on the basis that such reduction would make it more difficult for consumers to see, especially those with visual pathologies. These commenters, however, did not provide any data showing that drivers cannot read 4 mm figures. Moreover, our experience to date with 4mm figures on tires suggests that figures of that size do not present a problem. For those familiar with font sizes, 4 mm is approximately the equivalent of font size 16 in Windows 95, which is approximately double the font size used in this **Federal Register** and also approximately double the size of the letters found on a U.S. quarter. By way of another example, the Uniform Tire Quality Grading Standards (UTQGS) (49 CFR § 575.104) are intended to establish a tire grading system for consumer information, and the size of the tire grades marked on the tire sidewalls has always been 4 mm (5/32 inch). In the nearly 25 years since establishment of the UTQGS, we have not received a single complaint that those letters and numbers were too small to read. In addition, Part 574 permits tires of less than 13-inches in diameter or those of less than 6-inches cross section width to have a letter/number size of 4 mm, again with no complaints.

We would also like to discuss the following point suggested by Advocates, as follows:

> Given the public philosophy that underlies the Americans with Disabilities Act , *i.e.* to increase the accommodation of a wide array of Americans whose needs are not met by current practices involving, among other things, the task of visual detection and comprehension, Advocates believes that NHTSA has offered a proposed amendment without any foundation in the administrative record of this rulemaking.

Advocates letter of December 17, 1998 to U. S. DOT Docket Management, page 5.

> Title II of the Americans with Disabilities Act of 1990 (ADA) provides: No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
> 42 U.S.C. 42132.

The primary benefit provided by the TIN is that tires subject to recall notices can be identified and replaced. The change in the size of the numbering does not deny persons with poor vision this benefit because even if the person has difficulty seeing the date code, dealers and repair personnel will still be able to identify the tires and effectuate the recall. The ADA does not prescribe a particular type size for information provided by government agencies. The nearest comparison is in the aviation consumer protection context where restriction on airfares are required to be in 10 or 12-point type, depending on the size of the advertisement. See *Morales* v. *TWA*, 504 U.S. 374 (1992). The size of the date code numbers prescribed in this rule is the equivalent of 16-point type, approximately 25 percent larger than 12-point type.

While it is unclear how many people have inadequate static acuity or impaired CSF that would make it difficult to read 4 mm numbers, a person so impaired can be reasonably accommodated through the use of a magnifying glass or by simply asking repair personnel to check the tire numbers against any recall notices. The U.S. Supreme Court recently held that a physical impairment must be evaluated in light of corrective measures such as eyeglasses. See *Sutton* v. *United Airlines*, ____ U.S. ____ (1999). It is therefore unclear at this time whether persons with inadequate static acuity or impaired CSF that would make it difficult for them to see the 4 mm numbers have a disability covered by the ADA.

(3) Marking the TIN on Both Sidewalls

Although this issue is beyond the scope of our proposals in the NPRM, we wish to discuss the issue anyway. The agency addressed the issue of marking the TIN on both sidewalls in the final rule of November 10, 1970 (35 FR 17257) in which we established the TIN. We originally proposed in the NPRM of July 23, 1970 (35 FR 11800) that the TIN be marked on both sidewalls. Many tire manufacturers responded by suggesting that the TIN be marked on only one sidewall because first of all, one sidewall was sufficient for recordkeeping purposes. Secondly, the commenters stated that marking the TIN on both sidewalls would create a serious safety hazard for the factory machine operators in that they would have to work inside the jaws of each open tire press in order to position identification plates on both sidewalls. Some manufacturers further commented that its unions had objected to their members working under such hazardous conditions. We were persuaded by the manufacturers' comments and decided that since first purchasers receive direct notification from the manufacturer by certified mail in the event of a recall and because of the production hazards involved, the TIN need be marked on only one sidewall of the tire. We believe that our rationale in the November 10, 1970 final rule remains valid.

(4) Keep Current Requirements for Retreads

As noted in greater detail below, the agency believes that increasing the DOM code from 3 digits to 4 will not result in any cost increases or other burden for either the new and retread tire industries. Further, although there are still some small businesses retreading tires, the retread tire industry in general has in recent years experienced considerable consolidation, so that many of today's retreaders are

franchisees. Finally, we note that ITRA, RMA, and ETRTO all supported both adding the 4th digit and decreasing the size of the digits from 6 mm to 4 mm. ITRA is an international trade association representing those segments of the transportation industry that manufacture, sell, repair, service, recycle, or use new or retreaded tires, as well as those individuals or suppliers that furnish equipment, materiel, or services to the transportation industry. As explained above, the RMA is the primary national trade association for the finished rubber products industry in the U.S., and the ETRTO is the European standardization authority for the establishment and promulgation of interchangeability standards for pneumatic tires, rims, and valves. None of these associations expressed any reservations with respect to the impact of these amendments on tire retreaders. Further, CIMS provided no backup data to support its assertions. We believe, therefore, that the concerns expressed in CIMS'' comments are not representative of those of the tire retreading industry in general and do not justify our creating different marking systems for new and retreaded tires.

(5). Harmonization With National, Regional and International Requirements

Although no commenters addressed this issue, harmonization remains one of the agency's goals, particularly in those instances in which NHTSA can raise the level of its standards through harmonizing with a higher non-U.S. requirement. We already know that the European community and Japan will require the 4-digit, 4 mm date code commencing January 1, 2000. The agency believes that harmonizing our date code requirements with those of Europe and Japan makes sense, since it also is to our advantage by making the dates of manufacture of tires easier to ascertain for the agency as well as the industry. In addition, by not harmonizing our requirements with theirs, needless additional costs could be incurred by both domestic and foreign tire manufacturers who export tires into and out of the United States. Thus, the agency believes that adding a 4th digit to the date code and reducing the minimum size of the digits to 4 mm is consistent with our goal of higher safety through upward harmonization.

F. Agency Decision.

For the reasons enumerated in the Discussion section above, the agency has decided to amend 49 CFR 574.5 to change the date of manufacture grouping in the tire identification number, also known as the date code, which is the fourth grouping of digits. Effective July 2, 2000, the number of digits in the date code will be increased from 3 to 4, the first 2 digits representing the week of manufacture and the last 2 digits representing the year of manufacture. Thus, the numbers 0100 would represent the first full week of January 2000. In addition, the minimum size of those digits is reduced from 6 mm (¼ inch) to 4 mm (5⁄32 inch) for all tire sizes in order to fit within the tire molds currently utilized by tire manufacturers. Early compliance with these requirements will be permitted effective upon publication of this rule in the **Federal Register**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review*.

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not ''significant'' within the meaning of the DOT's regulatory policies and procedures. This action amends the tire identification number required by 49 CFR 574.5 to be marked on all tires sold in the United States. Specifically, this proposal increases the number of digits in the date of manufacture grouping of the tire identification number from 3 to 4, and permits a reduction in the size of those digits so that the 4 digits will fit within the same ''plug'' in the tire molds in which the currently-required 3 digits fit. That permits tire manufacturers and retreaders to use the same molds that they do now, thereby relieving them of the necessity of absorbing the costs of constructing new molds. Date codes are changed weekly by manufacturers and with an approximately 1-year phase-in period, manufacturers will have ample opportunity to phase-in the new 4-digit date code without having to redesign their tire molds. For these reasons, the agency believes that implementation of the amendments herein will not result in any increased costs to tire manufacturers, distributors, dealers, or consumers. Accordingly, the agency has concluded that preparation of a full regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this rulemaking action will not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments implemented herein will primarily affect manufacturers and retreaders of motor vehicle tires. The Small Business Administration (SBA) regulation at 13 CFR Part 121 defines a small business as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The amendments promulgated in this rulemaking action merely increase the number of digits in the date of manufacture symbol in the tire identification number from 3 digits to 4, and permit a reduction in the size of those digits from 6 mm (¼ inch) to 4 mm (5⁄32 inch). The purpose of these changes is to make tires more easily traceable in the event of a defect or noncompliance, to allow easier identification of old tires, and to harmonize U.S. requirements with those of the European Community and Japan. These amendments were requested by the trade organizations that represent the major tire manufacturers in both the U. S. and Europe. In particular, the reduction in the size of the digits will be beneficial so that tire manufacturers would be spared the expense of designing and making new tire molds. NHTSA believes, therefore, that the amendments promulgated herein will not impose any increased costs or other burdens on tire manufacturers, most, if not all, of which would not qualify as small businesses under SBA guidelines. Further, these amendments will not result in any increase in costs for small retreaders and other small businesses or consumers. Accordingly, we believe that there will be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For those reasons, the agency has not prepared a regulatory flexibility analysis.

C. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will have no significant impact on the quality of the human environment.

E. Paperwork Reduction Act

The amendments requiring tire manufacturers to designate the date of manufacture of their tires in 4 digits instead of the currently required 3 and to reduce the size of the digits from 6 mm to 4 mm relate to third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. These amendments create no additional information collection requirements since the amendments merely make a slight change to the format of existing requirements.

The information collection requirements for 49 CFR Part 574 have been submitted to and approved by OMB pursuant to the provisions of the Paperwork Reduction Act , 44 U.S.C. 3501, *et seq.* This collection of information authority for tire information and recordkeeping has been assigned control number 2127–0503, which expires August 31, 2000.

F. Civil Justice Reform

This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 574 is amended as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

1. The authority citation for part 574 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 574.5 is amended by revising paragraph (d) and Figures 1 and 2 to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(d) *Fourth grouping.* For tires produced or retreaded on and after July 2, 2000, the fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 3197 means the 31st week of 1997, or the week of August 3 through 9, 1997; 0198 means the first full calendar week of 1998, or the week of January 4 through 10, 1998. The symbols signifying the date of manufacture must be not less than 4 mm (5/32 inch) in height and shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 for the optional descriptive code.

BILLING CODE 4910–59–P

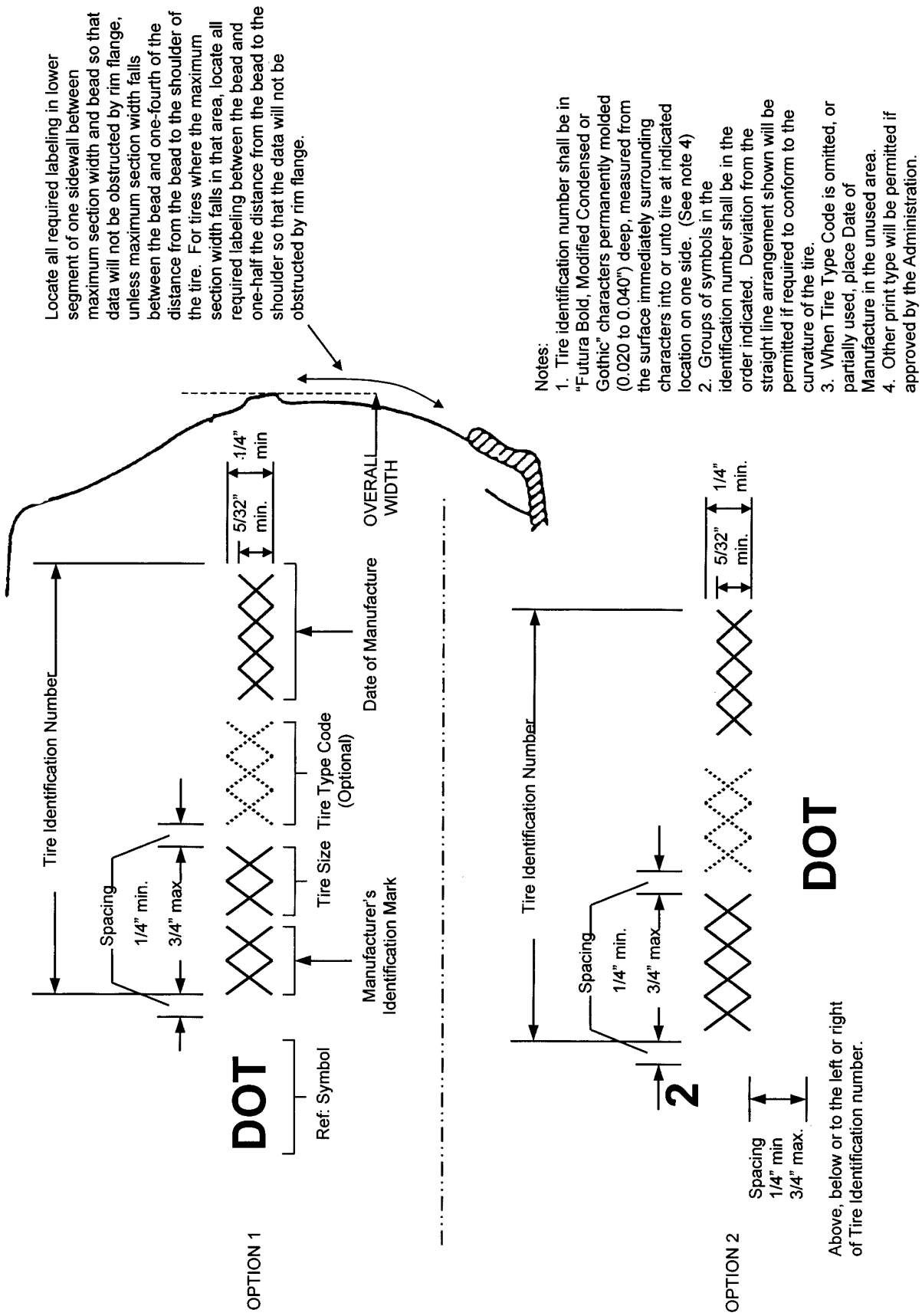
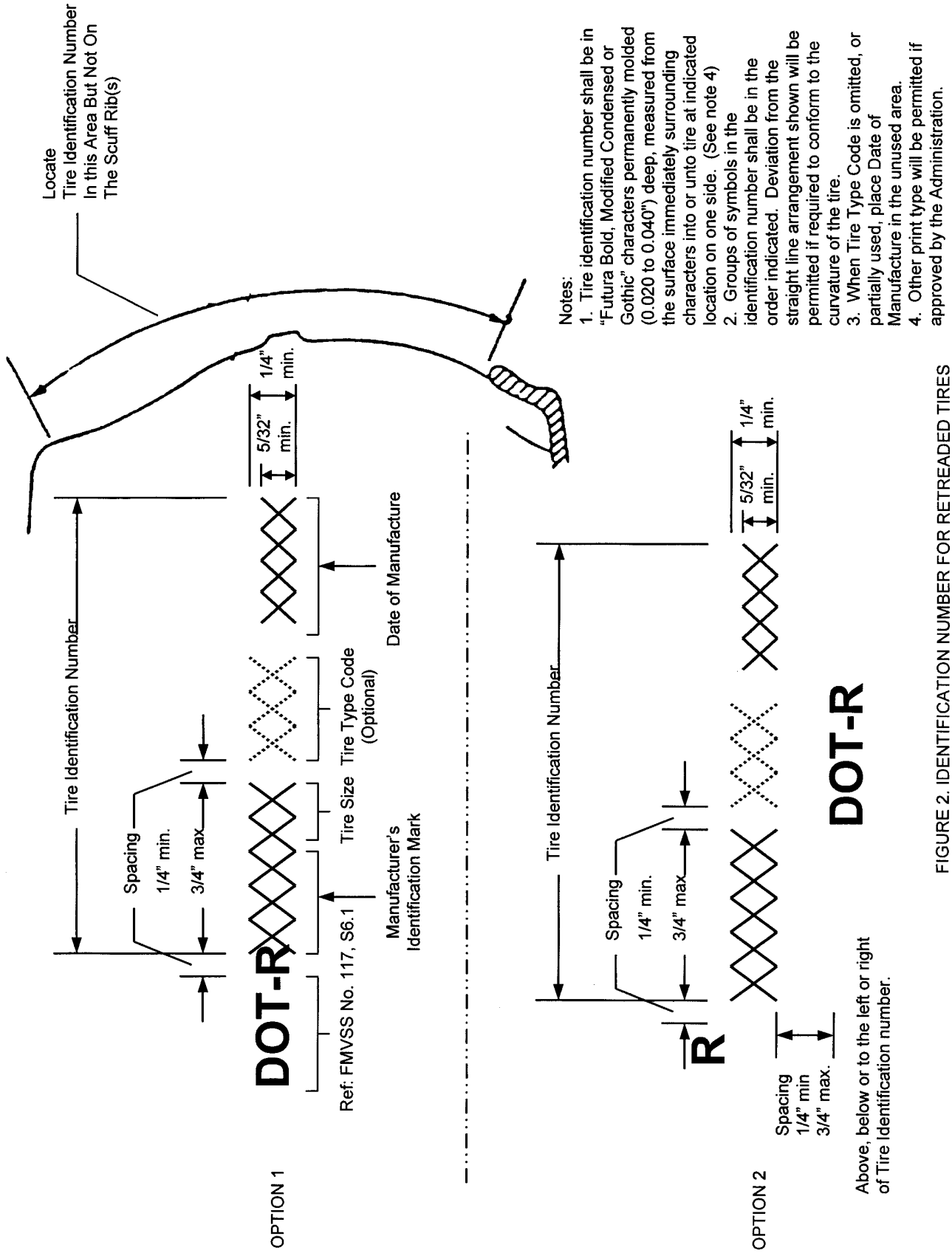


FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES



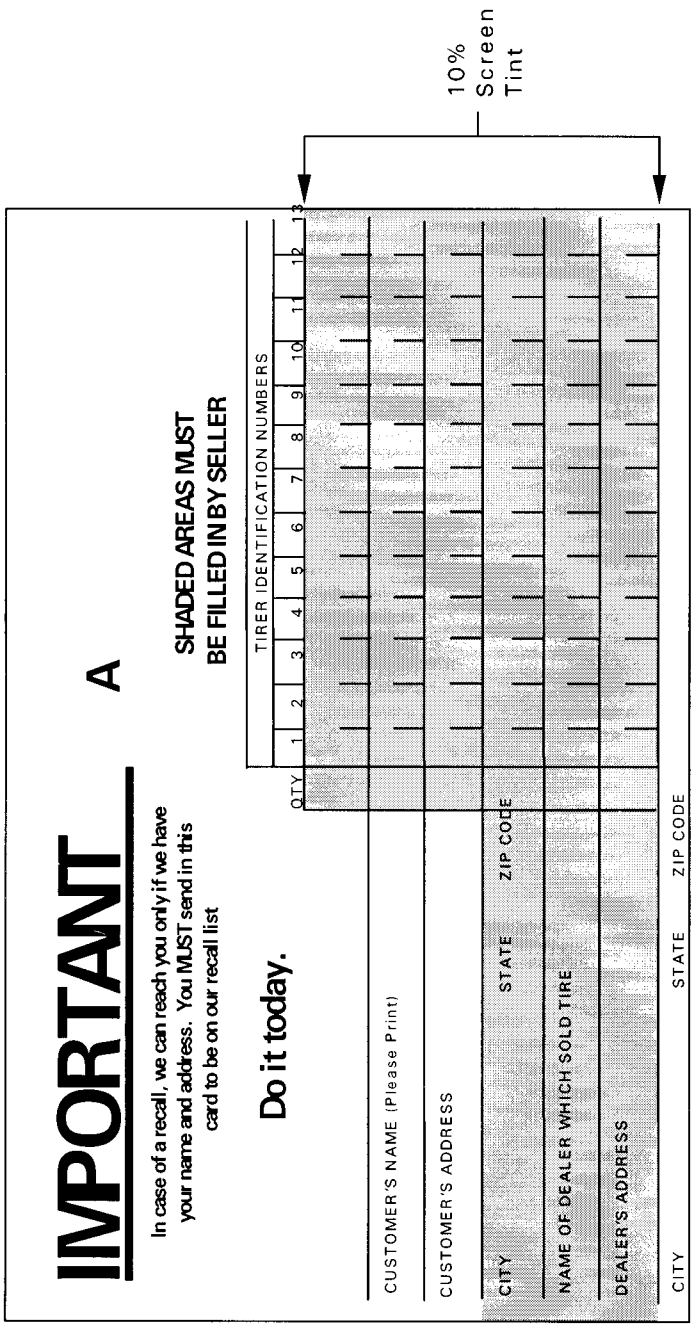
Notes:
1. Tire identification number shall be in "Futura Bold, Modified Condensed or Gothic" characters permanently molded (0.020 to 0.040") deep, measured from the surface immediately surrounding characters into or unto tire at indicated location on one side. (See note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Tire Type Code is omitted, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the Administration.

FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

3. Section 574.7 is amended by revising Figures 3a and 4, to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

* * * * * * *



A- Preprinted tire manufacturer's name - unless the manufacturer's name appears on the reverse side of the form

Figure 3a - Registration form for independent distributors and dealers - tire identification number side

* * * * * * *

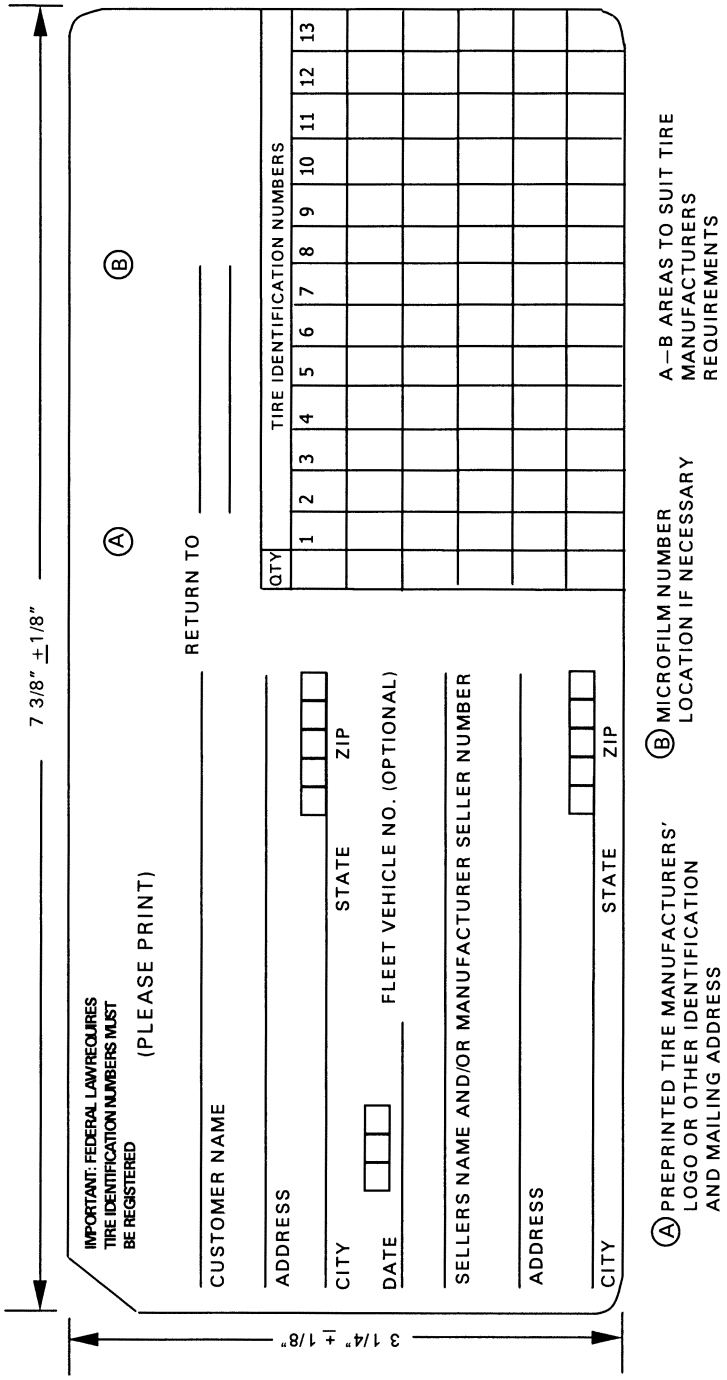


FIG 4 - UNIVERSAL FORMAT

Issued on: July 2, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–17402 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333; I.D. 062999D]

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 trip limits in the Pacific Coast groundfish limited entry, fixed gear daily trip limit fishery for sablefish, and in the open access fisheries for sablefish and widow rockfish. These actions, which are authorized by the Pacific Coast groundfish fishery management plan (FMP), are intended to help the fisheries achieve optimum yield (OY).

DATES: Effective 0001 hours local time (l.t.) July 2, 1999, 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 on this rule will be accepted through July 23, 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 Rodney McInnis, Acting 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 June 22 through 25, 1999, meeting in Portland, OR. All of the changes are increases to current cumulative trip limits. The adjusted trip limits are calculated to provide a year-long fishing opportunity. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits will be made as necessary.

Limited Entry, Fixed Gear Daily Trip Limit Fishery for Sablefish

Currently the limited entry, fixed gear (or ''nontrawl'') daily trip limit fishery for sablefish north of 36° N. lat. is managed with a 2-month cumulative trip limit of 2,400 lb (1,089 kg), which was set in place at the beginning of 1999 (64 FR 1316, January 8, 1999 as amended at 64 FR 16862, April 7, 1999). No more than 300 lb (136 kg) of sablefish may be landed per day.

The best available information at the June Council meeting indicated that 68 mt, (18 percent of the 379–mt set aside for the daily trip limit portion of the fishery and 15 percent of the 2,516 mt limited entry nontrawl sablefish allocation), had been landed through May 31, 1999. Fishers present at meetings of the Groundfish Management Team and Groundfish Advisory Panel indicated that this low rate of landings may be due to several factors, including poor winter weather, unusual La Nina ocean conditions, and fishers shifting effort to target higher-priced non-groundfish species. If the fishery were to continue under current landings limits, the fleet would not harvest the 379–mt of sablefish set aside for this fishery in 1999 and therefore, the fishery would not achieve OY. For this reason, the Council recommended that the current 2-month cumulative trip limit be increased to 4,200 lb (1,905 kg) for the period of July 1 through August 31, 1999. The Council further recommended converting the 2-month cumulative trip limits to monthly cumulative trip limits of 2,100 lb (953 kg), beginning September 1, 1999. Managing this fishery under monthly cumulative limit periods during the later portion of the year will give the Council greater flexibility, should it need to make inseason adjustments following its September and November meetings. [Note: The 2-month cumulative trip limit periods for sablefish caught in the limited entry, fixed gear fishery are not the same as for the limited entry trip limits for other species.]

Open Access Fisheries for Sablefish and Widow Rockfish

The open access fishery for sablefish north of 36° N. lat. is managed similarly to the limited entry, fixed gear daily trip limit fishery. A 300–lb (136 kg) daily limit, which counts toward a 2-month cumulative trip limit of 1,800 lb (816 kg), was established at the beginning of 1999 (64 FR 1316, January 8, 1999 as amended at 64 FR 16862, April 7, 1999).

The best available information at the June Council meeting indicated that 42 mt, or 10 percent of the 423–mt open access 1999 sablefish allocation, had been landed through May 31, 1999. The possible reasons for the low rates of landings in this fishery are similar to those for sablefish in the limited entry daily trip limit fishery. If the fishery were to continue under current landings limits, the open access fleet would not harvest its 423–mt sablefish allocation and, therefore, the fishery would not achieve OY. For this reason, the Council recommended that the current 2-month cumulative trip limit be increased to 3,000 lb (1,361 kg) for the period of July 1 through August 31, 1999. The Council further recommended converting the 2-month cumulative trip limits to monthly cumulative trip limits of 1,500 lb (680 kg), beginning September 1, 1999. Managing this fishery under monthly cumulative limit periods during the later portion of the year will give the Council greater flexibility, should it need to make inseason adjustments following its September or November meetings.

Widow Rockfish

Currently, the open access fishery for widow rockfish is managed with a 1-month cumulative trip limit of 2,000 lb (907 kg). The best available information at the June Council meeting indicated that the open access fishery had landed 15 mt, or 8 percent of its 184 mt widow rockfish allocation through May 31, 1999. If the fishery were to continue under the current widow rockfish cumulative monthly limit, it would not harvest its 1999 widow rockfish allocation by the end of the year and, therefore, the fishery would not achieve OY. The Council expected that raising the widow rockfish cumulative trip limit during summer months, when open access fishery participation is strongest, would increase the likelihood that the fishery would harvest its widow rockfish allocation before the end of the year. For this reason, the Council recommended increasing the open access widow rockfish monthly cumulative limit to 8,000 lb (3,629 kg), beginning July 1, 1999.

NMFS Action

For the reasons stated previously, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999) and as amended at 64 FR 16862, April 7, 1999). The annual

management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery*, paragraph B.(6)(d)(ii)(A) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(6) * * *

(d) * * *

(ii) * * *

(A) *North of 36° N. lat.* The daily trip limit, which applies to sablefish of any size, is in effect north of 36° N. lat. until the closed periods before or after the regular season as specified at 50 CFR 660.323(a)(2), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 4,200 lb (1,905 kg) per 2-month period (July 1 through August 31, 1999) except during the regular season. The 2-month periods in 1999 are: January 1–February 28, March 1–April 30, May 1–June 30, and July 1–August 31. Beginning September 1, the cumulative trip limit is converted from 2-month periods to 1-month periods, and the daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. of 300 lb (136 kg) counts toward cumulative trip limit of 2,100 lb (953 kg) per calendar month except during the mop-up season.

* * * * *

2. In section IV, under C. *Trip limits in the Open Access Fishery*, paragraphs C.(1)(b), C.(2)(a), C.(2)(a)(i), and C.(2)(b) are revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(b) *Widow rockfish*. The cumulative monthly limit for widow rockfish coastwide is 8,000 lb (3,629 kg) per vessel.

* * * * *

(2) * * *

(a) *Hook-and-line, pot, setnet and trammel net*. The following trip limits apply to all open access gear, except for exempted trawl gear.

(i) *North of 36°00' N. lat.* North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 3,000 lb (1,361 kg) for the period of July 1 through August 31, 1999. Beginning September 1, the daily trip limit for sablefish counts toward a cumulative trip limit of 1,500 lb (680 kg) per calendar month.

(ii) * * *

(b) *Exempted trawl gear*. (i) *Sablefish taken by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber with exempted trawl gear*. North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2-month period. South of 36°00' N. lat., the daily trip limit for sablefish is 350 lb (159 kg) per day. [Note: All sablefish taken by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber with exempted trawl gear may not exceed and counts against the 300 lb (136 kg) per trip limit for groundfish specified below at paragraph IV.C.(6).]

(ii) *Sablefish taken by vessels engaged in fishing for pink shrimp with exempted trawl gear*. North of 36°00' N. lat., the cumulative trip limit for sablefish is 1,800 lb (816 kg) per 2-month period. South of 36°00' N. lat., the daily trip limit for sablefish is 350 lb (159 kg) per day, which may not be multiplied by the number of days in the trip. [Note: All sablefish taken by vessels engaged in fishing for pink shrimp with exempted trawl gear may not exceed and counts against the 500 lb (227 kg) per day and 2,000 lb (907 kg) per trip limit for groundfish specified below at paragraph IV.C.(7).]

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impractical. It would be impractical because the cumulative trip limit period began July 2, 1999, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), because such a delay would be contrary to the public interest. This action should be implemented at the beginning of the cumulative trip limit period to avoid confusion and maximize the potential that fishers will harvest the allocation. For these reasons good cause exists to waive the 30-day delay in effectiveness.

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: July 1, 1999.

George H. Darcy,

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

[FR Doc. 99–17325 Filed 7–2–99; 4:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 062599B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Inseason transfer.

SUMMARY: NMFS allocates 8 metric tons (mt) of the 1999 Atlantic bluefin tuna (BFT) Reserve to the Purse Seine category, creating a adjusted Purse Seine category quota of 260 mt and a adjusted Reserve quota of 35 mt for the 1999 fishing season. This action is being taken following input received by the Highly Migratory Species Advisory Panel (AP), as prescribed by management measures adopted in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP), and is consistent with the criteria for BFT quota transfers as specified in 50 CFR 635.27.

DATES: Effective July 2, 1999, until May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed by the Secretary of Commerce under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Within NMFS, daily responsibility for management of Atlantic Highly Migratory Species (HMS) fisheries rests with the Office of Sustainable Fisheries, and is

administered by the HMS Management Division.

Based on the 1998 revised stock assessment, parties at the 1998 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) of 2,500 mt whole weight (ww) of west Atlantic BFT inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. The annual landing quota allocated to the United States was increased by 43 mt ww to 1,387 mt ww.

Regulations at 50 CFR 635.27, subdivide the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the FMP that was adopted and made available to the public in April 1999. The FMP and the implementing regulations establish percentage quota shares for the ICCAT recommended U.S. BFT landing quota for each of the domestic fishing categories. For the Purse Seine category, NMFS adopted a cap on the amount of quota the category could be allocated, establishing a quota percentage share for the Purse Seine category of 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. If the percentage of the total ICCAT recommended annual landings quota allocated to the Purse Seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the Reserve.

The ICCAT recommended 1999 U.S. BFT landings quota is 1,387 mt, 18.6 percent of which is 258 mt. Thus, for 1999, the Purse Seine category was allocated 250 mt of the 18.6 percent of the overall U.S. BFT landings quota, and the additional 8 mt were allocated to the Reserve. An additional 2 mt Purse Seine category under-harvest from 1998 was added to the category's quota for 1999, for a total 1999 Purse Seine category quota of 252 mt (64 FR 29806, June 3, 1999).

In both the FMP, and the final HMS consolidated regulations, NMFS noted that the AP had not had an opportunity to fully address the Purse Seine category cap in light of the 1999 BFT quota increase from ICCAT. Therefore, NMFS indicated it would hold the additional 8 mt for 1999 in the Reserve until after the AP had discussed the issue. NMFS also indicated that if the agency decided, after receiving input from the AP, that it would not retain the cap, the FMP would be modified through its framework provisions.

The AP met in Silver Spring, MD on June 10 and June 11, 1999, and discussed the Purse Seine category cap. After extensive discussion, a clear majority favored removal of the cap. The AP provided information and advice to NMFS on the issue of fairness in the context of allocation to the Purse Seine category. Among the points used by the AP in support of removing the cap were the following: (1) Adopting a cap on one category and not others is not fair and equitable, (2) adopting a cap on the only category in the fishery which is managed using limited access does not promote limited access, and (3) adopting a cap on the Purse Seine category's BFT quota allocation may cause purse seine vessels to increase fishing effort on yellowfin tuna, which is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort.

As part of NMFS' consideration of the issue of transferring quota from the reserve, NMFS must also consider the quota transfer criteria as described at 50 CFR 635.27(a)(7), which state that NMFS has the authority to allocate any portion of the Reserve to any category or categories of the fishery after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of BFT tuna before the anticipated end of the fishing season, (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded, (5) the effects of the transfer on BFT rebuilding and overfishing, and (6) the effects of the transfer on accomplishing the objectives of the FMP.

NMFS has determined that the transfer of the 8 mt from the Reserve to the Purse Seine category is consistent with the quota transfer criteria, especially since the Purse Seine category targets and lands BFT of a larger size than the other domestic fishing categories to which the Reserve may be allocated, and, thus, would not have a negative impact of stock rebuilding. In addition, the FMP established a separate School Reserve for the Angling category (18 additional mt for 1999), which, along with strict quota monitoring in the commercial fisheries, means that a Reserve of 35 mt for the 1999 fishing year is sufficient.

After considering the AP's input and the quota transfer criteria described here, NMFS has decided to immediately transfer the 8 mt from the Reserve to the Purse Seine category, and is preparing a proposed rule to address the Purse Seine category cap issue under the framework authority of the FMP.

Quota Adjustment

NMFS is transferring 8 mt of the Reserve to the Purse Seine category. Following this transfer, the Reserve is reduced to 35 mt, and the Purse Seine category quota is increased to 260 mt for the 1999 fishing year.

Classification

This action is taken under 50 CFR 635.27(a)(7). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 *et seq.*

Dated: July 2, 1999.

Gary C. Matlock,

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

[FR Doc. 99–17322 Filed 7–2–99; 4:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990630178–9178–01; I. D. 062499A]

RIN 0648–XA31

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1999 Bank-Specific Harvest Guidelines

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

ACTION: Bank-specific harvest guidelines for the Northwestern Hawaiian Islands (NWHI) crustacean fishery for 1999.

SUMMARY: NMFS announces the 1999 bank-specific harvest guidelines for the NWHI crustacean fisheries. The previously announced total NWHI-wide harvest guideline of 243,100 lobsters (spiny and slipper lobster combined) is allocated among the four NWHI lobster fishing grounds as follows: Necker Island, 54,600 lobsters; Gardner

Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and the other remaining lobster banks combined, 71,240 lobsters. The intent of this action is to prevent overfishing and achieve the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Effective July 2, 1999.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office (PIAO), NMFS, 2570 Dole St., Honolulu, HI 96822 or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: During 1998, the Western Pacific Fishery Management Council (Council) and NMFS, under FMP framework procedures, implemented a bank-specific harvest guideline program for the NWHI lobster fishery to prevent the potential risk of fishermen over-exploiting the lobster resources at Necker Island, Gardner Pinnacles, and Maro Reef. That program was for only one season, July 1 through December 31, 1998. At its meeting in December 1998, the Council recommended the establishment of four NWHI lobster fishing grounds consisting of Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining NWHI lobster banks combined. Also, the Council recommended that the Regional Administrator, in consultation with the Council, be authorized to allocate the annual NWHI-wide harvest guideline among the four fishing grounds. On April 8, 1999, the Council requested the Regional Administrator to initiate rulemaking to establish a permanent bank-specific harvest allocation program for the NWHI lobster fishery.

Under a separate rule, appearing in today's **Federal Register**, NMFS established a permanent bank-specific harvest allocation program. On March 11, 1999, NMFS announced in the **Federal Register** (64 FR 12092) the 1999 NWHI-wide harvest guideline of 243,100 lobsters, spiny and slipper lobsters combined, based on an estimated total exploitable lobster population of 1,870,000. Subsequently, NMFS Southwest Fisheries Science Center scientists calculated exploitable population estimates for Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining lobster banks combined. By applying the FMP-specified constant harvest rate of 13 percent to the exploitable population estimates for each of the four fishing grounds, the Regional Administrator determined the 1999 harvest guideline for Necker Island to be 54,600 lobsters; Gardner Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and all the other remaining NWHI lobster banks combined, 71,240 lobsters. The Regional Administrator will close each fishing ground when its harvest guideline is estimated to be reached.

The PIAO will monitor landings and issue timely reports of the level of cumulative catch information and of the amount of the harvest guideline remaining for each fishing ground. Fishermen are advised to contact the PIAO (see **ADDRESSES**) periodically to stay abreast of any changes and of the progress of the fishery toward attaining the bank-specific harvest guideline of each of the fishing grounds. When the harvest guidelines of all the fishing grounds are attained, the Regional Administrator will close the entire NWHI lobster fishery. Under the procedures in 50 CFR 660.50(b), NMFS will announce the date upon which the harvest guideline will be reached and when the fishery will be closed.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, (AA) finds that because this action merely announces bank-specific harvest guidelines resulting from nondiscretionary application of the objective harvest guideline formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment. The AA also finds that there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). In order to insure the health of the lobster resources in the NWHI by preventing the potential for overexploiting those resources at any of the major fishing grounds (Necker Island, Gardner Pinnacles, or Maro Reef) this fishing season, this action must be in effect as soon as practicable after the season opening on July 1, 1999. Therefore, delaying this action would be contrary to the public interest and unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17324 Filed 7–2–99; 4:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990630177–9177–01; I.D. 051099A]

RIN 0648–AK61

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Bank-specific Harvest Guidelines

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment under the framework procedures of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region. This rule divides the Northwestern Hawaiian Islands (NWHI) lobster fishery into four fishing grounds and allows the Southwest Regional Administrator, NMFS (Regional Administrator) to allocate the annual NWHI harvest guideline among these grounds for the 1999 season and beyond. Also, this final rule allows a lobster vessel carrying an operational NMFS-certified vessel monitoring system (VMS) unit to be within the boundary of a fishing grounds immediately after it is closed, provided the vessels is making steady progress to an open fishing grounds or back to port. This rule is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource.

DATES: Effective July 2, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. Send comments

regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to Pacific Islands Area Office, NMFS, 2570 Dole Street, Honolulu, HI, 96822–2396 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at 808–522–8220 or Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808–973–2985.

SUPPLEMENTARY INFORMATION: This rule divides the NWHI lobster fishery into four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. Also, the rule authorizes the Regional Administrator, in consultation with the Western Pacific Fishery Management Council (Council), to allocate the annual NWHI-wide lobster harvest among the four lobster fishing grounds. Under this final rule, the harvest of lobster and the possession of lobster traps on board a permitted lobster vessel will be prohibited within a lobster fishing ground when the harvest guideline allocation is determined to have been taken, unless the vessel has on board an operational NMFS-certified VMS unit and is making steady progress to another fishing ground that is open, or is returning to port. Also, vessels with a VMS unit will not be subject to a specified time by which their lobsters must be landed. Vessels not carrying an operational VMS unit will be required to land their lobsters within a specified time period, to be announced by the Regional Administrator, following closure of the fishery, as provided by current regulations (50 CFR 660.50).

The preamble of the proposed rule contained descriptions of the alternatives considered, as well as the reasons for adopting the preferred alternative; those reasons are not repeated here. (64 FR 29834, June 3, 1999). This final rule is intended to help prevent localized depletion of the lobster populations at Necker Island, Gardner Pinnacles, and Maro Reef; to promote broader distribution of fishing effort among the remaining NWHI fishing grounds; to obtain better data on the lobster stocks, which would allow for the specification of additional fishing grounds as new information becomes available; and to conserve the resource. The intent of the VMS provision is to encourage lobster vessels to carry a VMS unit to allow NMFS to monitor their location on a real-time basis.

No comments were received on the proposed rule. Therefore, the final rule is unchanged from the proposed rule, with the exception of one technical change. The proposed rule incorrectly referenced a proposed change to § 660.48(a)(7) when the change actually intended was to § 660.48(a)(8). The final rule makes the necessary correction.

In a separate rule, appearing in today's *Federal Register*, NMFS announces the allocation of the 1999 harvest guideline of 243,100 lobsters among each of the four fishing grounds.

Classification

The Assistant Administrator for Fisheries, NOAA, for good cause, waives the 30-day delay in effectiveness for this rule under 5 U.S.C. 553(d)(3) in order to ensure the health of the lobster resource in the NWHI by preventing the potential for severe depletion of the lobster population at any of the major fishing grounds: Necker Island, Gardner Pinnacles, and Maro Reef, this fishing season. The rule should be in effect by July 1, when the fishing season starts, or as soon as possible thereafter. The allocation of the harvest guideline itself does not require action by any fisherman; rather it directs when the Regional Administrator must close each of the four fishing grounds. All participants will be provided actual notification of this rule. Therefore, delaying implementation of this rule would be contrary to the public interest and unnecessary.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an EA/RIR/IRFA and a FRFA as part of the regulatory impact review. No public comments were received on the initial regulatory flexibility analysis (summarized in the *Federal Register* on June 3, 1999, at 64 FR 29834). A summary of the FRFA follows. The final rule establishes four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster fishing banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. It is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource. The preambles to the proposed and final rules provide more details on the need for, and objectives of, this rule. The final rule applies to the 12 individuals who have been issued the 15 permits in the NWHI limited entry crustacean fishery. All participants in this fishery are small entities. No new reporting or recordkeeping requirements are required by the rule. This action embodies several steps taken to minimize the economic impact of the chosen measure on small entities. First, the alternative implemented by this final rule will result in long-term economic benefits to the fishery. Second, any vessel with an operational NMFS-certified VMS unit on board is not required to land lobsters by a specified time (thereby allowing flexibility in the vessel's activities). Also, any vessel so equipped may transit across a closed lobster fishing ground when it is making steady progress to another fishing ground that is open or it is returning to port. The reason for choosing the alternative implemented by this rule is that it will best allow for the attainment of the objectives of protecting lobster at each fishing ground, of providing better data, and of conserving the resource. The Council considered operating the fishery under a single annual harvest guideline, but rejected this alternative because it would not provide a means of limiting localized depletion. The Council considered Necker-Maro-Gardner (only) bank-specific harvest guidelines but rejected this alternative primarily because it would not afford bank-specific protection to other NWHI banks, if needed. The Council considered general area-specific harvest guidelines and full bank-specific harvest guidelines but rejected these alternatives because a lack of data for making these types of allocations may lead to mis-specified harvest guidelines.

Based on the experience of the 1998 fishery which was managed under an nearly identical rule, participants are expected to fish at the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds until each closes. Some fishing is expected to take place on the other remaining lobster grounds in the NWHI (Table 1 of the RIR/IRFA and FRFA). However, average catch per unit of effort rates are expected to be lower than those at Necker Island, Gardner Pinnacles, and Maro Reef, and the entire NWHI harvest may not be taken (22 percent of the total harvest guideline was not taken in 1998). This will lead to lower average gross revenues, as well as to slightly higher travel costs, compared to the same harvest guidelines unallocated among banks (Table 2 of the RIR/IRFA and FRFA). However, this rule should result in long-term economic benefits to the fishery as the resource increases with improved fisheries management. A copy of the

FRFA is available from the Council (see **ADDRESSES**).

This rule contains a collection-of-information requirement regarding VMS use and is subject to the Paperwork Reduction Act. (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. The collection of this information has been approved by OMB, under OMB control number 0648–0307. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The collection is to query through the VMS system a vessel to learn of its location before and after the start of the season or closure of a fishing ground, which is automatic with no action required by the vessel operator, except to verify the VMS unit is operating. The burden associated with this collection is estimated to require a response time of .033 seconds. Permit holders whose vessels are not equipped with VMS would have the option of installing new VMS in order to participate under this regulatory option for the opening and closing of the lobster season and transitting between fishing grounds. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded on June 7, 1999, to determine whether the effect on Hawaiian monk seals from the fishery managed under this action is likely to be adverse. As a result, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by adding the definition of ''Lobster grounds'', in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164° 00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167° 40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170° 20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

* * * * *

3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13) to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

* * * * *

4. Section 660.48 is amended by revising paragraph (a)(8) to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by revising paragraph (a) introductory text, paragraphs (b)(1), (b)(3) and (b)(4), and adding new paragraph (b)(5) to read as follows:

§ 660.50 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

* * * * *

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

* * * * *

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

* * * * *

[FR Doc. 99–17323 Filed 7–2–99; 4:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 130
Thursday, July 8, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit additional comments on three particularly controversial issues raised by FDA's proposed rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (''structure/function claims''). This meeting is intended to provide the public an additional opportunity to provide focused comment on these issues in a manner that will assist FDA in evaluating appropriate policies and approaches. FDA is also reopening, until August 4, 1999, the comment period for the proposed rule, to allow interested persons to comment on the issues raised in this document.

DATES: The meeting will be held on August 4, 1999, from 8 a.m. to 6 p.m. Submit written comments on or before August 4, 1999.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to ''FDADockets@oc.fda.gov''. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Barclay, Office of Policy, Planning, and Legislation (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of April 29, 1998 (63 FR 23624), FDA published a proposed rule on the types of claims that could be made for dietary supplements without prior authorization by FDA. Under Federal Food, Drug, and Cosmetic Act (the act), as amended by the Dietary Supplement Health and Education Act of 1994 (DSHEA), a dietary supplement may carry a statement that describes ''the role of a nutrient or dietary ingredient intended to affect the structure or function in humans'' or that ''characterizes the documented mechanism by which [the supplement] acts to maintain such structure or function.'' These types of claims are referred to as structure/function claims. However, a permitted structure/function statement ''may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases.'' These types of claims are referred to as ''disease claims.''

In the April 29, 1998, proposal, FDA stated its belief that the line between structure/function claims and disease claims was not always clear and that clarifying criteria were needed. The proposed rule was intended to help identify disease claims; claims that did not qualify as disease claims would be considered acceptable structure/function claims. The proposal contained a definition of ''disease,'' based upon current definitions of the term in medical and legal dictionaries. This definition differed from a definition of ''disease or health-related condition'' already found in FDA's regulations implementing the health claims provisions of the Nutrition Labeling and Education Act (NLEA). FDA proposed to conform the definition of ''disease or health-related condition'' in the health claims regulation to the proposed new definition of ''disease.'' The proposal also contained 10 criteria for identifying disease claims.

FDA received over 100,000 comments on the proposed rule. Most of the comments objected to the proposed definition of disease or to some or all of the criteria for identifying disease claims. Although the comments raised many issues, three issues received particular attention: (1) Whether FDA should retain the definition of ''disease or health-related condition'' issued for NLEA health claims, rather than issue a new definition of ''disease''; (2) whether certain common conditions associated with natural states, such as hot flashes associated with menopause, or premenstrual syndrome associated with the menstrual cycle, should be considered ''diseases''; and (3) whether dietary supplements may carry implied disease claims. Because of the degree of controversy surrounding these issues, FDA believes that further public discussion focused on the three issues would be useful. FDA is therefore holding a public meeting to obtain further input on how to develop appropriate rules or policies that are consistent with the intent of DSHEA and with protection of the public health.

II. Scope of Discussion

The scope of the meeting will be limited to the three issues discussed in this notice. A brief discussion of each of the issues with specific questions on which FDA would like input follows.

A. Definition of Disease

In 1993, FDA issued regulations implementing the health claims provisions of NLEA. NLEA requires food manufacturers, including dietary supplement manufacturers, to obtain prior FDA authorization for any labeling statement that characterizes the relationship between a nutrient in the food to a ''disease or a health-related condition'' (section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)). The phrase ''disease or health-related condition'' was defined in those regulations as:

> damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g., hypertension); except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition * * *

§ 101.14(a)(6) (21 CFR 101.14(a)(6)).

In the proposed rule on structure/function claims, FDA proposed a new definition of ''disease'':

any deviation from, impairment of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms, including laboratory or clinical measurements that are characteristic of a disease.

FDA's proposed definition of disease was based on current medical and legal definitions of the term. FDA stated in the preamble to the proposed rule that the agency did not want to make use of the older health claims definition of ''disease or health-related condition'' because its use of the term ''damage'' could be interpreted to limit the definition to serious or long-term diseases, and might exclude conditions that are medically understood to be diseases, such as depression or migraine headaches.

A very large percentage of the comments received on the proposal objected to the new definition of disease. Among the principal objections were that: (1) The new definition is too broad, sweeping in many minor deviations or abnormalities that are not diseases; and (2) Congress should be presumed to have been aware of the 1993 definition of ''disease or health-related condition'' and to have intended FDA to use that definition. Almost all of the comments from the dietary supplement industry and from individuals recommended that FDA return to the 1993 definition. Comments from health professional groups tended to support the new definition of disease as more consistent than the NLEA definition with a medical understanding of disease.

FDA seeks further input on the appropriate definition of disease. To help focus comments on this issue for the public meeting, the agency seeks input on the following questions: (1) What are the consequences, with respect to the range of permissible structure/function claims, of adopting: (a) The 1993 definition in § 101.14(a)(6), or (b) the definition in the proposed rule? (2) If FDA were to retain the 1993 definition, does the reference to ''damage'' exclude any conditions that are medically understood to be diseases? Please provide examples. (3) If it does not exclude any such conditions, is the 1993 definition otherwise consistent with current medical definitions of disease? (4) If it does exclude conditions that are medically understood to be diseases, could it be revised in a way that would include such conditions?

B. Common Conditions Associated With Natural States

The proposed rule stated that natural states such as aging, menopause, pregnancy, and the menstrual cycle, were not themselves diseases, but could be associated with abnormal conditions that were diseases. FDA proposed to treat as a disease claim a statement that a product had an effect on a condition associated with a natural state if the condition presented ''a characteristic set of signs or symptoms recognizable to health care professionals or consumers'' as an ''abnormality'' (see proposed § 101.93(g)(2)(iii)). FDA provided as examples of such abnormal conditions the following: Toxemia of pregnancy, premenstrual syndrome, hot flashes, and presbyopia, decreased sexual function; and Alzheimer's disease associated with aging.

Many comments strongly objected to classifying common conditions associated with natural states as diseases. While no one argued that toxemia of pregnancy or Alzheimer's disease are not diseases, a very large number of comments contended that premenstrual syndrome, hot flashes, and decreased sexual function associated with aging are so common that they should be considered neither abnormal nor diseases.

To help focus comments on this issue for the public meeting, FDA seeks input on the following questions: (1) If FDA were to treat some conditions associated with natural states as diseases (e.g., toxemia of pregnancy and Alzheimer's disease) but not others (e.g., hot flashes, common symptoms associated with the menstrual cycle, and decreased sexual function associated with aging), what would be an appropriate principle for distinguishing the two groups? (2) For example, would it be appropriate to consider the severity of the health consequences if the condition were to go without effective treatment? (3) If so, how should ''severity'' be defined?

C. Implied Disease Claims

FDA proposed to treat both express and implied disease claims as disease claims that could not be made for dietary supplements without prior FDA review (either as health claims or as drug claims). Many comments objected, arguing that Congress intended to include implied disease claims within the category of structure/function claims that do not require prior FDA review.

Most of the comments contended that Congress intended to prohibit only express disease claims, which, according to the comments, are limited to claims that explicitly refer to a specific disease. For example, ''for the treatment of lung cancer'' would be an express disease claim because it uses the term ''cancer.'' According to the comments, implied disease claims are those that do not explicitly mention a specific disease. Implied disease claims may, however, refer to identifiable characteristics of a disease from which the disease itself may be inferred. There are many possible ways to imply treatment or prevention of disease, from listing the characteristic signs and symptoms of the disease to providing images of people suffering from the disease. As defined by the comments, the last 9 of the 10 criteria proposed by FDA for identifying disease claims could be considered methods of implying disease treatment or prevention.

Many comments argued with particular energy that dietary supplements should be allowed to claim to alleviate the characteristic signs or symptoms of a disease. Few comments offered examples of the types of implied disease claims they believed should be permitted. Applying the principle that dietary supplement labeling should be allowed to list the signs and symptoms of a disease, ''shrinks tumors of the lung'' or ''prevents development of malignant tumors'' would be permitted claims because they refer to the remedial effect of a product on a defining symptom of cancer, but do not mention the name of the disease itself. Similarly, while ''treatment of epilepsy'' would be prohibited as an express disease claim, ''prevention of seizures'' would be acceptable as an implied disease claim. ''Treatment of hay fever'' would be prohibited as an express disease claim, while ''relief of sneezing, runny nose, and itchy watery eyes caused by exposure to pollen or other allergens'' would be permitted as an implied disease claim.

The comments argued that Congress' intent to permit implied disease claims can be seen in at least three provisions of DSHEA. First, the Findings section of DHSEA refers to the relationship between dietary supplements and disease prevention. Second, section 403(r)(6) of the act states that structure/function statements may not ''claim'' to treat or prevent disease, and this term should be read to refer only to express claims. Third, DSHEA requires structure/function claims to be accompanied by a disclaimer that ''this product is not intended to diagnose, treat, cure, or prevent any disease.'' According to the comments, Congress understood that specific disease treatment or prevention effects can also be described as effects on the structure

or function of the body, and resolved the tension by requiring the disclaimer. Many comments also argued generally that DSHEA was intended to promote the free-flow of truthful information about dietary supplements, and that prohibiting implied disease claims is contrary to this legislative goal.

FDA had proposed to treat both express and implied claims as disease claims on two grounds. First, the agency has always exercised authority over both express and implied claims under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)) , and believed that Congress would have explicitly authorized implied claims if it intended to change the agency's longstanding interpretation of the statute. The sections of DSHEA cited by the comments do not contain such an express authorization. Second, FDA believed that most disease treatment or prevention claims, including claims about serious and life-threatening diseases, can be described in a manner that will be easily understood by consumers without express reference to the name of the disease (e.g., ''shrinks tumors of the lung''). If dietary supplements were permitted to make implied disease claims, the burden would be on consumers to evaluate the validity of claims about dietary supplements marketed for serious and life-threatening diseases. In addition, dietary supplements could be given an unfair advantage over prescription and over-the-counter drugs in the marketplace that are required to establish their safety and effectiveness for disease treatment and prevention.

In the proposed rule, FDA asked for comment on a specific type of implied disease claim: A claim that a dietary supplement prevents or treats abnormal or unhealthy conditions or clinical measurements that are not themselves diseases but are markers of, or risk factors for, diseases, e.g., ''lowers cholesterol.'' FDA proposed to treat such claims as disease claims, but to permit claims that a product maintains healthy function, e.g., ''helps maintain a healthy cholesterol level.'' Most of the comments argued that consumers do not perceive a distinction between claims that a product treats or prevents abnormal function, and claims that the product maintains healthy function. Comments from dietary supplement manufacturers and some consumer groups argued that both types of claims should be permitted, while comments from health professional groups, groups devoted to specific diseases, and other consumer groups tended to argue that neither type of claim should be permitted.

FDA seeks further input on whether dietary supplements should be permitted to carry implied disease claims without prior review, either as health claims or as drug claims. To help focus comments on this issue for the public meeting, the agency seeks input on the following questions: (1) If such claims should be permitted, how should FDA correctly draw the line between what constitutes a prohibited express claim and what constitutes a permitted implied claim? (2) If such claims should be permitted, what are representative examples of the types of implied disease claims that should be permitted without prior review? (3) Are the examples mentioned in this notice appropriate structure/function claims? (4) Is a claim that a product ''maintains healthy function'' an implied disease claim in all cases? If not, under what circumstances is such a claim not an implied disease claim?

III. Registration and Requests to Make Oral Presentations

If you would like to attend the meeting, you must register with the contact person (address above) by July 16, 1999, by providing your name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 301–594–6777. If you need special accommodations due to disability, please inform the contact person when you register.

FDA intends to invite representatives from industry, health professional groups, and consumer groups to participate in panel discussions on the three issues discussed previously during the first portion of the meeting. Presentations by members of the public will be permitted during the second portion of the meeting, as time permits. If, in addition to attending, you wish to make an oral presentation during the meeting, when you register to attend you must so inform the contact person and submit: (1) A brief written statement of the general nature of the arguments you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. We anticipate that, if time permits, those attending the meeting will have the opportunity to ask questions during the meeting.

IV. Comments

Interested persons may, on or before August 4, 1999, submit written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to ''FDADockets@oc.fda.gov''. You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website ''http://www.fda.gov''.

Dated: July 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17424 Filed 7–6–99; 12:26 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 72 and 75

RIN 1219–AA74; 1219–AB11

Diesel Particulate Matter Exposure of Underground Coal and Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rules; corrections.

SUMMARY: This document corrects errors in the preamble discussions to the proposed rule on diesel particulate matter exposure of underground coal miners, and the proposed rule on diesel particulate matter exposure of underground metal and nonmetal miners. Specifically, this document corrects errors in the Diesel Emission Control Estimator formula in the proposed Appendix to Part V of both preambles; and corrects certain titles in proposed Figures V–1 through V–5 of

the metal and nonmetal preamble, and proposed Figure V–5 of the coal preamble.

DATES: Written comments on these clarifications and corrections must be submitted on or before July 26, 1999.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to *comments@msha.gov*.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: On April 9, 1998 (63 FR 17492), MSHA published a proposed rule addressing diesel particulate matter exposure of underground coal miners. On October 29, 1998 (63 FR 58104), the agency published a proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners. These proposals seek to reduce the risks to underground coal and metal and nonmetal miners, respectively, of serious health hazards associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers.

After publication of both proposed rules, MSHA realized that the Diesel Emission Control Estimator formula in Appendix to Part V: Diesel Emission Control Estimator was incorrect. The formula did not contain the unit conversion factors of 60 minutes/hour and 1000 μg/mg. Also, the formula did not contain the ''Ts'' unit factor, which represents the total shift length, hours. However, the spreadsheet supplied by MSHA performs the calculations correctly because it contains these units.

This document corrects these errors by including the conversion factors, and the ''Ts'' unit in the Diesel Emission Control Estimator formula. Additionally, the Agency is taking this opportunity to correct certain titles in proposed Figures V–1 through V–5 of the metal and nonmetal preamble, and proposed Figure V–5 of the coal preamble. These titles are being corrected because the specific units of measurement are misstated. Below are these corrections.

I. Corrections to Proposed Rule on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (63 FR 58104)

[Figure V–1]:

1. On page 58198, Figure V–1, section 1, line 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 58198, Figure V–1, section 2, line 18, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

[Figure V–2]:

1. On page 58199, Figure V–2, section 1, line 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m^3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 58199, Figure V–2, section 2, line 18, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

[Figure V–3]:

1. On page 58200, Figure V–3, section 1, line 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 58200, Figure V–3, section 2, line 18, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

[Figure V–4:]

1. On page 58201, Figure V–4, section 1, line 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 58201, Figure V–4, section 2, line 21, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

[Figure V–5]:

1. On page 58205, Figure V–5, section 1, line 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 58205, Figure V–5, section 2, line 18, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

3. On page 58205, Figure V–5, section 3, line 4, Column B, ''73 cfm/hp'' should read ''173 cfm/hp''.

4. On page 58206, second column, line 3, ''E(a)=(DPM(m) − I)x(Q(I)/35200)/[Sum(Hp(I)xTo(I))]'' should read ''E(a)=(DPM(m) − I)xTs x Q(I) x 1.7/ [10^6 x Sum (Hp(I) x To(I))]''.

5. On page 58206, second column, line 12, ''To(I) = Individual engine operating times, hours'' should read ''Ts = Total shift length, hours''.

6. On page 58206, second column, line 14, insert the following before beginning of paragraph: ''To(I) = Individual engine operating times, hr; ''1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7''; ''10^6 = The conversion factor that converts gm to μg''.

7. On page 58206, third column, line 9, ''DPM(a) = {[[Sum (E(I) x Hp(I) x To(I))] x 35,300/Q(I)] + I} x [Ts/8]'' should read ''DPM(a) = [(E(a) x Sum Hp(I) x 10^6/1.7 x Q(I)) + I] x Ts/8''.

8. On page 58206, third column, line 12, ''35,300 is a metric conversion factor'' should be deleted.

9. On page 58206, third column, line 16, ''E(I) = Individual engine emission rates, gm/hp-hr'' should read ''E(a) = is the quantity calculated for section 2, Column B, the average engine emission rate, gm/hp-hr''.

10. On page 58206, third column, line 19, ''To(I) = Operating time hours'' should be deleted.

11. On page 58206, third column, line 23, insert the following before the beginning of paragraph: ''1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7''; ''10^6 = The conversion factor that converts gm to μg''.

12. On page 58207, first column, line 71, ''DPM(c) = {Sum[(E(I) x Hp(I) x To(I)) x (35300/Q(I)) x (1 − R(o)) x (1 − R(f)) x (1 − R(e))] x [Q(I)/Q(f)]} + I'' should read ''DPM(c) = {(10^6/Ts) x Sum[E(I) x Hp(I) x To(I) x (1 − R(o)) x (1 − R(f)) x (1 − R(e))] / 1.7 x Q(f)} + I''.

13. On page 58207, second column, insert before line 17, ''Ts = Total shift length, hours''.

14. On page 58207, second column, after line 21 and before the section heading, ''VI. Impact Analysis,'' insert the following: ''Note: The factor 1.7 to convert Q in cfm to m^3/hr is determined as follows: 1 cu ft = ((2.54 cm/in)^3 x (12 in)^3/cu ft)/[(100 cm)^3/m^3] = 0.028317 m^3; 1 min = 1/60 hr; 1 cfm = 1.7 m^3/hr; 1 gm = 10^6 μg; Thus Q(m^3/hr) = 1.7 x Q (cu ft/min) and E(μg/hp-hr) = 10^6 x E(gm/hp-hr)''.

II. Corrections to Proposed Rule on Diesel Particulate Matter Exposure of Underground Coal Miners (63 FR 17492)

[Figure V–5]:

1. On page 17567, Figure V–5, section 1, ''MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)'' should read ''MEASURED OR ESTIMATED DPM CONCENTRATION (μg/m^3)''.

2. On page 17567, Figure V–5, section 2, line 18, ''AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)'' should read ''AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)''.

3. On page 17569, first column, line 19, ''E(a)=(DPM(m)-I) x (Q(I)/35200)/ [Sum(Hp(I) x To (I))]'' should read ''E(a)=(DPM(m)-I) x Ts x Q(I) x 1.7/ [10^6 x Sum (Hp(I) x To(I))]''.

4. On page 17569, first column, line 29, ''To(I) = Individual engine operating times, hours'' should read ''Ts = Total shift length, hours''.

5. On page 17569, first column, after line 30 and before line 31, insert the following before beginning of paragraph: ''To(I) = Individual engine operating times, hr''; ''1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7''; ''10^6 = The conversion factor that converts gm to μg''.

6. On page 17569, second column, line 19, ''DPM(a) = {[[Sum (E(I) x Hp(I) x To(I))] x 35,300/Q(I)] + I} x [Ts/8]'' should read ''DPM(a) = [(E(a) x Sum Hp(I) x 10^6/1.7 x Q(I)) + I] x Ts/8''.

7. On page 17569, second column, line 22, ''35,300 is a metric conversion factor'' should be deleted.

8. On page 17569, second column, line 26, ''E(I) = Individual engine emission rates, gm/hp-hr'' should read ''E(a) = is the quantity calculated for section 2, Column B, the average engine emission rate, gm/hp-hr''.

9. On page 17569, second column, line 30, ''To(I) = Operating time hours'' should be deleted.

10. On page 17569, second column, after line 33 and before line 34, insert the following before the beginning of paragraph: ''1.7 = The metric conversion factor that converts cfm to m^3hr, 1.7''; ''10^6 = The conversion factor that converts gm to μg''.

11. On page 17570, first column, line 19, ''DPM(c) = {Sum[(E(I) x Hp(I) x To(I)) x (35300/Q(I)) x (1-R(o)) x (1-R(f)) x (1-R(e))] x [Q(I)/Q(f)]} + I'' should read ''DPM(c)= {(10^6/Ts) x Sum[E(I) x Hp(I) x To(I)x (1-R(o)) x (1-R(f)) x (1-R(e))] / 1.7 x Q(f)} + I'.

12. On page 17570, first column, insert in line 41, ''Ts = Total shift length, hours''.

13. On page 17570, first column, after line 47 and before the section heading, ''VI. Impact Analysis'': insert the following: ''Note: The factor 1.7 to convert Q in cfm to m^3 / hr is determined as follows: 1 cu ft = ((2.54 cm/in)^3 x (12 in)^3/cu ft)/[(100 cm)^3/m^3] = 0.028317 m^3; 1 min = 1/60 hr; 1 cfm = 1.7 m^3/hr; 1 gm = 106 μg; Thus Q(m^3/hr) = 1.7 x Q (cu ft/min) and E(μg/hp-hr) = 10^6 x E(gm/hp-hr)''.

II. Close of Rulemaking Records

The post-hearing comment periods for both proposed rules will close concurrently on July 26, 1999. Commenters are encouraged to submit their comments on or before that date. This will allow the public 15 months from the date of publication to comment on the underground coal proposal, and nine months to comment on the metal and nonmetal proposal.

Dated June 30, 1999.

J. Davitt McAteer

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–17326 Filed 7–6–99; 9:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–124–FOR]

Pennsylvania Regulatory Program

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on certain parts of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on December 18, 1998, with revisions submitted on June 1, 1999. The comment period is being reopened for changes that deal with effluent limitations in 25 PA Code Chapter 87, Subchapter F and Chapter 88, Subchapter G. Specifically, these changes include the deletion of the definition of ''best professional judgement'' at 25 PA Code 87.202 and 25 Pa Code 88.502, and the deletion of subsections 25 PA Code 87.207 (b) and 25 PA Code 88.507 (b). Both §§ 87.207(b) and 88.507(b) are titled, ''Treatment of Discharges'' and require operator treatment of preexisting discharges which are not encountered during mining or implementation of the abatement plan with the effluent limits established by best professional judgement. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

DATES: Written comments must be received by 4:00 p.m. on July 23, 1999.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, Post Office Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

The Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program pursuant to remining and reclamation, postmining discharges, and water supply protection/replacement in a letter dated December 18, 1998 (Administrative Record No. PA–853.01). This proposed amendment was

published in the **Federal Register** on March 12, 1999 (64 FR 12269). The comment period for this proposal closed on April 12, 1999. During OSM's review of this proposal, PADEP submitted changes to supplement the original submission. These changes were described in a letter dated June 1, 1999 (Administrative Record No. 853.11). In that letter, PADEP indicated that the December 18, 1998, submission proposed to remove approved program language in 25 PA Code Chapters 87–90 dealing with effluent limits for discharges from areas disturbed by coal mining activities. The deletion of the definitions of the term ''best professional judgement'' from 25 PA Code 87.202 and 88.502 and deletion of 25 PA Code 87.207(b) and 88.507(b) are a supplement to this proposal. OSM is opening the public comment period to allow comment on these additional proposed deletions to the approved Pennsylvania program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments identified above. Specifically, OSM is seeking comments on the proposed changes to Pennsylvania's regulations that were submitted on June 1, 1999 (Administrative Record No. PA–853.11). Comments should address whether the proposed changes satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1999.

Allen D, Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–17295 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 212

[Docket No. RM 99–4A]

Design Protection for Vessel Hulls

AGENCY: Copyright Office, Library of Congress.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 1313(c) of title 17 permits a party damaged by the registration of a vessel hull design to request cancellation of the design. The Copyright Office is requesting interested parties to comment on the process and procedures that should be adopted for the cancellation of registrations of vessel hull designs.

DATES: Comments should be submitted no later than August 6, 1999. Reply comments are due no later than September 7, 1999.

ADDRESSES: An original and 10 copies of comments and reply comments should be mailed to: Office of the General Counsel, Copyright Office, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered by hand, an original and 10 copies should be brought to: Office of the Copyright General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney, Office of the General Counsel, Copyright Office, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: As part of the amendments made to the Copyright Act by the Digital Millennium Copyright Act, Public Law 105–304, Congress enacted design protection for vessel hulls. Chapter 13 of the Copyright Act creates certain exclusive rights for owners of original designs of vessel hulls provided registration of the design

is made within two years after the date on which the design is first made public. Registration of designs is made at the Copyright Office.

The Copyright Office has adopted interim regulations, effective July 1, 1999, implementing the registration system for vessel hull designs. The interim regulations did not, however, address procedures for cancelling registrations upon petition of an interested party. This Notice of Inquiry seeks public comment as to what type of process and procedures the Copyright Office should adopt for the cancellation of registrations. Persons submitting comments are invited to combine those comments with the comments they submit relating to the interim regulations, which are due on the same date.

Section 1313(c) of title 17 provides that ''[a]ny person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the [Register] at any time to cancel the registration on the ground that the design is not subject to protection under this chapter.'' 17 U.S.C. 1313(c). Upon receipt of such application, the Register must provide the owner of the design with the request for cancellation and ''the owner shall have a period of 3 months after the date on which such notice is mailed to present arguments to the [Register] to support the validity of the registration.'' *Id*. The Register is granted authority to establish regulations by which the opposing parties may ''appear and be heard in support of their arguments,'' and is directed to cancel the registration if she determines that ''the design is not subject to protection under this chapter.'' *Id*.

Because the Copyright Office has just published interim regulations creating the registration process for vessel hull designs and has yet to make a registration, it was not necessary to immediately adopt cancellation regulations. The Office is now seeking comment on the appropriate structure and procedures for cancelling registrations. In considering a process, commenters should bear in mind that the fees for cancellation proceedings will be set at a level designed to recover the actual cost of the proceedings.

The Office specifically seeks comment to the following inquiries. First is the issue of who should conduct a cancellation proceeding. Should the proceeding be conducted by staff of the Copyright Office, and, if so, should it be conducted by staff of the Examining Division or by attorneys in the General Counsel's Office? Or, should the Office hire an administrative law judge (''ALJ'') (preferably one with knowledge of vessel designs) to conduct the hearings and make findings of fact? If an ALJ is the preferable choice, how should the ALJ be paid? Should the ALJ's findings be given presumptive validity, or should the Register be empowered to make her own findings?

Second, how extensive should the proceeding be to consider the petition? The statute prescribes that the owner must be given 3 months to respond to the petition. Should additional written arguments be permitted in addition to the initial petition and the owner's response? What type of submissions should be permitted, and what should the time be? Should the parties be confined to presenting their arguments in written format, or should oral hearing be allowed as well? How extensive should such hearings be? Should they be conducted in accordance with the Administrative Procedure Act requirements for formal hearings, or according to some other less formal format?

Third, what should be the fee charged by the Copyright Office for such a proceeding? Because the registration fee is relatively modest, and because the fee for cancellation proceedings is likely to be considerably greater, should the obligation to pay for cancellation proceedings be shared by the party seeking cancellation and the party who obtained the registration? Should the fee be fixed, or should it be assessed in whole or in part based on the amount of time the presiding officer actually expends in reviewing the submissions and conducting the proceeding? Does the Office have authority to assess fees in that manner?

The Office welcomes responses to these inquiries, as well as any other information or comment as to the cancellation process.

Dated: July 1, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–17364 Filed 7–7–99; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–37–1–7392b; FRL–6372–8]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the New Mexico State Implementation Plan (SIP) that contains transportation conformity rule for Albuquerque/Bernalillo County. If we approve this transportation conformity SIP revision, the Albuquerque/Bernalillo County Air Quality Control Board will be able to implement and enforce the Federal transportation conformity requirements at the State level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. Our proposed approval is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision for conformity of general Federal actions (under 40 CFR part 51, subpart W) on September 13, 1996 (61 FR 48407).

We are proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. We have given our rationale for the proposed approval and other information in the Final Rules section of this **Federal Register**.

In the ''Rules and Regulations'' section of **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

DATES: We must receive your comments on this proposed rule in writing, by August 9, 1999.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, City of Albuquerque, One Civic Plaza, Albuquerque, New Mexico 87102, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

If you wish to obtain additional information, you should read the Direct Final Rule which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: June 10, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–17205 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–56–1–7391b; FRL–6372–5]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. If we approve this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. Our proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. Our proposed approval is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision for conformity of general Federal actions (under 40 CFR part 51, subpart W) on March 11, 1998 (63 FR 11833).

We are proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. We have given our rationale for the proposed approval and other information in the Final Rules section of this **Federal Register**.

In the ''Rules and Regulations'' section of **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: We must receive your comments on this proposed rule in writing, postmarked by August 9, 1999.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1749.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: If you wish to obtain additional information, you should read the Direct Final rule which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: June 9, 1999.

W.B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–17203 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–1999–5915]

RIN 2133–AB39

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, or we, our or us) is seeking public comment on a proposed rule to implement Title V of the Coast Guard Authorization Act of 1998. The new law authorizes the Secretary of Transportation to waive the U.S.–build and other requirements of the Passenger Services Act and Section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This administrative process will improve the responsiveness of the Federal Government in meeting the needs of many vessel-operating small businesses.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 7, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document. You should submit your written comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: You may call Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, at (202) 366–0760, or you may write to him at the following address: MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: By this notice of proposed rulemaking, MARAD seeks public comment on an implementation plan for its Small Passenger Vessel Waiver Administration Program and related information collection requirements. Title V of the Coast Guard Authorization Act of 1998 (Public Law 105–383) authorizes the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying twelve or fewer passengers) to operate in the coastwise trade.

Within the Department of Transportation there are two agencies with responsibilities related to the coastwise trade laws. The Coast Guard issues the vessel documents and endorsements that authorize vessels to engage in the coastwise trade. However, the Secretary of Transportation has delegated to MARAD the authority to process applications for waivers of the coastwise laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses. We are outlining the procedures to be followed in processing applications for waivers, or revoking waivers previously granted. Upon grant of a waiver, MARAD will notify the applicant and the Coast Guard. Thereafter, you may register the vessel so waived with the Coast Guard under the Coast Guard's normal procedures, provided the vessel is otherwise eligible.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign-built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly harmful impact on U.S. shipyards or U.S.-flag ship operators. Specifically, and in order to meet the public comment provisions of Title V, it is our intention to publish waiver requests for comment in the **Federal Register**. After a period of time to evaluate comments and assess the impact that the proposed waivers will have on the U.S.-flag shipping and shipbuilding industry, we will issue a determination.

In assessing the adverse effect of grant of a particular waiver, we may consider sales of vessels of the same type and size and for the same trade by domestic shipbuilders. As an example, the grant of a waiver for a motor vessel might not have an adverse effect on sales by a builder of sailboats. As for adverse effects on coastwise trade businesses, we may look at the type of service and geographic location of the applicant and the objector. An intended service providing day trips for whale watching might not affect a service providing weeklong trips on a sailing ship. A charter service in Maine might not affect a charter service in California. Each decision will be made on the facts of the individual circumstances, including the degree of competition in a proposed market.

We do not have the authority to waive citizenship requirements for vessel ownership and documentation. The Coast Guard will ascertain whether the shipowner is qualified as a citizen to register a vessel. In addition, the Coast Guard, not MARAD, will determine whether a particular vessel will be considered a small passenger vessel or an uninspected passenger vessel. However, we may refuse to process an application if the vessel is not the type eligible for a waiver. Prospective applicants for a coastwise trade law waiver may wish to consult with the Coast Guard prior to initiating the waiver application process with MARAD.

Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel and the vessel is having an unduly harmful impact on U.S. vessel builders or persons who employ U.S.-built vessels in the domestic trade. The procedure for revocation of a MARAD waiver will include the publication of a notice in the **Federal Register** seeking public comments on the proposed revocation. Secondly, we will determine the extent of the allegedly detrimental activity and, if an undue impact is found, we will issue a formal letter of waiver revocation with an appropriate grace period. This determination will be sent to the Coast Guard for revocation of the vessel's coastwise endorsement.

MARAD's decisions to grant or deny a waiver and to revoke or not revoke a waiver will not be final until after time for review has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver determination, or request the Maritime Administrator not to review a waiver determination. Relatively short time periods are provided for this review process.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number that appears at the top of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your

comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/ .

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, MAR–220, 400 7th Street, SW, Washington, DC 20590. In addition, you should submit two copies, *from which you have deleted the claimed confidential business information,* to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''MARAD–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket that you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket, as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

May I Comment on MARAD?s Use of Plain Language?

This NPRM is one of our first published rulemaking documents under the plain language directives. We welcome any comments and suggestions on the use and effectiveness of plain language techniques in this document or other suggestions on improving our use of plain language.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule is not an economically significant regulatory action under section 3(f) of E.O. 12866, because it would not have an effect on the economy of $100 million or more. We do not anticipate that a preliminary regulatory evaluation will be prepared.

Federalism

MARAD has analyzed this notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), MARAD must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. Based on a review of this proposed rule, MARAD certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because this regulation does not impose any significant burdens on small entities, and we do not expect that a substantial number of small entities will be applicants.

Environmental Assessment

This rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This proposed rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget (OMB) will be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, et seq.).

In accordance with the Paperwork Reduction Act this document announces MARAD's intentions to request approval for three years of information collection to allow processing of applications for waivers. Copies of this request may be obtained from the Division of Domestic Shipping at MAR–832 Room 7201, 400 7th Street, SW, Washington, DC 20590.

Title of Collection: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels, 46 CFR Part 388.

Type of Request: New request for information collection.

OMB Control Number: 2133–NEW.

Form Number: None.

Expiration Date of Approval: Three years following approval by the Office of Management and Budget.

Summary of Collection of Information: Persons desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application. No form or particular format will be required for the application. However, a minimal amount of information about the applicant and the vessel proposed for a waiver will be necessary to properly make the determinations required to grant a waiver.

Need for and Use of the Information: The information collected will be used to process applications for waiver of the coastwise trade laws for small passenger vessels. Without the information it would be impossible to know who wants a waiver and whether they qualify for a waiver.

Description of Respondents: Owners of small passenger vessels.

Annual Responses: Responses will be a one-time requirement of up to approximately 100 respondents per year.

Annual Burden: 100 hours.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Consultation and Coordination with Indian Tribal Governments

MARAD believes that regulations evolving from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modification to computer systems. Because the NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in the NPRM.

Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the Maritime Administration proposes to add a new Part 388 to 46 CFR chapter II, subchapter J, to read as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

Sec.
388.1 Purpose.
388.2 Definitions.
388.3 Applications; fees.
388.4 Criteria for grant of a waiver.
388.5 Criteria for revocation of a waiver.
388.6 Process.
388.7 Sunset provision.

Authority: 46 App. U.S.C. 1114(b); Public Law 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

§ 388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105–383, 112 Stat. 3445, which grants the Secretary of Transportation authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more, built or rebuilt outside the United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) *Coastwise Trade Laws* include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) *Eligible Vessel* means a vessel of five or more tons that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certification requested would become effective.

(c) *Secretary* means the Secretary of Transportation.

(d) The terms, *small passenger vessel, uninspected passenger vessel* and *passenger for hire* have the meaning given such terms by section 2101 of title 46, United States Code.

§ 388.3 Applications; fees.

(a) You may apply in writing to the Secretary, Maritime Administration (MARAD), MAR–120 Room 7210, 400 7th St., SW, Washington, DC 20590, for an administrative waiver of the coastwise laws of the United States for an Eligible Vessel to carry no more than twelve passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

(3) Intended use for vessel, including geographic region of intended operation and trade.

(4) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to determine origins of vessel, foreign construction will be assumed).

(5) Name, address, and telephone number of applicant and vessel owner (if different from applicant).

(6) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(7) A statement on the impact this waiver will have on U.S. shipyards.

(b) You must enclose an application fee for each waiver requested, in the form of a check for $300, made out to the order of ''Treasurer of the United States.''

§ 388.4 Criteria for grant of a waiver.

(a) *General criteria.* (1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an Eligible Vessel if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) We may evaluate the expected impact of the proposed waiver on the basis of the information received from

all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.

(b) *Impact on U.S. shipbuilders.* We may use the following criteria to determine the effect on U.S. shipbuilders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) *Impact on coastwise trade operators.* We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and the vessel(s) of an existing operator(s) (or the vessel(s) of an operator that can demonstrate it has taken definite steps to begin operation):

(i) Are of similar size;

(ii) Are of similar characteristics;

(iii) Would provide similar commercial service; and

(iv) Would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market.

§ 388.5 Criteria for revocation of a waiver.

(a) We may revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

(1) The vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

(2) The employment of the vessel unduly adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.

(b) We may evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.

§ 388.6 Process.

(a) *Initial process.* We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for a waiver. All applications that pass the initial screening will be available for public inspection in the Department of Transportation Docket Room following publication in the **Federal Register**. We will publish a notice of such applications in the **Federal Register**. Interested parties will be given an opportunity to comment on whether introduction of any of the proposed vessels would adversely affect them. In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will assume that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or may, as a matter of discretion, hold a hearing on the application. The decision will be communicated to the applicant, commenters and the Coast Guard. If the Maritime Administration grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation, provided the vessel and its owner otherwise qualify.

(b) *Revocation.* We may, upon the motion of an interested party, or upon our own motion, publish a notice in the **Federal Register** proposing to revoke a waiver granted under this part. We may request additional information from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and additional publicly available information or may, as a matter of discretion, refer the request for revocation to a hearing. The Maritime Administration will communicate its decision to the applicant and the Coast Guard. If MARAD revokes a waiver, the Coast Guard shall revoke the vessel's coastwise endorsement.

(c) *Review of determinations.* (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver or revoke a waiver will not be final until after time for discretionary review by the Maritime Administrator has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver, waiver denial, or waiver revocation within five (5) days of such determination. Each petition for review should state the petitioner's interest and the reasons review is being sought, clearly pointing out any alleged errors of fact or misapplied points of law. Within three (3) days of submission of a petition for review, applicants for a waiver and persons who submitted comments in response to a **Federal Register** notice may request the Maritime Administrator not to review a waiver, waiver denial or waiver revocation.

(2) Such petitions and responses may be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206. To the extent possible, each petitioner or respondent should send a copy of their petition or response to other interested parties by facsimile at the same time the submission is made to MARAD. The Maritime Administrator will decide whether to take review within two (2) days following the time for submission of a request that the Maritime Administrator not take review. If the Maritime Administrator takes review, the determination by the Director, Office of Ports and Domestic Shipping, will be stayed until final disposition. If review is not taken, the determination by the Director, Office of Ports and Domestic Shipping, will become final two (2) days after the time for submission of requests that the Maritime Administrator not take review. If the last day of a time limit falls on a Saturday, Sunday or Federal holiday, the time is extended to the next business day. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, will become final within ten (10) days. The Secretary, MARAD, may extend any of the time limits for good cause shown.

§ 388.7 Sunset provision.

We will grant no waivers after September 30, 2002, unless the statutory authority to grant waivers is extended beyond that date. Any waiver granted prior to September 30, 2002 will continue in effect until otherwise invalidated or revoked under chapter 121 of title 46, United States Code.

By order of the Maritime Administrator.

Dated: June 30, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–17045 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Notice of 6-month Extension on the Proposed Rule to List the Contiguous United States Distinct Population Segment of the Canada Lynx as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of deadline.

SUMMARY: We (the U.S. Fish and Wildlife Service) extend for not more than 6 months the time to make a decision on the proposal to list the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) as a threatened species. The new deadline for final action on the proposed rule to list the contiguous United States population segment of the Canada lynx is extended from July 8, 1999, to January 8, 2000. We will use the 6-month extension to obtain and review new information anticipated to be forthcoming in a scientific report on the Canada lynx from the U.S. Forest Service's Rocky Mountain Research Station.

DATES: We intend to reopen the public comment period to accept comment on the science report when it becomes available and will soon announce the dates of the new public comment period in the **Federal Register**.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor at the above address, or telephone 406/449–5225; facsimile 406/449–5339.

SUPPLEMENTARY INFORMATION:

Background

Within the timeframes established under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), a final determination of whether or not to list the contiguous United States distinct population segment of the Canada lynx is due by July 8, 1999. The proposed listing of the Canada lynx was a result of a settlement agreement between the U.S. Fish and Wildlife Service and the plaintiffs, Defenders of Wildlife *et al.*, on February 12, 1998. This agreement required the publication of a proposed rule to list the Canada lynx in the contiguous United States. The proposed rule to list this population segment as threatened was published in the **Federal Register** on July 8, 1998 (63 FR 36994).

If there is substantial disagreement regarding the sufficiency or accuracy of the available data, the Act allows for a 6-month extension of a final listing determination for the purpose of soliciting additional data. We are extending for 6 months the deadline for the final determination to list the lynx. The new deadline for a final listing determination is extended from July 8, 1999, to January 8, 2000.

The scientific basis for our findings and conclusions in the proposed rule have been questioned by many of the 14 affected State wildlife agencies that responded during the public comment period. These State wildlife agencies have expertise and historical knowledge of lynx biology within their respective jurisdictions and dispute the accuracy of our assessment of the status and/or threats to the lynx. The information challenged by the State agencies included our assessment of the effects on lynx populations of forestry practices, past overharvesting, and competition with other species. They also disputed our assessment of the lynx population's status within the individual states. Additionally, we received comments from professional societies similarly disputing the assessment of status and threats.

Subsequent to the 1998 settlement agreement, the U.S. Forest Service's Rocky Mountain Research Station assembled a team of scientists to prepare a scientific report on the Canada lynx. This ''science report'' will be a comprehensive compilation and assessment of historic and current lynx occurrence records and distribution, scientific literature, lynx and prey ecology, habitat correlations, and threats to the continued existence of lynx in the contiguous United States. The science report will be the only comprehensive assessment of lynx in the contiguous United States, besides the Service's proposed rule. The science report will undergo scientific peer review prior to release. The science report is anticipated to be finalized by late July 1999.

Given the serious concerns expressed by the States and scientists with expertise in the field of lynx biology questioning our assessment of the status and threats to the lynx in the proposed rule, and our assessment of preliminary information from the Science Team that may cause us to reconsider some of the conclusions on status and threats in the proposed rule, we conclude that there is substantial scientific disagreement regarding the sufficiency and accuracy of the available data relevant to a final determination of whether or not to list the lynx. The additional time we need to adequately address these issues is not anticipated to appreciably impact the lynx.

We have reason to believe the forthcoming science report will represent significant new and important information critical to helping resolve ongoing substantial scientific disagreement regarding the status of lynx and the presence and magnitude of threats facing its continued existence in the contiguous United States. Therefore, we are using the provision in section 4(b)(6)(B)(i) of the Act to extend for a period of 6 months the deadline for a final listing determination for the lynx.

The 6-month extension will enable us to receive and evaluate the new information in the science report, allow time for public comment on the science report, assess the public comments received, and integrate this information into the final listing decision. The extension will enable us to make a sound final determination using the best available scientific and commercial data, within the legal mandates of the Act and the Administrative Procedure Act.

This report is expected to be an important contribution to the best scientific and commercial data available and may strengthen the biological basis for making a final listing determination for the Canada lynx. The public comment period will be reopened to receive both the science report and accept public comments on the report. The opening of the public comment period will be announced in the **Federal Register** when the availability of the science report is known. At that time, instructions for obtaining a copy of the science report also will be announced.

Author. The author of this document is Lori H. Nordstrom (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: June 30, 1999.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–17246 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 130
Thursday, July 8, 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

Submission for OMB Review; Comment Request

July 1, 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, D.C. 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.

Rural Utilities Service

Title: Demand Side Management and Integrated Resource Plan.

OMB Control Number: 0572–0105.

Summary of Collection: The Rural Electrification Loan Restructuring Act of 1993, Public Law 103–129, (RELRA), signed into law by President Clinton on November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq (RE Act) to permit the Rural Utilities Service (RUS) to make loans for Demand Side Management (DSM), energy conservation programs, and on-grid and off-grid renewable energy systems. DSM and energy conservation programs have become increasingly important to electric utilities as they seek ways to make their existing systems more efficient and reduce the need for new capacity. RUS will collect information using an RUS-approved integrated resource plan (IRP) and the loan application.

Need and Use the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification, as required by the RE Act.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 24.

National Agricultural Statistics Service

Title: Stock Report.

OMB Control Number: 0535–0007.

Summalry of Collection: The National Agricultural Statistics Service's primary function is to prepare and issue current official State and National estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain (including rice) oilseeds, potatoes, peanuts, hops, and dry beans. Grain and oilseed stocks in all positions (on-farm and off-farm) are estimated quarterly. Grain stocks estimates are one of the most important National Agricultural Statistics Service (NASS) estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code Title 7, Section 2204. This statue specifies that the Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists. ''The Hop Growers of America provides the data collection for much of the production information but, because of sensitivity issues, stocks and price information are best collected by an impartial third party-NASS. NASS collects the stocks data because there is a high degree of competition among the brewers, dealers, and growers. NASS will collect information using stock reports.

Need and Use of the Information: NASS will collect information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. These estimates are used by farmers and agribusiness firms in their production and marketing decisions. In the absence of such information feeding would continue at an ultimately unsustainable rate, causing more drastic adjustment to be necessary near the end of the crop marketing year.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 12,590.

Frequency of Responses: Reporting: Monthly; quarterly; semi-annually; annually.

Total Burden Hours: 14,683.

Risk Management Agency

Title: General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the 1998 Research Act requires the Federal Crop Insurance Corporation (FCIC) to publish regulations on how FCIC will provide a final agency determination in response to certain inquiries. Sec. 533 provides if FCIC does not respond in the time established by this regulation, the interpretation of the requested is considered correct for the crop year. It becomes necessary for the requester, or respondent, to identify himself so he can be provided a

response and also to state his interpretation of the regulation for which he is seeking a final agency interpretation.

Need and Use of the Information: The requesters name and address will be used to allow FCIC to provide a response to the requester (respondent). The requesters detailed interpretation of the regulation is required to comply with the requirements of Sec. 533 of the 1998 Research Act and to clearify the boundaries of the request to FCIC. FCIC would not be able to comply with the statutory mandates of Sec. 533 of the 1998 Research Act is the requested information was not collected with each submission.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Food and Nutrition Service

Title: Evaluation of Asset Accumulation Initiatives.

OMB Control Number: 0584–NEW.

Summary of Collection: This evaluation of programmatic options to promote saving among food stamp households was originally undertaken in response to a provision of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). This legislation directs the Secretary of Agriculture to test, under limited circumstances, a modified food stamp policy. This data collection focuses on state and local initiatives that provide savings opportunities to populations that include a substantial proportion of food stamp households. Special purpose savings are targeted to low income populations. Often special purpose savings accounts legislation has been enacted in the context of state welfare initiatives. Twenty five states included Individual Development Account (IDA's) in welfare reform plans for Transitional Assistance to Needy Families (TANF) recipients. The Food and Nutrition Service (FNS) will collect information through telephone interviews to use in evaluating these asset accumulation initiatives.

Need and Use of the Information: FNS will collect information on the status of special-purpose account programs nationwide. An in-depth examination of the ways in which the programs are structured, how they operate, salient issues involved in their establishment and operation, and the response of the target populations will be studied. The information will be used by FNS to assess the desirability of relaxing asset accumulation rules via special-purpose accounts. It will also provide FNS with useful information regarding the operational feasibility of such programs.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 180.

Cooperative State Research, Education, and Extension Service

Title: Application for Authorization to Use the 4–H Name and/or Emblem

OMB Control Number: 0524–0034

Summary of Collection: Use of the 4–H Name and/or Emblem is authorized by an Act of Congress, (Pub. L. 772, 80th Congress, 645, 2nd Session). Use of the 4–H Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and person authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) to authorize others to use the 4–H Name and Emblem. Therefore, anyone requesting authorization from the Administrator to use the 4–H Name and Emblem is asked to describe the proposed use in a formal application. CSREES will collect information using form CSREES–01 Application for Authorization to Use the 4–H Club Name or Emblem.

Need and Use of the Information: CSREES will collect information on the name of individual, partnership, corporation, or association; organizational address, name of authorized representative; telephone number; proposed use of the 4–H Name or Emblem; and plan for sale or distribution of product. The information collected by CSREES will be used to determine if those applying to use the 4–H name and emblem are meeting the requirements and quality of materials, products and/or services provided to the public. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the high standards of 4–H, its educational goals and objectives.

Description of Respondents: Not-for-profit institutions; individuals or households; business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: Other (every 3 years).

Total Burden Hours: 20.

Farm Service Agency

Title: General Regulations Governing the Peanut Warehouse Storage Loan and Handler Operations—7 CFR 1446.

OMB Control Number: 0560–0014.

Summary of Collection: The U.S. Department of Agriculture provides price support to peanuts producers in the United States to their income and assure an adequate supply of peanuts for domestic use. In return for the guaranteed prices, limitations are placed on the amount of peanuts being produced and sold for domestic edible use. The Federal Agriculture Improvement and Reform Act of 1996 (The 1996 Act) revised the peanut program applicable to the peanut price support program for the 1996 through 2002 crop years. Regulations at 7 CFR Part 1446 have been amended to restrictions on transfer of peanuts from additional loan to quota loan. Commodity Credit Corporation (CCC) contract for warehouse storage and related services. For handlers of contract additional peanuts, CCC uses the information to determine the amount of shrink allowed, the type of supervision required, the amount of export obligation and the amount of export disposition credit. The Farm Service Agency (FSA) collects information using forms.

Need and Use of the Information: FSA collects information on the name and address of warehouses, the examiner's report on the condition of the warehouse and of the stock stored therein and any corrections that need to be made, and the warehouse operator's actions to correct the conditions, if needed. If the information is not collected, the administration of the Peanut Price Support Program would be impaired and the Act would not be implemented as required by Congress.

Description of Respondents: Farms; not-for-profit institutions; individuals or households; Federal Government.

Number of Respondents: 25,800.

Frequency of Responses: Recordkeeping; reporting: On occasion; Monthly; Annually.

Total Burden Hours: 28,752.

Agricultural Marketing Service

Title: Tobacco Report.

OMB Control Number: 0581–0004.

Summary of Collection: The authority for the collections of information on Form TB–26, Tobacco Stocks Reports, is Public Law No. 661, commonly known as the Tobacco Statistics Act (7 U.S.C. 501–508) enacted in 1929. The Act directs the Secretary to collect statistics on the quantities of leaf tobacco held by dealers and manufacturers in the United

States and Puerto Rico. The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to collect, tabulate, and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality and condition of such products in various positions in the marketing channel, utilization of sub-products shipment, and unloads. The Agricultural Marketing Service will collect information using forms TB–26, Tobacco Stocks Report, and TB–39, Quarterly Report of Manufacture and Sales of Snuff, Smoking, and Chewing Tobacco.

Need and Use of the Information: AMS will collect information on the total supply of unmanufactured tobacco available to domestic manufacturers and to monitor the size, growth, or decline of the market. The data is required for the calculation of production quotas for individual types of tobacco under the Agricultural Adjustment Act of 1938. Without the information USDA would not be able to disseminate marketing information as directed and authorized in the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 81.

Frequency of Responses: Reporting; quarterly.

Total Burden Hours: 298.

Agricultural Marketing Service

Title: Almonds Grown in California, Marketing Order 981.

OMB Control Number: 0581–0071.

Summary of Collection: Marketing Order No. 981 (7 CFR Part 981), regulates the handling of almonds grown in California and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stats. 31, as amended; 7 U.S.C. 601–674). This legislation, hereinafter referred to as the act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. Regulations apply to almonds shipped within and outside of the production area to any market, except those specifically exempt. The Order also authorizes the establishment of production research and marketing research and development projects, including paid advertising. California accounts for all of the U.S. almond production, approximately 70% of which is exported. The Agricultural Marketing Service (AMS) will collect information using several forms submitted by growers and handlers.

Need and Use of the Information: AMS will collect information so industry statistics may be published, for program compliance reasons and to determine industry support for programs or changes thereto and determine qualifications. Without the information the Board would not be able to carry out the purposes of the Act and the Order.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 7,658.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 2,638.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–17255 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2000 Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2000 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $130.00 per license.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at warsack@usda.gov.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.36 provides for the issuance of licenses to import certain dairy articles which are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture and the U.S. Customs Service.

The Regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this Regulation.

The Regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2000 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1999 has been determined to be $335,352 and the estimated number of licenses expected to be issued is 2,582. Of the total cost, $173,357 represent staff and supervisory costs directly related to administering the licensing system during 1999; $50,320 represents the total computer costs to monitor and issue import licenses during 1999; and $111,675 represents other miscellaneous cost, including travel, postage, publications, forms, a new FAX machine, and an ADP system contractor.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2000 calendar year, in accordance with 7 CFR 6.33, will be $130.00 per license.

Issued at Washington, DC the 30th day of June, 1999.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 99–17358 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet July 22, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3733, 14th Street between

Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Presentation on status of Western Group discussions at the Ad Hoc Group negotiations regarding protocol for the Biological Weapons Convention (BWC).
4. Discussion of comments provided on draft documents on Declaration Format and Triggers for the BWC.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, BXA MS: 3876, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: July 1, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–17356 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 8, 1999.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (''PPD-T aramid'') from the Netherlands in response to requests by respondent, Akzo Nobel Aramid Products, Inc. and Aramid Products V.o.F. (''Akzo'') and petitioner, E.I. DuPont de Nemours and Company. This review covers sales of this merchandise to the United States during the period June 1, 1997, through May 31, 1998, by Akzo. The results of the review indicate the existence of dumping margins for the above period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; Telephone: (202) 482–1775.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 10, 1998, we published in the **Federal Register** (63 FR 31717) a notice of ''Opportunity to Request an Administrative Review'' of this order covering the period June 1, 1997, through May 31, 1998.

In accordance with 19 CFR 351.213(b), Akzo and petitioner requested that we conduct an administrative review for the aforementioned period. On July 28, 1998, the Department published a notice of ''Initiation of Antidumping Review'' (63 FR 40258). The Department is now conducting this administrative review pursuant to section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* (''*HTSUS*'') item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value (''NV'') and export price (''EP'') or constructed export price (''CEP'') of each entry of subject merchandise. *See* Section 751(a)(2)(A). Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review (''POR''). *See Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (1993) (the Department did not consider ESP (now CEP) entries which were sold after the

POR). The Court of International Trade (''CIT'') has upheld the Department's practice in this regard. *See The AD Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States,* 914 F. Supp. 535, 544–45 (CIT 1995).

Comparisons to NV

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review which were sold by the respondent in the home market during the POR to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value (''CV'') of the product sold in the home market during the comparison period.

Furthermore, pursuant to section 777A(d)(2) of the Act, where there were home market sales that passed the cost of production (''COP'') test, as discussed below, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in sections 772(b), (c), and (d) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, we reduced these prices to reflect rebates. In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses, e.g., credit expenses, and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses (international freight, brokerage and handling, U.S. duties, domestic inland freight, and insurance) in accordance with section 772(c)(2) of the Act. Finally, we also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Akzo's aggregate volume of the home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV on home market sales.

We calculated NV based on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments for discounts and rebates. Where applicable we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(a)(6) of the Act, where applicable, we made deductions from the starting price for inland freight and inland insurance. In addition, we made a circumstances of sale adjustment for imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Prices were reported net of value added taxes (''VAT'') and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and the subject merchandise.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP under section 772(d) of the Act.

Cost of Production Analysis

In the most recently completed administrative review of Akzo, we disregarded sales found to be below the COP. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in the instant review.

In accordance with section 773(b)(3) of the Act, we calculated the weighted average COP, by model, based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative expenses and packing costs in accordance with section 773(b)(3) of the Act. We used the home market sales data and COP information provided by Akzo in its questionnaire responses.

After calculating a weighted-average COP, we tested whether home market sales of PPD-T aramid were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' In accordance with section 773(b)(2)(B) and (D) where 20 percent or more of home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. Because the sales prices would not permit recovery of all costs within a reasonable period of time, we disregarded those below-cost sales and used the remaining above-cost sales to determine NV in accordance with section 773(b)(1). For those models of PPD-T aramid for which there were no home market sales available for matching purposes, we compared CEP to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (''SG&A''), and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We used the costs of materials, fabrication, and SG&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's questionnaire response. See *Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 1344,

1349 (January 19, 1996). For selling expenses, we used the average of the home market selling expenses weighted by the respective quantities sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all home market sales in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP under section 772(d) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the transaction between the exporter to the importer for which we construct the import price.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997) (''*South Africa Final*'').

In the present case, we were not able to compare U.S. CEP sales to HM sales at the same level of trade. First we compared the CEP to the HM sales to determine whether a level-of-trade adjustment was appropriate, in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Netherlands markets, including the selling functions, classes of customer, and selling expenses. Upon consideration of the above mentioned factors, the Department determined that there is one level of trade and one channel of distribution in the home market (direct to end users) and a different level of trade in the U.S. market (sales to an affiliated distributor). However, the data available do not provide an appropriate basis to determine a level of trade adjustment. Further, we determined that Akzo's NV sales to end-users/converters in the home market, as well as CV, are at a more advanced stage of distribution than CEP sales. As a result, the Department has preliminarily determined to grant Akzo an adjustment to NV in the form of a CEP Offset.

For a detailed description of our level-of-trade analysis for these preliminary results, see the June 30, 1999, *Analysis Memorandum* to The File, on file in the Import Administration's Central Records Unit (Room B–099) of the main Commerce building.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See *South Africa Final*. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Therefore, for purposes of the current review, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales based on the methodology discussed above.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter/manufacturer	Weighted-Average Margin (percent)
Akzo	3.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for Akzo's entries of the subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties on Akzo's entries of the merchandise subject to the review.

Cash Deposit Requirements

To calculate the cash-deposit rate for Akzo in this administrative review, we divided the total dumping margins for Akzo by the total net value of Akzo's sales during the review period. Furthermore, the following deposit rates will be effective upon publication of the

final results of this administrative review for all shipments of aramid fiber from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Akzo will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 66.26 percent, the ''All Others'' rate established in the LTFV investigation. See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 32678–01 (June 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17395 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand in response to a request by the respondent, the New Zealand Kiwifruit Marketing Board, the sole exporter of the subject merchandise to the United States. The review covers the period June 1, 1997, through May 31, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

Background

On June 10, 1998, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on fresh kiwifruit from New Zealand (63 FR 31717).

In accordance with 19 CFR 351.213(b)(1), on June 29, 1998, the New Zealand Kiwifruit Marketing Board (NZKMB) requested an administrative review of the antidumping duty order covering the period June 1, 1997, through May 31, 1998. NZKMB also requested revocation of the antidumping order, in accordance with 19 CFR 351.222(b)(1). On July 28, 1998, the Department initiated an administrative review for NZKMB (63 FR 40258).

On July 21, 1998, the California Kiwifruit Commission (the petitioner) submitted a letter objecting to NZKMB's request for revocation. The petitioner argued that NZKMB failed to satisfy the regulatory requirements for seeking revocation and urged the Department to reject NZKMB's revocation request in this administrative review. Subsequently, on September 23, 1998, NZKMB withdrew its request for revocation of the antidumping duty order at the conclusion of this review.

On August 20, 1998, the Department issued the antidumping questionnaire to NZKMB. NZKMB submitted responses to sections A through D of the antidumping questionnaire on October 19, 1998 and February 22, 1999. The Department issued its supplemental questionnaires and received responses to the questionnaires in April 1999.

During May 1999, the Department conducted verifications of the sales and cost responses of NZKMB and individual kiwifruit growers. On June 24, 1999, NZKMB submitted revised sales and cost of production databases incorporating changes resulting from the verifications.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit are not covered under the scope of this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information provided by NZKMB. We used standard verification procedures, including on-

site inspection of the respondent's facilities and examination of relevant sales and financial records. Based on the Department's verification findings, we made certain changes to the sales and cost data submitted by the respondent used to calculate the preliminary margin. Our verification results are outlined in the verification reports placed in the case file.

Normal Value Comparisons

To determine whether sales of fresh kiwifruit to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for NZKMB, as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

NZKMB claimed that it made home market sales at two levels of trade based on the channel of distribution (i.e., sales to a distributor on a consignment basis and direct sales to wholesale or retail customers). In the U.S. market, NZKMB reported only CEP sales made through one channel of distribution and claimed one level of trade (the CEP level of trade). NZKMB argued that a CEP offset is warranted in this case because neither of its two claimed home market levels of trade is similar to the U.S. CEP level of trade, and the home market levels are more remote from the factory than the CEP level. Accordingly, we have performed an analysis of the information on the record to determine whether a LOT adjustment, or in the alternative, a CEP offset, is warranted.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between NZKMB and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine whether the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

Based on an analysis of the information on the record, we found that NZKMB made sales in the home market at one LOT, with two types of sales within that level: sales through a distributor and direct sales to wholesale or retail customers. We examined the selling functions performed for both types of sales and found that NZKMB, and its marketing subsidiary Zespri, performed minimal selling functions for both types of sales in the home market. Through its packhouse and coolstore providers, NZKMB provides quality checking services supporting all home market sales. In addition, Zespri provides some advertising and customer support for home market sales to its distributor. However, for sales made to its distributor, which constitute the vast majority of home markets sales, the distributor handles the bulk of the services and selling functions after delivery from the coolstore, and Zespri ''does not provide technical advice, warranty services, freight or delivery arrangements, direct advertising support to the distributor (except for general brand-enhancement advertising), or any other sales support services.'' See NZKMB's October 19, 1998, submission at page A–17. Similarly, for the few direct sales to its customers, NZKMB maintains the fruit in coolstore until sale and provides quality control through its coolstore providers, but Zespri provides no subsequent sales support activities besides general advertising and customer support. Given the minimal level of reported selling functions for both types of sales in the home market, we preliminarily determine that the selling functions for both sales types are sufficiently similar to justify only one LOT in the home market.

Because all U.S. sales were CEP sales, the LOT for such sales is the level of the constructed sale from the exporter to the importer. We examined the selling functions performed by NZKMB and Zespri for U.S. CEP sales and preliminarily determine that they are made at the same LOT as home market sales. As with home market sales, NZKMB provides quality checking services in support of U.S. sales through their packhouse and coolstore providers. In addition, Zespri staff in New Zealand provide some support for U.S. sales including promotional information and strategic advice on sales and marketing tactics. See NZKMB verification report memorandum for Louis Apple from James Maeder and John Maloney, dated June 14, 1999. The majority of selling function support for U.S. sales occurs in the United States, performed by Zespri's affiliated North American selling agent, and are not considered for comparison purposes. Thus, similar to home market sales, Zespri performs a limited number of selling functions in New Zealand in support of the constructed U.S. CEP sales, including the quality and condition checking services performed for all kiwifruit sales. Furthermore, a comparison between the reported indirect selling expenses in New Zealand for U.S. sales and the reported indirect selling expenses for home market sales indicated no substantial quantitative difference in the level of selling functions. As a result, we find that the quantity and quality of selling functions performed by NZKMB and Zespri in support of the constructed U.S. sales are comparable to the selling functions performed in support of home market sales. Therefore, our analysis of the chains of distribution and selling functions performed for all sales in the home market and CEP sales in the U.S.

market indicates that both are made at the same stage in the marketing process.

Because of the analogous levels of selling functions and stages in the chains of distribution between home market sales and constructed U.S. sales, we find that sales in both markets were made at the same LOT. Therefore, no LOT adjustment or CEP offset is warranted in this case.

Constructed Export Price

For all U.S. sales made by NZKMB, we used CEP, in accordance with section 772(b) of the Act, because the sales were made to the first unaffiliated party in the United States after importation. We calculated CEP based on packed F.O.B. (ex-New Zealand coolstore) and delivered prices. We made deductions, where appropriate, for foreign inland freight (coolstore to port), pre-sale warehousing expenses, transportation insurance expenses (including inland and marine insurance), foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. inland freight, U.S. coolstore expenses, and U.S. Customs fees, in accordance with section 772 (c)(2)(A) of the Act.

In accordance with sections 772(d)(1) and (2) of the Act, we made additional deductions, where appropriate, for commissions, credit expenses, direct advertising expenses, U.S. indirect selling expenses, U.S. inventory carrying costs, and U.S. repacking costs. We also made an adjustment for profit, in accordance with section 772(d)(3) of the Act. Finally, we increased the U.S. price to account for post-sale price adjustments not reflected in the gross price.

Normal Value

In order to determine whether there were sufficient sales of kiwifruit in the home market to serve as a viable basis for calculating NV, we compared the volume of NZKMB's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that NZKMB had a viable home market during the period of review (POR) (*i.e.*, June 1, 1997 through May 31, 1998). Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that NZKMB had made home market sales at prices below the cost of production (COP) in this review because the Department had disregarded sales below the COP in the most recently completed administrative review. *See Fresh Kiwifruit from New Zealand: Final Results of Antidumping Duty Administrative Review*, 61 FR 46438 (September 3, 1996) (Kiwifruit Third Review). Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether the respondent made home market sales during the POR at prices below the COP. We followed the Department's determinations in the original investigation and the prior administrative reviews that, in comparing NV to COP, the reseller's or exporter's acquisition prices are irrelevant because section 773(b) of the Act requires that the Department look at the actual COP of the subject merchandise. Accordingly, we used the costs incurred by kiwifruit growers, the actual producers of the subject merchandise, to calculate the COP.

Due to the large number of growers from which the NZKMB purchased kiwifruit during the POR, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review. *See* section 777A of the Act. We selected the sample of kiwifruit growers by first geographically segregating farms into two regions: the Bay of Plenty region and the non-Bay of Plenty region. In selecting the sample of twenty growers, we selected sixteen growers representing the Bay of Plenty region and four from the non-Bay of Plenty region in order to accurately reflect the relative proportion of kiwifruit production from each of the two regions. Because the Department's purpose is to estimate the average unit cost per tray of exported kiwifruit, as a second step, we have assigned selection probabilities to the growers on the basis of the volume of kiwifruit each grower submitted to the NZKMB for export. We sent the COP/CV questionnaires through the NZKMB to the twenty selected kiwifruit growers and received responses to the Department's questionnaire from all twenty selected growers. We verified the COP/CV data provided by four of the twenty selected growers.

We calculated each grower's cultivation cost by summing all costs for the 1997–1998 kiwifruit season. These costs included cost of materials, farm labor, farm overhead, and packing. We allocated the cultivation cost on a per-tray equivalent basis over the total number of tray equivalents submitted by each grower to the NZKMB. A tray equivalent is a standard unit of measurement for kiwifruit which represents the amount of kiwifruit which can fit into a standard packing tray. We adjusted these per-tray costs to reflect fruit loss and then added the NZKMB's G&A and interest expenses to the farm's average cost per tray.

The orchard set-up costs for all growers were amortized over twenty years as was done in prior reviews. Where growers purchased an established orchard, the acquisition price of the farm was treated as the set-up cost.

Except as follows, we relied on the COP data submitted on June 24, 1999, which incorporates the revised COP data of the three verified growers based on information obtained at verification. With respect to the COP and packing data provided by the remaining growers that were not verified, we adjusted their reported COP and packing data to reflect the adjusted COP and packing amounts of the three verified growers, based on our findings at the verifications. Specifically, for each of the three growers we verified, we calculated the difference between the reported COP and packing expense and the revised COP and packing expense based on the verification findings. We then increased the COP and packing expense amounts reported by the remaining, unverified growers by the average percentage difference between the revised and reported COPs and packing amounts of the three verified growers. *See* Preliminary Results Calculation Memorandum dated June 30, 1999. We then calculated a simple average COP and packing expense from the sampled growers' individual COPs and packing expenses, as revised. The total COP was calculated on a New Zealand dollar per single-layer tray (NZ$/SLT) equivalent basis. We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, and direct and indirect selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of NZKMB's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that

product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of NZKMB's sales of a given product were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that all of NZKMB's home market sales were at prices less than COP. We, therefore, disregarded all home market sales and based NV on CV in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs. Section 773(e)(2)(B) of the Act states that in the absence of above-cost sales of a foreign like product, SG&A and profit shall be based on (i) expenses and profit of the respondent's other products, or (ii) the expenses and profit of other producers subject to the antidumping investigation or review, or (iii) any other reasonable method. The first two alternatives are not available in this case, since NZKMB sells no other products and there are no other New Zealand exporters subject to this review. Therefore, we must rely on ''other reasonable'' methods. In this case, NZKMB earned no profits on home market sales and we have no other information on the record with respect to profit earned in the home market. Therefore, consistent with the methodology used in the most recent prior review of this proceeding, as facts available, we used the profits realized at the grower level. In this instance, we used the average profit of the twenty sampled growers as the profit figure in our margin calculations. With respect to selling expenses, we have used the selling expenses associated with the home market sales. *See Fresh Kiwifruit from New Zealand: Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 47440 (September 9, 1997).

In comparing CEP to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and advertising expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. With respect to commissions, where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, including inventory carrying costs, up to the amount of the U.S. commission, in accordance with 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period June 1, 1997, through May 31, 1998:

Manufacturer/exporter	Percent margin
New Zealand Kiwifruit Marketing Board	4.66

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of fresh kiwifruit from New Zealand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for NZKMB will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 98.60 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17394 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1442 or (202) 482–3813, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Preliminary Determination

We preliminarily determine that live cattle from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on December 22, 1998. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico*, 63 FR 71886 (December 30, 1998) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On January 20, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

On March 1, 1999, after considering comments from interested parties on the issue of respondent selection, the Department selected the following companies as respondents in this investigation: Cor Van Raay Farms Ltd. and Butte Grain Merchants Ltd. (Cor Van Raay); Pound Maker Agventures, Ltd. (Pound Maker); Riverside Feeders Ltd. and Grandview Cattle Feeders Ltd. (Riverside/Grandview); Jameson, Gilroy and B & L Livestock Ltd. (JGL); Groenenboom Farms, Ltd. (Groenenboom); and Schaus Land and Cattle Company (Schaus) (collectively ''respondents''). *See Selection of Respondents*, below. On March 2, 1999, the Department issued an antidumping questionnaire to the selected respondents.[1]

The respondents submitted their initial responses to the questionnaire in March, April and May 1999. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We received timely responses to these questionnaires.

Immediately prior to the date of this determination (on June 29th and 30th), the respondents filed revised U.S., home market, and cost databases. Our initial examination of this information indicates that, for at least one company, the antidumping rate calculated using such data may differ significantly from the rates listed below. We will examine this data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination for any such company.

Period of Investigation

The period of investigation (POI) is October 1, 1997, through September 30, 1998. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition (*i.e.*, November 12, 1998).

Scope of Investigation

The scope of this investigation covers all live cattle except (1) imports of dairy cows for the production of milk for human consumption and (2) purebred or other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting number 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including issues of model matching, cost of production, and the segmented nature of the cattle industry), and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that given our resources, we would be able to investigate the six producers/exporters with the greatest export volume, as identified above. For a more detailed discussion of respondent selection in this investigation, *see* Memorandum from Gary Taverman to Richard W. Moreland, (March 1, 1999) (Respondent Selection Memorandum).

Collapsing Determinations

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.[2] In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

[2] *See* 19 CFR 351.401(f)(1).

between the affiliated producers.[3] These factors are illustrative, and not exhaustive.

In this investigation, we have preliminarily determined to collapse (1) Riverside/Grandview with affiliates Vander Heyden Ranches and VanVaerenbergh Farms, (2) Pound Maker with affiliates Dale Blair and Blair Stock Farms, and (3) JGL with affiliates M&T Feedlot and Kirk Sinclair. For a detailed discussion of this collapsing determination, requiring reference to business proprietary information, *see* Memorandum from the Team to Richard Moreland, dated June 30, 1999, regarding Collapse of Affiliated Parties.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the investigation and were sold in the comparison market during the POI fall within the definition of the foreign like product. For slaughter cattle, we have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: type, breed, and gender. For feeder cattle we have included a fourth matching criterion of weight band, given the impact of weight on price for sales of this type of cattle.

We have determined that it is generally not possible to match across type, breed, or gender, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. *See, e.g.,* letter from the Canadian Cattlemen's Association to the Department of Commerce, dated January 20, 1999, at 5 (noting that for these categories, the different products ''are characterized by significant differences in market structure (both demand and supply) and in market pricing,'' such that ''[s]ales comparisons cutting across these proposed categories would produce distorted results and should not be permitted.'') *See also* letter from the Ranchers-Cattlemen Action Legal Foundation (R-Calf, the petitioner) to the Department of Commerce, dated June 8, 1999 (R-Calf letter), at 11. However, the record indicates that such a distortion does not arise with respect to products of different weight bands. *See* R–Calf letter at 10–11. Therefore, for sales of feeder cattle (for which there are variations in weight bands), in situations where an identical match is not possible we have sought to compare feeder cattle of different weight bands, with a difference-in-merchandise adjustment.

Fair Value Comparisons

To determine whether sales of live cattle from Canada were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs and CEPs for comparison to POI weighted-average normal values.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

Consistent with these definitions, we found that all the respondents made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that Schaus made CEP sales during the POI. These sales involved cattle exported as feeder cattle, which were custom fed at unaffiliated U.S. feedlots and then sold to unaffiliated U.S. customers. Because the sales were made by the respondent after the date of importation, the sales are properly classified as CEP sales.

For all respondents, we calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States.

All six respondents made at least some sales on a spot-price basis. For such sales, where invoices were issued to the U.S. customer before the date of shipment, we have relied on the date of invoice as the date of sale, since that is the date on which the material terms of sale were established. Where invoices were issued after the date of shipment, or not issued at all, we have relied on the date of shipment as the date of sale, since it is the Department's practice not to rely on a date later than the date of shipment as the date of sale.

Three of the respondents also made sales to the United States pursuant to futures contracts. For such sales, we based the date of sale on the ''lock-in'' date (*i.e.*, the date on which the respondent, pursuant to the terms of the contract, accepted the future delivery price indicated by the Chicago Mercantile Exchange Board on that day in question), since that was the date on which the essential terms of sale were established.

As the starting U.S. price, we relied on either the gross unit price shown on sales invoices (for live-weight sales) or the net price shown on settlement reports (for dressed-weight sales).[4] In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. These included foreign inland freight, international freight, brokerage, and customs duties.

Section 772(d)(1) of the Act provides for additional adjustments to the CEP. We reduced the CEP by the amount of credit expenses and further manufacturing expenses. Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to CEP selling expenses. As described below, we made such an adjustment in the case of Schaus, the only respondent to have made CEP sales.

We made company-specific adjustments as follows:

Cor Van Raay

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including international freight, U.S. customs duty, and miscellaneous movement charges.

Groenenboom

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including international freight and transit insurance.

JGL

We based EP on delivered and FOB prices to unaffiliated customers in the United

[3] *See* 19 CFR 351.401(f)(2).

[4] For sales made on a live-weight basis, the price charged for each animal is based on the weight of the animal prior to slaughter. For sales made on a dressed-weight basis, the price charged for each animal is based on the weight of the animal after slaughter, and takes into account adjustments for grade and yield.

States. We made deductions from the starting price, where appropriate, for movement expenses, including international freight, U.S. inland freight, insurance, feed expenses, yard insurance, straw expenses, and loading expenses.

Pound Maker

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, including international freight, U.S. customs duty, transit insurance and brokerage expenses.

Riverside/Grandview

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including freight from the respondent's facility to the customer, U.S. customs duty, and brokerage and handling expenses.

Schaus

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including freight from the respondent's facility to the customer, U.S. customs duty, and export processing fees. In addition to these adjustments, for CEP sales, in accordance with section 772(d)(1) of the Act, we adjusted the CEP by the amount of direct selling expenses and revenues (*i.e.*, credit expenses and interest revenue). In accordance with section 772(d)(2) of the Act, we reduced the CEP by the amount of further manufacturing expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

All respondents had viable home markets for live cattle, and they reported home market sales data for purposes of the calculation of normal value.

Adjustments made in deriving the normal values for each company are described in detail in *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value*, below.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that live cattle sales made in Canada were made at prices below the cost of production (COP). *See Initiation Notice*, 63 FR at 71889. As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective home markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for live cattle, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses. We relied on the COP data submitted by each respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or otherwise required adjustment, as discussed below:

Cor Van Raay

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Cor Van Raay did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents.

Groenenboom

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Groenenboom did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents.

Pound Maker

We adjusted the denominator used in the G&A expense rate calculation by removing cost of sales amounts which did not appear on Pound Maker's financial statements.

Riverside/Grandview

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Riverside/Grandview did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents. We also adjusted financial expenses to exclude offsets for a disaster claim and custom work, and to include a payout penalty assessed by a lender and imputed interest expenses on non-interest bearing loans from shareholders.

Schaus

We adjusted the reported COP to exclude offsets for various income items not associated with the production of the subject merchandise.

2. Valuation of Resale Merchandise

Respondents JGL and Schaus had sales not only of their own-produced cattle, but also of cattle that they purchased and resold without additional value added.

Consistent with our practice regarding the cost of resales of subject merchandise, we requested cost of production data from certain of JGL's suppliers. *See* Memorandum to Richard W. Moreland from Gary Taverman and Neal Halper, April 8, 1999 (Reporting Methodology Memorandum) at 5–7.[5] At the same time, given the nature of the industry and the manner in which costs are maintained, we determined to rely on JGL's own costs as a surrogate for supplier costs where appropriate, and also to request a complete listing of JGL's acquisition costs as an alternative source of cost data. *Id.* at 6 (''[U]pon receipt and analysis of the section D response, we may determine that JGL's own production costs are an appropriate surrogate for resale costs, to the extent that JGL produces cattle that are comparable to those involved in straight resales.'') and 7 (''Given that this approach might not yield cost data for all combinations of type, breed, gender, and weight of cattle sold by respondents, we would propose also to obtain a complete listing of acquisition costs, as a possible alternative basis for calculation of cost of production.'') (at footnote 13).

While we have received the cost data requested from JGL's suppliers, we are continuing to analyze this information and have determined not to use such costs for this preliminary determination. We note that the reported supplier costs, which pertain to feeder cattle, have in most instances not been provided on a weight-band specific basis (*see Product Comparisons* section, above, regarding comparisons of feeder cattle on a weight-band specific basis and matching across weight bands). Other aspects of the cost data contained in these responses also require further analysis, including issues raised by the petitioners regarding alleged

[5] *See also, Fresh and Chilled Atlantic Salmon From Norway, Final Results of Antidumping Duty Administrative Review*, 61 FR 65522, 65525 (December 13, 1996); *Elemental Sulphur From Canada, Final Results of Antidumping Finding Administrative Review*, 61 FR 8239, 8250 (March 4, 1996).

inadequacies in these supplier submissions.[6] While we do not agree with the petitioners that alleged deficiencies in the supplier responses (*e.g.*, hay costs associated with grazing cattle, and family labor costs) require the determination of respondent JGL's resale costs based on application of adverse facts available,[7] particularly given the information provided by JGL with respect to its own feeder costs and acquisition prices, we intend to closely scrutinize the reporting of such supplier costs in supplemental questionnaires and at verification of JGL and the supplier firms. If, based on the results of verification and of our analysis of the information provided by the suppliers, we determine that such firms have not cooperated to the best of their ability, we may determine such supplier costs based on the facts available for the final determination.

Accordingly, we are determining the costs of cattle resold by JGL using JGL's own costs as a surrogate, where available, and are otherwise relying on the acquisition price paid by JGL.[8]

For Schaus, consistent with the methodology described above with respect to JGL, we have valued resold cattle using Schaus' cost of production for own-produced cattle as a surrogate for the costs incurred by Schaus' suppliers, or where such data were not available, we have relied on the acquisition price paid by Schaus for cattle to be resold. For the final determination, we will consider whether it would be more appropriate to rely on other cost data, such as the cost data reported by the JGL suppliers, as a surrogate for the costs incurred by Schaus' suppliers.

3. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities[9] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. Because we compared prices to the POI average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of live cattle, more than 20 percent of the home market sales of all six respondents were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act. For those U.S. sales of live cattle for which there were no comparable home market sales in the ordinary course of trade, we compared EPs or CEPs to the constructed value in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value* section, below.

C. Calculation of Normal Value Based on Home Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

Cor Van Raay

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses (*i.e.*, credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Groenenboom

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer, plus insurance). In addition, we made COS adjustments for direct expenses, including credit expenses, Alberta Cattle Commission Fees, branding fees, banking fees, and grading fees, in accordance with section 773(a)(6)(C)(iii) of the Act.

JGL

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for billing adjustments and movement expenses (including inland freight from the respondent's facility to the customer, freight insurance, feed expenses, yard insurance, straw expenses, and loading expenses). In addition, we made COS adjustments for direct expenses and revenues, including credit expenses, branding inspection fees, veterinary fees, and miscellaneous expenses, as well as interest revenue, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

Pound Maker

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses (*i.e.*, credit expenses, checkoff fees, brand inspection fees and commission expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Riverside/Grandview

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made circumstance-of-sale (COS) adjustments for direct expenses (*i.e.*, credit expenses, brand inspection fees and transit fees), in accordance with section 773(a)(6)(C)(iii) of the Act.

[6] See letter from R-Calf to the Department, June 28, 1999.

[7] The petitioners maintain that JGL's resale costs should be valued based on information in the petition published by the Government of Manitoba. *Id.* at 2–5.

[8] We have examined the acquisition prices reported by JGL in comparison with the costs of feeder cattle on the record for this company and do not find reason to believe that the prices paid by JGL are distortive as a surrogate for supplier costs for the preliminary determination.

[9] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

Schaus

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for billing adjustments and movement expenses (including inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses and revenues, including credit expenses and interest revenue, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act,

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, for those models of live cattle for which we could not determine the normal value based on comparison market sales, either because (1) there were no sales of a comparable product or (2) all sales of comparison products failed the COP test, we based normal value on the constructed value.

Section 773(e)(1) of the Act provides that the constructed value shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to constructed value for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, constructed value. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from constructed value.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal value level of trade is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and under section 772(d) of the Act.

In this investigation, we found that the respondents perform minimal selling functions in the United States and home markets. With respect to each respondent's EP sales, we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. One respondent, Schaus, also made CEP sales. For this respondent, we found that the adjusted CEP level of trade was essentially the same as that of the single home market level of trade, such that no level-of-trade adjustment or CEP offset was necessary.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of live cattle from Canada, except for Pound Maker (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin percentage
Cor Van Raay	4.49
Groenenboom	3.90
JGL	3.94
Pound Maker	[1] 0.18
Riverside/Grandview	6.81
Schaus	5.43
All Others	4.73

[1] deminimis.

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the ''all others'' rate. Accordingly, we have excluded the *de minimis* dumping margin for Pound Maker from the calculation of the ''all others'' rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For this investigation, case briefs must be submitted no later than August 6, 1999. Rebuttal briefs must be filed no later than August 13, 1999. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a hearing is requested, it will be held on August 18, 1999, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than September 13, 1999 (*i.e.*, 75 days after the date of issuance of this notice).

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17392 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1997–1998 administrative review and partial recission of review.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1997, through May 31, 1998. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189 and (202) 482-1174, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 1998).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). The Department notified interested parties of the opportunity to request an administrative review of this order on June 10, 1998 (63 FR 31717). On June 30, 1998, the petitioner, The Timken Company, requested that the Department conduct an administrative review. Thus, in accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 28, 1998 (63 FR 40258).

On September 21, 1998, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the *Separate Rates Determination* section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation and to companies listed in the initiation notice for which we were able to obtain addresses.

We received responses to the questionnaire from the following six companies: Luoyang Bearing Corp. (Group) (''Luoyang''), Wafangdian Bearing Factory (''Wafangdian''), Zhejiang Machinery Import & Export Company (''Zhejiang''), China National Machinery Import & Export Corporation (''CMC''), Wanxiang Group Corporation (''Wanxiang''), and Premier Bearing & Equipment (''Premier'').

On October 28 and December 4, 1998, the petitioner made requests to rescind the review with respect to Wafangdian, Zhejiang, Wanxiang, and CMC. While the petitioner's rescission requests were made more than 90 days after initiation, 351.213(d)(1) of our regulations provides that we may extend that deadline, and it is our practice to do so where it poses no undue burden on the parties or the Department. Therefore, in accordance with 351.213(d)(1) of our regulations, we have rescinded the review regarding these companies (for a complete discussion of this decision see the Memorandum from Team to Richard Moreland, ''Partial Rescission of Review,'' dated February 19, 1999). CMC objected to the rescission on the grounds that it requested a review when requesting revocation. However, CMC's request for revocation was submitted

after the anniversary month and, therefore, cannot constitute a timely request for review. Thus, CMC's request was not considered.

In addition, during April, May, and October, 1998, Triumph Express Service Int'l Limited, Shanghai United Bearing, Transunion International Company, Ltd., China Resources Transportation & Godown Co., Ltd., Scanwell Consolidators, Ltd., and Chin Jun Industrial, Ltd. reported no shipments of subject merchandise to the United States during the period of review (''POR''), June 1, 1997, through May 31, 1998. We independently confirmed with the Customs Service that there were no shipments from these companies. Therefore, in accordance with 351.213(d)(3) of our regulations, we preliminarily conclude that there were no shipments from these companies to the United States and are rescinding the review with respect to these companies.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this policy, exporters in nonmarket economies (''NMEs'') are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (see *Silicon Carbide,* 59 FR at 22587, and *Sparklers,* 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that Luoyang should receive a separate rate (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part,* 63 FR 63842 (November 17, 1998) (''*TRBs X*'')). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to Luoyang's exports according to the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we have continued to assign Luoyang a separate rate.

Premier is a privately owned Hong Kong trading company. Because we have determined that this firm, rather than its PRC-based suppliers, is the proper respondent with respect to its sales of TRBs to the United States, no separate-rates analysis of Premier's suppliers is necessary. See the *United States Sales* section, below.

Separate-Rate Determinations for Non-Responsive Companies

We have preliminarily determined that those companies for which we initiated a review and which did not respond to the questionnaire should not receive separate rates. See the *Use of Facts Otherwise Available* section, below.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for all companies which did not respond to our requests for information. Furthermore, we preliminarily determine that Premier did not demonstrate that it cooperated to the best of its ability in providing certain information, and we have applied adverse facts available to calculate a portion of Premier's margin.

1. *Companies that did not respond to the questionnaire:* Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department

will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review, represents the highest overall margin calculated for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated. As noted in the *Separate Rates Determination* section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Therefore, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. *Premier:* Premier, a Hong Kong-based reseller of TRBs, claims that it attempted to obtain factors-of-production data for the models it sold in the United States from its suppliers. Premier provided factors data from two suppliers for some models which it sold to the United States. However, only one supplier's set of factors data was usable as Premier was unable to answer supplemental questions relating to the second supplier's set of factors data. For other models sold in the United States, Premier stated that it was unable to provide factors data from any of its PRC suppliers. Instead, Premier provided factors data from another PRC producer of the same models. For the remaining models sold in the United States by Premier, no factors data were reported.

As in prior reviews, we have preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received factors-of-production data (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review,* 63 FR 37339, 37342 (July 10, 1998) (''*Preliminary TRBs X*'')). Therefore, for the models for which we have such information, we are using, as facts available, the factors data provided by Premier, including information from manufacturers which did not supply Premier during the POR, in order to calculate normal value.

For the models for which no factors data was reported, we have preliminarily determined that Premier has not demonstrated that it cooperated to the best of its ability in responding to our antidumping duty questionnaire. While Premier has stated that it attempted to obtain factors data from its PRC-based suppliers, it has not provided sufficient evidence on the record to support this claim. For example, Premier did not provide copies of the letters it sent to all of its suppliers requesting information, nor has it provided copies of letters from all of its suppliers responding to Premier's request. In addition, Premier submitted contradictory information about its suppliers. Given that this is the eleventh review of the antidumping duty order on TRBs from the PRC and that Premier has participated in several reviews, Premier has been on notice of the Department's requirements on this matter. Because the missing factors of production amount to a substantial portion of Premier's response, we are using adverse facts available for such missing data.

Thus, with respect to Premier's U.S. sales for which no corresponding factors data were reported, we are applying, as adverse facts available, a margin of 25.56 percent, the highest overall margin ever applicable to Premier. This approach is consistent with our final results in the prior review (*see TRBs X* 63 FR 63857). As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 25.56 percent rate is corroborated.

United States Sales

Premier reported that it maintains inventories of TRBs in Hong Kong and sells TRBs worldwide. Therefore, its PRC-based suppliers have no knowledge when they sell to this firm that the shipments are destined for the United States. Since Premier is the first party to sell the merchandise to the United States, we have calculated United States price of this merchandise based on Premier's sales.

For sales made by Premier and Luoyang, we based the U.S. sales on export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not indicated by other circumstances.

We calculated EP based on the FOB, CIF, or C&F port price to unaffiliated purchasers, as appropriate. From this price we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using the surrogate data (amounts charged by international providers). When marine insurance and ocean freight were provided by market economy companies, we deducted the values reported by the respondents for these services.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC tapered roller bearing industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, except as noted below, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and § 351.408(c) of our regulations.

Although Premier is a Hong Kong company, we also calculated NV for it based on factors-of-production data. We did not use Premier's third-country sales in calculating NV because its PRC-based suppliers knew at the time of sale that the subject merchandise was destined for exportation. Section 773(a)(3)(A) of the Act provides that under such conditions NV may be determined in the country of origin of the subject merchandise. Accordingly, we calculated NV for Premier on the basis of PRC production inputs and surrogate country factor prices.

Under the factors-of-production methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We chose India as the most comparable surrogate on the basis of the criteria set out in § 351.408(b) of our regulations. *See* Memorandum to Susan Kuhbach from Jeff May: ''Tapered Roller Bearings (''TRBs'') from the People's Republic of China (''PRC''): Nonmarket Economy Status and Surrogate Country Selection,'' dated January 8, 1999, for a further discussion of our surrogate selection. We selected Indonesia as a second-choice surrogate based on the same criteria. We note that, in past reviews of this and other orders, we have found that both India and Indonesia are significant producers of TRBs (*see Preliminary TRBs X*, 63 FR 37342, and *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, From Romania; Preliminary Results of Antidumping Administrative Review*, 63 FR 11217–01 (March 6, 1998)).

We used publicly available information from India to value the various factors of production with the exception of the following: hot-rolled alloy steel bars for the production of cups and cones, cold-rolled steel rods used in the production of rollers, and steel scrap from the production of cups, cones, and rollers. To value hot-rolled alloy steel bars for the production of cups and cones we used publicly available Japanese export prices to Indonesia. To value cold-rolled steel rods used in the production of rollers we used publicly available Indonesian import data. We used these data because we found the Indian data for those inputs to be unreliable. (*See* Memorandum to Susan Kuhbach: ''Selection of a Surrogate Country and Steel Value Sources,'' dated June 30, 1999 (''Steel Values Memorandum'').)

We valued the factors of production as follows (for a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 30, 1999):

1. *Steel Inputs.* For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs X* (63 FR 63845), we used a weighted average of Japanese export values to Indonesia from the Harmonized Tariff Schedule (''HTS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under Indonesian tariff subheading 7228.50000 obtained from *Badan Pusat Statistik, Republik Indonesia*. For cold-rolled steel sheet for the production of cages, we used Indian import data under Indian tariff subheading 7209.4200 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports.* (For further discussion of selection of steel value sources, *see* Steel Values Memorandum.)

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs X*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)).

One producer in this review purchased steel sheet from a market economy supplier and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued the steel input using the actual price reported for directly imported inputs from a market economy. Two producers purchased imported steel bar from a trading company in the PRC. We have not used the trading company prices and instead used a surrogate to value that steel.

We valued scrap recovered from the production of cups, cones, and rollers using Indonesian import statistics from HTS category 7204.29000. Scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. *Labor.* Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import__admin/records/wages.

3. *Overhead, SG&A Expenses, and Profit.* For factory overhead, we used information obtained from the fiscal year 1997–98 annual reports of six Indian bearing producers. We calculated factory overhead and selling, general and administrative (''SG&A'') expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. For profit, we totaled the reported profit before taxes for the six Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. *Packing.* We calculated the packing costs as a percentage of COP for each respondent based on the information submitted in the 1996–97 review. This ratio was applied to the respondents' COP for the current review to derive a company-specific packing expense. *See* Memorandum from Susan Kuhbach to the File: ''Valuation of Packing,'' dated February 12, 1999.

5. *Electricity.* We used a simple average of 1995 regional electricity prices in India for large industries as reported in *India's Energy Sector*, published by the Centre for Monitoring Indian Economy Pvt. Ltd. (September 1996). We adjusted the value to reflect inflation using the WPI.

6. *Inland Freight.* We valued truck freight using a rate derived from the April 20, 1994 issue of *The Times of India*. We adjusted the rate to reflect inflation using the WPI. We valued rail freight using rates published by the Indian Railway Conference Association in 1995. We calculated an average rate per kilometer and adjusted the rate to reflect inflation using the WPI.

7. *Ocean Freight.* We calculated a value for ocean freight based on 1996 rate quotes from Maersk Inc. Because the information obtained was from a period contemporaneous with the POR, no adjustments were necessary.

8. *Marine Insurance.* We calculated a value for marine insurance based on the CIF value of the TRBs shipped. We obtained the rate used through queries we made directly to an international marine insurance provider.

9. *Brokerage and Handling.* We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Viraj Impoexpo in the antidumping investigation of *Stainless*

Steel Wire Rod from India (63 FR 48184, September 9, 1998). Because this information is contemporaneous with the current POR, no adjustments were necessary.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1997, through May 31, 1998:

Manufacturer/exporter	Margin (percent)
Luoyang	0.98
Premier	23.61
PRC Rate	33.18

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review subsequently, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to EP sales for these preliminary results, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17393 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999B]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting(s).

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: On July 20, 1999, the Black Sea Bass Monitoring Committee will begin meeting at 10:00 a.m. The Scup Monitoring Committee will meet from 2:00–5:00 p.m. On July 21, 1999, the Summer Flounder Monitoring Committee will meet from 8:00 a.m. until noon. The Bluefish Monitoring Committee will meet from 1:00–4:00 p.m.

ADDRESSES: These meetings will be held at the Sheraton International Hotel, Baltimore-Washington International Airport, 7032 Elm Road, BWI Airport, Baltimore, MD 21240, telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2000 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota for bluefish for 2000.

Although other issues not contained in this agenda may come before these committees for discussion, in acccordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 1, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–17370 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999A]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a joint public meeting of its Groundfish Committee and Groundfish Advisory Panel on July 22, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on July 22, 1999, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee and its advisors will discuss further development of a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) to address management of the Gulf of Maine cod fishery. The adjustment would be implemented by February, 2000 and carry through the 2000–2001 fishing year. The Council may provide further guidance to the committee on this action at its July 13–15 meeting in Portland, ME.

Additionally, the committee and panel will review the timeline for Amendment 13 to the FMP and outline specific management proposals for a stock-rebuilding program, including but not limited to days-at-sea management, gear reductions and area management. The meeting agenda also will include a review of the technical responses to questions raised by the committee at its June 17 meeting about the scientific basis for the current cod stock boundary delimitation.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 1, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–17371 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request that the United States Consult with Mexico and Canada Concerning a Certain Lyocell Staple Fiber

July 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for consultations on a certain lyocell staple fiber.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The purpose of this notice is to advise the public that CITA has been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin to permit the use of non-North American lyocell staple fiber classified in HTS subheading 5504.90.0000 of the Harmonized Tariff Schedule of the United States in NAFTA originating goods.

There will be a 30-day comment period beginning on July 8, 1999 and extending through August 9, 1999. Anyone wishing to comment or provide data or information regarding domestic production or availability of lyocell staple fiber classified in HTS subheading 5504.90.0000 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a ''foreign affairs function of the United States.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17312 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DR–F

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., August 2, 1999.

PLACE: Naval Medical Center San Diego, 34800 Bob Wilson Drive, San Diego, CA 02134–5000.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m.—Meeting—Board of Regents

(1) Approval of Minutes—May 14, 1999
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: July 2, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17503 Filed 7–6–99; 3:31 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Invitation to comment on the 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: Interested persons are invited to submit comments on or before September 7, 1999.

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.

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: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Review Qualifications Statement.

Frequency: Biennially.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 5,000 Burden Hours: 1,250.

Abstract: In order for OSERS to conduct a review of its discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special education fields.

Requests for copies of this information collection should be addressed to Vivian Reese, U. S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance

Type of Review: Revision.

Title: Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan Borrower Promises to Repay His or Her Loan.

Frequency: On occasion.

Affected Public: Individuals or households, State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 1,828,224 Burden Hours: 1,828,224.

Abstract: This form is the means by which a Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan borrower promises to repay his or her loan.

Requests for copies of this information collection should be addressed to Vivian Reese, U. S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Program for North American Mobility in Higher Education (A Special Focus Competition of FIPSE).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden: Responses: 80 Burden Hours: 2,400.

Abstract: The Program for North American Mobility in Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe—schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17262 Filed 7–7–99; 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 July 6, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 7, 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.

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.

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: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program: Repayment Plan Selection.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loan(s).

Additional Information: The Department is making minor changes on this form in order to eliminate redundant or potentially confusing language and make this form easier to understand. These improvements will help the public save time and avoid confusion.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 2,650,000. Burden Hours: 874,500.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, 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 *vivian__reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17264 Filed 7–7–99; 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 July 8, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 7, 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.

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.

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: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Case Service Report.

Abstract: As required by Section 13 of the Rehabilitation Act, the data are submitted by State VR agencies each year. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose case records are closed.

Additional Information: The Form RSA–113 collection provides ongoing information on the national vocational rehabilitation (VR) program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 81.

Burden Hours: 3,645.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, 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 *vivian__reese*@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Quarterly Cumulative Caseload Report.

Abstract: State vocational rehabilitation (VR) agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. These data are used for program planning, management, budgeting and general statistical purposes.

Additional Information: The RSA–113 collection provides ongoing information on the national VR program.

Frequency: Quarterly.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 81.

Burden Hours: 324.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, 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 *vivian__reese*@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17265 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Invitation to submit comments.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

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, 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.

Dated: July 1, 1999.

Patrick Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: IEA Civics Education Project—Pilot Test and Full Scale.

Frequency: One time.

Affected Public: Individuals or households, State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 3,900. Burden Hours: 3,150.

Abstract: The Civics Education Project is a multi-national project coordinated by the International Association for the Evaluation of Educational Achievement (IEA). Through this project, a student assessment will be administered to 14

year olds to assess their civics knowledge, skills, attitudes and actions.

Request for copies of this information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Adult Education and Family Literacy Act State Plan (P.L. 105–220).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't.

Reporting and Recordkeeping Burden: Responses: 59. Burden Hours: 7,375.

Abstract: The Adult Education and Family Literacy State Plan submission describes information requirements for an application for Federal education assistance.

Request for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions, regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17263 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.200]

Graduate Assistance in Areas of National Need (GAANN) Inviting Applications for new Awards for Fiscal Year (FY) 2000

Purpose of Program: This program provides fellowships in areas of national need through academic departments and programs of institutions of higher education to assist graduate students with excellent records who demonstrate financial need and plan to pursue the highest degree available in their course of study.

Eligible Applicants: Academic departments and programs of institutions of higher education that meet the requirements in 34 CFR 648.2.

Deadline for Transmittal of Applications: October 4, 1999.

Deadline for Intergovernmental Review: December 3, 1999.

Applications Available: July 16, 1999.

Available Funds: $18,054,000. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $126,875—$750,000.

Estimated Average Size of Awards: $138,000 per year.

Estimated Number of Awards: 130.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations in 34 CFR part 648.

SUPPLEMENTARY INFORMATION:

Stipend Level: The Secretary has determined that the maximum fellowship stipend for academic year 1999–2000 is $15,000, which is equal to that provided by the National Science Foundation (NSF) graduate fellowships. Should the NSF increase its graduate fellowship stipends for the academic year 2000–2001, we will make a parallel increase in GAANN fellowship stipends.

Institutional Payment: The Secretary estimates that the institutional payment for academic year 1999–2000 is $10,375. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1999 of the Consumer Price Index for the year 2000.

Priorities

Absolute Priority—Under 34 CFR 75.105(c)(3) and 34 CFR 648.33, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A project funded under this priority must propose to provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Geological and Related Sciences, Mathematics, and Physics.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Applications from interdisciplinary programs for projects designed to involve academic fields in two or more of the designated areas of need.

Invitational Priority 2—Applications from geological science programs for projects that will train Ph.D. students for careers in the field of computational earth science.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Cosette H. Ryan, Graduate Assistance in Areas of National Need Program, U.S. Department of Education, International Education and Graduate Program Service, 400 Maryland Avenue, SW., Suite 600–B, Portals Building, Washington, DC 20202–5247. Telephone: (202) 260–3608. The e-mail address for Ms. Ryan is cosette__ryan@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternate format, (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You 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 questions about using the PDF, call the

U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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. 1135–1135ee.

Dated: July 1, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–17245 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Thursday, July 29, 1999, 10:30 a.m. to 5:30p.m.; and Friday, July 30, 1999, 8 a.m. to 12:30 p.m.

ADDRESSES: Embassy Suites Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, S.W. Washington DC 20585, Telephone Number 202.586.0126, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Thursday, July 29, 1999

Welcome remarks
Status of Nuclear Energy's FY 2000 Budget
Status of Nuclear Energy Research Initiative
DOE Laboratory Update—
Review of Program Scoping Plan for the Fast Flux Test Facility

Friday, July 30, 1999

Report of NERAC Subcommittees
Use of Radioisotopes in Cancer Therapy
Public comment period

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on July 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–17363 Filed 7–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–355–000]

Baltimore Gas and Electric Company; Notice of Request for Limited Waiver

July 2, 1999.

Take notice that on June 28, 1999, pursuant to Rule 207(a)(5) of the rules and regulations of the Commission, 18 CFR 385.207(a)(5), Baltimore Gas and Electric Company (BG&E) tendered for filing a request for a 17-month Limited Waiver of the Commission's ''shipper must have title'' policy. BG&E asserts that the request addresses certain pipeline storage and transportation services that BG&E must retain to implement a gas supplier choice program for all customers on BG&E's system. Specifically, BG&E states that waiver of the ''shipper must have title'' policy is necessary for BG&E to maintain its pipeline storage capacity contracts and the associated no-notice flexibility, while simultaneously providing marketers with the opportunity to purchase storage commodity for injection into their allocated portion of BG&E's pipeline storage.

BG&E requests that the Commission act on this request no later than July 30, 1999, so that the waiver may take effect on November 1, 1999, the date BG&E's expanded residential customer choice program becomes effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at htt://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17303 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–571–000]

Clear Creek Storage Company, L.L.C.; Application for Blanket Certificate

July 1, 1999.

Take notice that on June 29, 1999, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, Post Office Box 45601, Salt Lake City, Utah 84111, filed in Docket No. CP99–571–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), an application for a blanket certificate of public convenience and necessity authorizing Clear Creek to engage in any of the activities specified in 18 CFR 157.208 through 157.218. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Clear Creek is a Utah limited liability corporation that is owners by two non-pipeline natural gas companies, Questar Energy Trading Company (QET) (75%) and Montana Power Ventures Inc. (MPV) (25%), which have subscribed to

all the planned storage capacity in the Clear Creek storage reservoir. Clear Creek states that the storage capacity of the project will be used by its owners to support their respective efforts to buy and market natural gas and to manage their individual portfolios of natural gas supplies and customer demands. Clear Creek states that QET and MPV will each store their own gas and have rights to injections and withdrawals in proportion to their respective ownership shares in Clear Creek.

Any persons desiring to be heard or to protest said filing should apply on or before July 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practices and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely field, or if the Commission on its 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 Clear Creek to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17253 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2609–000 and EL99–71–000]

First Energy Operating Companies; Notice of Initiation of Proceeding and Refund Effective Date

July 2, 1999.

Take notice that on February 26, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–71–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–71–000 will be 60 days after publication of this notice in the **Federal Register.**

David P. Boergers,

Secretary.

[FR Doc. 99–17301 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–568–000]

Koch Gateway Pipeline Company; Notice of Application for Abandonment

July 1, 1999.

Take notice that on June 25, 1999, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77521–1478, filed an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations requesting permission and approval to permanently abandon in place six 1,000 horsepower reciprocating compressor units and appurtenant facilities located at its Magasco Compressor Stations Site in Sabine County, Texas, which have been inactive, on a temporary basis, since the Commission granted such authorization in Docket No. CP97–538–000.[1] The application is 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).

Any questions regarding the application should be directed to Kyle Stephens, Director of Certificate, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478, (713) 544–7309.

[1] 80 FERC ¶ 61,287 (1997).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 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 385.211 and 385.214) 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 in any proceeding herein 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 Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on 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 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 Koch to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17252 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2898–000, ER99–2908–000, ER99–2869–000, ER99–2699–000, ER99–3076–000]

PECO Energy Company; Notice of Filing

July 1, 1999.

Take notice that on June 22, 1999, PECO Energy Company (PECO), tendered for filing amendments to the Description of Transaction section also providing information clarifying unbundled pricing of the transaction

agreements filed in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17304 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–569–000]

Texas Eastern Transmission Corp. and National Fuel Gas Supply Corp.; Notice of Application

July 2, 1999.

Take notice that on June 25, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642 and National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–569–000, a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing (i) Texas Eastern to abandon by sale to National Fuel its undivided ownership interest in certain jointly owned facilities; (ii) National Fuel to acquire Texas Eastern's undivided ownership interest in the jointly owned facilities; and (iii) Texas Eastern to abandon a certificated transportation service for National Fuel, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/ on line/rims.htm (call 202–208–2222 for assistance).

Texas Eastern seeks authorization to abandon by sale to National Fuel, its undivided interest in the jointly owned facilities extending from the International Border at Lewiston, New York to East Aurora, New York known as the Niagara Spur Loop Line (NSLL), for from Ellisburg, Pennsylvania to Leidy, Pennsylvania Known as the Ellisburg to Leidy Line (ELL). National Fuel seeks authorization to acquire Texas Eastern's undivided ownership interest in the NSLL and ELL. Texas Eastern and National Fuel have negotiated and entered into a Facilities Sale Agreement for the NSLL and ELL facilities dated June 22, 1999. In addition, Texas Eastern seeks authorization to abandon certificated transportation service it currently provides for National Fuel via Texas Eastern's Capacity in the ELL under Texas Eastern's FERC Gas Tariff Original Volume No. 2 Rate Schedule X–136.

Any questions regarding the application should be directed to either S.E. Tillman at (713) 627–5113, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642, or David W. Reitz at (716) 857–7949, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203.

Any person desiring to be heard or making any protest with reference to said application should on or before July 23, 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 and with Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in ad subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's rules of practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to interve is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern or National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17300 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–018]

Virginia Power Company; Notice of Settlement Meeting

July 2, 1999.

a. *Date and Time and Meeting:* July 20, 1999, 9:00 am to 3:00 pm.

b. *Place:* Littleton Community Center, Oak Street Extension, Littleton, NC (Contact: Nancy Hux, North Carolina Power) at (252) 535–6178.

c. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

d. *Purpose of the Meeting:* Settlement meeting associated with the relicensing of the Roanoke Rapids and Lake Gaston Project (P–2009).

e. *Proposed Agenda:* (This is the same Settlement meeting described in Virginia Power Company's letter Dated June 18, 1999, to all parties).

(1) Review of draft minutes and action items from May 13, 1999 meeting.

(2) Report of the Drafting Committee (DC) an its meetings and recommendations of decision, rules, and the role of the DC.

(3) Reports on the status of the technical studies and the status of the additional study requests.

(4) Report on cumulative impact assessment and adaptive/cooperative management.

(5) Presentation of Kerr Reservoir Storage Account.

(6) Wrap up.

f. All interested parties, are invited to attend this meeting as participants.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17302 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, Dept. of Energy.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 28, 1997, 64 FR 34652.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 30, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAG–12 on the Agenda scheduled for the June 30, 1999 meeting.

Item No./Docket No. and Company

CAG–12—RP98–117–000, K N Interstate Gas Transmission Company

David P. Boergers,

Secretary.

[FR Doc. 99–17519 Filed 7–6–99; 3:53 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–6]

Agency Information Collection Activities: Continuing Collection; Comment Request; Clean Water Needs Survey

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Clean Water Needs Survey, EPA, ICR No. 0318.08 OMB, ICR Control No. 2040–0050. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 7, 1999.

ADDRESSES: To obtain a copy of this ICR, please contact Sandra Perrin, Office of Wastewater Management, U.S. EPA (Mailcode 4204), 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sandra Perrin (202) 260–7382, Fax (202) 260–0116, E-Mail peerin, sandra@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are States, District of Columbia, Puerto Rico, Virgin Island and Pacific Territories (maximum 56).

Title: Clean Water Needs Survey, (OMB Control No. 2040–0050; EPA ICR No. 318.08) expiring 12/31/99.

Abstract: The Needs Survey is required by sections 205(a) and 516(b)(1) of the Clean Water Act (CWA). It is a biennial inventory of publicly owned wastewater treatment works (POTWs) in the United States as well as an estimate of how many POTWs are needed to be built. The Survey is a joint effort of the States, EPA Headquarters (Office of Wastewater Management (OWM)) and EPA Regions. The Survey records costs associated with a broad range of water quality and public health problems eligible for funding from the State Revolving Fund program under Title VI of the CWA. This includes the collection and treatment of municipal wastewater, the control of combined sewer overflows, storm water management, and control of non point source runoff. The States provide this information to EPA. EPA achieves national consistency in the final results through the application of uniform guidelines and validation techniques. 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 EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The annual burden estimate for State respondents in the 1996 Survey was 13,888 hours. This was decreased in 1998 to 1275 hours because EPA was modernizing its data base and no survey was conducted. We are estimating 375 hours per respondent for the 2000 survey. With 56 respondents, the total burden is estimated at 21,000 hours for the 2000 Survey which reflects an increase in the burden over 1996 for information collection for Combined Sewer overflows (CSO) and Nonpont Source/Stormwater along with an increase the number of POTWs. Since 1988 the Needs Survey has been completely automated allowing the States to perform direct on-line updates of their data and to obtain quick feedback on EPA Headquarters review of the updates. The main objectives of the 1996 Survey was to update the cost estimates of traditional categories of

POTWs, as well as to provide improve information on needs for CSO and NPS needs. There are no capital/startup costs or operation and maintenance costs for respondents. The main objectives of the 2000 data collection effort will be to develop data on pollution problems eligible for funding from the State Revolving fund program including Non Point Source(s). To minimize the reporting burden, the Surveys have been computerized since 1988 and EPA will continue to use the computerized data base approach. Frequency is determine by the Congress under the Clean Water Act. No confidential information is used, nor is sensitive information protected from release under the Public Information Act used. Burden means the total time, effort, or financial resources expended by person 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.

Dated: June 29, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–17346 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–5]

Agency Information Collection Activities, OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). 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.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epa.gov'', and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1903.01; The 1999 National Survey of Local Emergency Planning Committees; was approved 06/21/99; OMB No. 2050–0162, expires 06/30/2002.

EPA ICR No. 1286.05; Used Oil Management Standards Recordkeeping and Reporting Requirement; in 40 CFR part 266; was approved 06/21/99; OMB No. 2050–0124; expires 06/30/2002.

Extensions of Expiration Dates

EPA ICR No. 1626.05; National Recycling and Emissions Reduction Program; in 40 CFR part 82, subpart F; OMB No. 2060–0256; on 06/08/99 OMB extended the expiration date through 12/31/99.

EPA ICR No. 0664.05; NSPS for Bulk Gasoline Terminals; in 40 CFR part 60, subpart XX; OMB No. 2060–0006; on 06/22/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1764.01; National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; OMB No. 2060–0348; on 06/22/99 extended the expiration date through 12/31/99.

EPA ICR No. 0226.14; National Pollutant Elimination System Permit Application Requirements—Forms 2A and 2S (Final Rule); in 40 CFR parts 122 and 501; OMB No. 2040–0086; on 06/25/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1842.01; Notice of Intent of Stormwater Discharges Associated with Construction Activity under an NPDES General Permit; in 40 CFR part 122; OMB No. 2040–0188; on 06/25/99 extended the expiration date through 09/30/99.

EPA ICR No. 0168.06; National Pollutant Discharge Elimination System and Sewage; in 40 CFR parts 123 and 501; OMB No. 2040–0057; on 06/25/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0597.06; Maximum Residue Limit (MRL) Petitions on Food/Feed Crops and New Inert Ingredients; in 40 CFR parts 177, 180, 185 and 186; OMB No. 2070–0024; on 06/28/99 OMB extended the expiration date through 12/31/99.

Actions Withdrawn

EPA ICR No. 1865.01; Evaluation of Jobs Through Recycling Grants Projects; on 06/29/99 EPA withdrew this collection from OMB review.

EPA ICR No. 1866.01; Chlorinated Aliphatics Industry Study; on 06/29/99 withdrew this collection from OMB review.

Dated: July 1, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–17345 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–3]

Agency Information Collection Activities; Pesticides; Submission of EPA ICR No. 0595.07

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501*et seq.*), this document announces that the Information Collection Request (ICR) entitled: ''Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c)'' [EPA ICR No. 0595.07; OMB No. 2070–0055], has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, involves a collection activity that is currently approved and is scheduled to expire on September 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. A **Federal Register** document announcing the Agency's intent to seek OMB approval for this ICR and provide a 60 day comment period opportunity, was issued on January 20, 1999 (64 FR 3086,). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: farmer.sandy@epa.gov'' or download a copy of the ICR on the internet at http://www.epa.gov/icr/icr.htm and refer to

EPA ICR No 0595.07 and OMB Control No. 2070–0055.

ADDRESSES: Send comments, referencing EPA ICR 0595.07 and OMB Control No. 2070–0055, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460;

and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

This document applies to any state exercising authority to register additional uses of federally registered pesticides for distribution and use within the state to meet a special local need pursuant to FIFRA section 24(c). The term ''state'' includes a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa. Potentially affected categories include:

Category	NAICS code	SIC codes	Examples of potentially affected entities
State agencies/governments	923120	9431	State Agencies issuing state registration for additional uses of federally registered pesticides to be used within the state.
Organic Chemical Manufacturers	325320	286	Pesticide Registrants.
Inorganic Chemical Manufacturers	325320	287	Pesticide Registrants.
Agricultural Grower Groups	813910	100/200	Agricultural Grower Groups that provide information to support additional uses of federally registered pesticides within a state.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Information Collection Activity or ICR Does This Notice Apply To?

The final ICR package for the following information collection activity has been submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA is asking OMB to approve this ICR for three years.

Title: Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c).

ICR Numbers: EPA ICR No.0595.07; OMB No. 2070–0055.

ICR Status: This ICR involves a collection activity that is currently approved. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** documents for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides as mandated by FIFRA. However, FIFRA section 24(c) also authorizes States to register additional uses of federally registered pesticides for distribution and use within their borders to meet a special local need (SNL). A state-issued registration under FIFRA section 24(c) is deemed a federal registration, for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes, a state-registration. To support a special need registration all applicants must submit to the State basic pesticide product information including:

(1) Name and address of the applicant and any other person whose name will appear on the labeling or in the directions for use.

(2) The name of the pesticide product, and, if the application is for an amendment to a federally registered product the EPA registration number of that product,

(3) A copy of the proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need, consisting of:

(i) For a new product, a copy of the complete proposed labeling; or,

(ii) For an additional use of a federally registered product, a copy of proposed supplemental labeling and a copy of the labeling for the federally registered product.

(iii) If a State classifies for restricted use a product or use, which is not required to be so classified under FIFRA, supplemental labeling for the product or use containing additional appropriate precautions, and a statement that the product or use is for restricted use within the State may be required.

(4) The complete formula of the product, if the application is for a new product registration.

(5) Any other information that is required to be reviewed prior to registration.

Once a state issues a SLN registration, the label of the pesticide product must contain:

(1) A statement identifying the State where registration is to be valid.

(2) The special local need registration number assigned by the State.

(3) For an additional use of a federally registered product, the State must require that at the time of sale, labeling from the federally registered product be accompanied by supplemental labeling.

To ensure that the States do not issue any registrations that might conflict with other requirements in FIFRA, or with section 408 or 409 of the Federal Food Drug, and Cosmetic Act (FFDCA) which require that a tolerance exist for any pesticide used on a food or feed commodity. FIFRA section 24 (c)(3) allows the EPA to determine whether or not a State issued registration is inconsistent with the FFDCA or if the use of a pesticide registered by the State constitutes an imminent hazard. To make such a determination the EPA requires States to submit EPA Form 8570–25:

(1) Within ten working days from the date a State issues, amends or revokes a registration, the State is required to notify the EPA, in writing, of the action. Notification of State registrations, or amendments thereto, shall include:

(i) Effective date of the registration or amendment,

(ii) Confidential statement of the formula of any new product, and

(iii) A copy of the draft labeling reviewed and approved by the State, provided that labeling previously approved by the Administrator as part of a federal registration need not be submitted.

(2) Notification of State registrations or amendments shall be supplemented by the State sending to the EPA a copy of the final printed labeling approved by the State within 60 days after the effective date of the registration or amendment.

(3) Notification of revocation of a registration by a State shall indicate the effective date of revocation, and shall state the reasons for revocation.

(4) The Agency may request, when appropriate, that a State submit any data used by the State to determine that unreasonable adverse effects will not be caused.

The Agency has 90 days to determine whether the SLN registration should be disapproved. If the SLN is disapproved, the State is responsible for notifying the affected registrant.

Burden: Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 12.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: States.

Estimated Total Number of Potential Respondents: 349.

Frequency of Response: Determined by the state.

Estimated Total Annual Burden Hours: 24,604.

Estimated Total Annual Burden Costs: $2,360,287.

III. Are There Changes in the Estimates From the Last Approval?

Yes. The overall respondent burden hours associated with this collection has decreased from 38,775 to 24,604.5 hours per year. This change is due to the decrease of the number of applications made by the states since the renewal of the last ICR from 550 to 349. Costs have increased due to current labor rates as supplied by the Bureau of Labor Statistics. No regulatory changes have been made in the requirements for Section 24(c) applications.

IV. What Is the Next Step in the Process for This ICR?

After providing a 30 day opportunity for additional comments from the public, OMB will review and take action on the Agency's request. Periodically, EPA publishes a notice in the **Federal Register** listing recent OMB actions on the Agency's ICR submittals. If you have any questions about this ICR or the approval process, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 1, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–17348 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6371–9]

Notice of Approval of Extension of Prevention of Significant Air Quality Deterioration (PSD) and New Source Review (NSR) Permit to Muht-Hei, Inc. (NSR 4–4–10, SD 92–02)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 3, 1999 the Environmental Protection Agency issued an extension of the prevention of significant deterioration/new source review (PSD/NSR) permit to the applicant named above. Extension of the PSD/NSR permit grants approval to Muht-Hei, Inc. to construct and operate a solid waste landfill on the tribal lands of the Campo Band of Mission Indians.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; please address the request to: Steve Branoff (AIR–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1290.

SUPPLEMENTARY INFORMATION: On October 18, 1996, EPA issued a PSD/NSR permit to Mid-American Waste Systems, Inc. for the construction and operation of a solid waste landfill on the tribal lands of the Campo Band of Mission Indians. The 1996 permit specified that this permit would expire if construction did not commence within 18 months after its issuance. Prior to the date of permit expiration, Muht-Hei, Inc. applied to EPA for a transfer of ownership of the proposed project, and for an extension of the PSD/NSR permit. EPA has extended the approval to construct and operate the proposed landfill to the new owners for a period of 18 months from May 3, 1999 until November 2, 2000.

The PSD/NSR permit requires the application of Lowest Achievable Emission Rate (LAER) for emissions of volatile organic compounds (VOCs), and Best Available Control Technology (BACT) for fine particulate matter (PM_{10}). The permit also requires Muht-Hei to provide emission offsets for all direct and fugitive emissions of VOCs. LAER requirements for this permit include construction of the landfill with low permeability composite liners, installation and maintenance of a landfill gas (LFG) collection system, and destruction of all collected LFG in a flaring system that will achieve a minimum VOC destruction removal efficiency (DRE) of 99.6% by weight.

BACT requirements for particulate emissions include paving, vacuum-sweeping, and watering of roads. In addition, the LFG flare is subject to certain emission limits, including allowable emission rates as follows: 0.06 lbs/mmBtu of NO_X, 0.15 lbs/mmBtu of CO, and 0.005 lbs/mmBtu of PM_{10}.

DATES: The issuance of a PSD/NSR permit is reviewable under section 307(b)(1) of the Clean Air Act and 40 CFR 124.19(f)(1) in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 7, 1999. EPA did not receive an appeal to the Administrator or the Environmental Appeals Board for review of this permit decision within thirty (30) days from the date the final permit was issued.

Dated: June 28, 1999.

Kenneth Bigos,

Acting Director, Air Division, Region 9.

[FR Doc. 99–17209 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6374–4]

Contractor Access to Confidential Business Information (CBI); Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, Ann Arbor, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with 40 CFR 2.301(h)(2), EPA has determined that one contractor requires access to Confidential Business Information (CBI). This access is under the terms of the

contract. The contractor and contract are the Science Applications International Corporation (SAIC) with EPA Contract 68–W–99–002, Task Order 05.

DATES: SAIC will have access to this data from until September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Parsons, U.S. Environmental Protection Agency, OMS/VPCD, 2000 Traverwood, Ann Arbor, Michigan, 48105–2195 is the contact person for Contract 68–W–99–002, Task Order 05.

SUPPLEMENTARY INFORMATION: The Science Applications International Corporation (SAIC) as the prime contractor and Dyncorp and Indus as subcontractors, will have access to Confidential Business Information (CBI) to develop and maintain the Certification and Fuel Economy Information System (CFEIS) under EPA's new Mission Oriented Systems Engineering Support (MOSES) II contract, Task Order 05. CFEIS handles the information flow associated with the certification process and its companion fuel economy process. Production problems referred for analysis often entail access to CBI data. Their address (applies to prime and all subcontractors): Science Applications International Corporation (SAIC) @EPA's Systems Development Center (SDC) 200 N. Glebe Road Suite 300, Arlington, VA 22203 Phone: 703–292–6000, Fax 703–292–6388.

Dated: June 29, 1999.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–17349 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404LS–US/PB–402404–LS; FRL–6068–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of the Upper Sioux Community's and Lower Sioux Indian Community's Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On April 14, 1998, both the Upper Sioux Community (Upper Sioux) and Lower Sioux Indian Community (Lower Sioux) submitted applications for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 404 of the Toxic Substances Control Act (TSCA). Notice of the Upper Sioux and Lower Sioux applications, a solicitation for public comment regarding the applications, and background information supporting the applications were published in the **Federal Register** of October 2, 1998. Today's notice announces the approval of the Upper Sioux and Lower Sioux Indian Communities' applications, and the authorization of the Upper Sioux and Lower Sioux Communities' lead-based paint program to apply on the Upper Sioux and Lower Sioux Reservations respectively effective May 7, 1999, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the Upper Sioux and Lower Sioux Indian Communities effective on May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Emma Avant, Project Officer, Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604, telephone: (312) 886–7899, e-mail address: avant.emma@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the appropriate Regional EPA office for review. Complete, final applications will be subject to a public comment period, and reviewed by EPA within 180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, section 404(b) of TSCA. As determined by EPA's review and assessment, the Upper Sioux and Lower Sioux's applications successfully demonstrated that the Tribes' lead-based paint activities programs achieve the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Upper Sioux and Lower Sioux's applications. EPA announced solicitation for public comment regarding the applications in the **Federal Register** of October 2, 1998 (63 FR 53051) (FRL–6018–9).

II. Federal Overfiling

TSCA section 404(b), 15 U.S.C. 2684(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), 15 U.S.C. 2684(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

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

provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region V.

[FR Doc. 99–17316 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1319]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 30, 1999, the Commission released a public notice announcing the July 20, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6–A320, Washington, D.C. 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: July 2, 1999.

The meeting to be held on Tuesday, July 20, 1999, from 8:30 a.m. until 5:00 p.m., and on Wednesday, July 21, 1999, from 8:30 a.m. until 10:00 a.m. is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

It has been determined that the portion of the meeting to be held on Wednesday, July 21, 1999, from 10:00 a.m. until 12:00 p.m. will be closed to the general public. In response to NANC Chairman Alan Hasselwander's request, FCC Chairman William E. Kennard determined, after review by the General Counsel, that this portion of the July 21, 1999, meeting of the NANC may be closed to the public.'' In making this determination, Chairman Kennard stated:

> Given that the NANC's review, at the meeting, of the proposal by Lockheed Martin to provide number pooling administration is likely to involve disclosure of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential,'' that portion of the NANC meeting is subject to the Government in the Sunshine Act's (GISA) allowance for closure of meetings otherwise required to be open to the public. *See* GISA Section 552b(c)(4). Under the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA), the requirement that Federal Advisory Committee meetings be open to the public is, therefore, not applicable to the above-specified portion of the July 21, 1999, meeting of the NANC.

Proposed Agenda

Tuesday, July 20, 1999

1. Approval of June 22–23, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report.
3. Industry Numbering Committee (INC) Report. Discussion of obligation of code holders to resellers requirement to report forecast data.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Cost Recovery Working Group Report. Discussion business arrangement between North American Numbering Plan Administrator (NANPA) in the role of number pooling administrator and the Number Portability Administration Center (NPAC).
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, July 21, 1999

1. Steering Group Report.
2. Other Business.

Session closed to the public. Discussion of Lockheed Martin IMS CIS response to the Thousand Block Pooling Administrator Requirements Document. Non-disclosure agreement must be signed by NANC members and or their alternates prior to attending the closed-door session.

Federal Communications Commission.

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–17405 Filed 7–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–010071–028

Title: Cruise Lines International Association

Parties:

American Hawaii Cruises
Bergen Line, Inc.
Carnival Cruise Lines
Celebrity Cruises, Inc.
Commodore Cruise Line
Costa Cruise Lines
Crystal Cruises
Cunard
Delta Queen Steamboat Co. (''Delta Queen'')
Disney Cruise Line
First European Cruises
Holland America Line
Mediterranean Shipping Cruises
Norwegian Cruise Line
Orient Lines, Inc.
Premier Cruises
Princess Cruises
Radisson Seven Seas Cruises
Regal Cruises
Royal Caribbean International
Royal Olympic Cruises
Seabourn Cruise Line
Silversea Cruises
Windstar Cruises

Snyopsis: The proposed amendment updates the addresses of various Agreement members and deletes Delta Queen as a party to the Amendment. It also makes technical changes concerning travel industry related technology and adds a provision for arbitration clause covering both member lines and sellers of travel.

Agreement No.: 203–011527–003

Title: Independent Carriers Alliance

Parties:

Cho Yang Shipping Co., Ltd. (''Cho Yang'')
Montemar S.A. d/b/a/ Pan American Independent Line
DSR—Senator Lines
Hanjin Shipping Co., Ltd.
Di Gregorio Navegacao Ltda.
Zim Israel Navigation Company Ltd.

Synopsis: The proposed amendment would revise the Agreement's withdrawal provisions to permit Cho Yang to resign from the Agreement on less than the present six month advance notice period. As presently contemplated, Cho Yang's resignation would become effective on December 10, 1999.

Agreement No.: 217–011548–002

Title: Hanjin/Sinotrans Slot Charter Agreement

Parties:

Hanjin Shipping Co., Ltd.
China National Foreign Trade Transportation Corp. (Sinotrans)

Synopsis: The proposed modification changes the address of Sinotrans, changes the name of the contact person at each company, and provides for the automatic renewal of the agreement each year.

Agreement No.: 203–011574–006

Title: Pacific Islands Discussion Agreement

Parties:

P&O Nedlloyd Limited
South Seas Steamship Line
Polynesia Line, Ltd.
South Pacific Container Line
FESCO Ocean Management Limited d/b/a/ FESCO Australia North America Line

Synopsis: The proposed amendment would clarify the authority of the parties to discuss and agree upon voluntary guidelines relating to the terms and procedures of their individual service contracts.

Agreement No.: 203–011637–001

Title: MLL/TMG/Columbus/Maruba Cooperative Working Agreement

Parties:

Columbus Line
Maruba S.C.A.
Mexican Line Limited
Transportation Maritime Grancolombiana, S.A.

Synopsis: The proposed Amendment clarifies Article 5(e) of the Agreement by providing that no party may be required to disclose terms of its service contracts other than those required to be published. It also adds a new Article 5(f) which authorizes the parties to adopt voluntary service contract guidelines, and makes other nonsubstantive changes to Article 5.

Agreement No: 207–011649–001

Title: Joint Operating Agreement Between Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Parties:

Interocean Lines, Inc.
Trinity Shipping Line, S.A.

Synopsis: The proposed amendment provides for the automatic extension of the Agreement for additional six-month periods beyond the initial term of the Agreement.

Agreement No.: 217–011664

Title: Maersk/OOCL Space Charter Agreement

Parties:

A.P. Moller-Maersk Line
Orient Overseas Container Line

Synopsis: The proposed agreement would authorize Maersk to charter space to OOCL and for the parties to agree on administrative matters in the trade from ports and points in California to ports and points in Northern Europe.

Agreement No.: 224–201080

Title: Port of Oakland-COSCO Marine Terminal use Agreement

Parties:

City of Oakland, Board of Port Commissioners
China Ocean Shipping (Group) Company

Synopsis: The proposed agreement provides for the nonexclusive use of certain facilities at the Charles P. Howard Terminal. The agreement runs through April 30, 2004.

By Order of the Federal Maritime Commission.

Dated: July 2, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–17314 Filed 7–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Personnel, Federal Maritime Commission, 800 North Capital Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the

appointing authority relative to the performance of the senior executive.

Harold J. Creel, Jr.,

Chairman.

The Members of the Performance Review Board Are

1. Ming Chen Hsu, Commissioner
2. John A. Moran Commissioner
3. Delmond J.H. Won, Commissioner
4. Norman D. Kline, Chief Administrative Law Judge
5. Frederick M. Dolan, Jr., Administrative Law Judge
6. Thomas Panebianco, General Counsel
7. Bryant L. VanBrakle, Secretary
8. Edward P. Walsh, Managing Director
9. Bruce A. Dombrowski, Deputy Managing Director
10. Vern W. Hill, Director, Bureau of Enforcement
11. Sandra L. Kusumoto, Director, Bureau of Administration
12. Florence A. Carr, Director, Bureau of Economics and Agreement Analysis
13. Austin L. Schmitt, Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–17290 Filed 7–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Effective Date: Comments must be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revisions, of the following reports:

1. Report title: Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock.

Agency form numbers: FR 2030, 2030a, 2056, 2086, 2086a, 2086b, and 2087.

OMB control number: 7100-0042.

Frequency: On occasion.

Reporters: National, State Member, and Nonmember Banks.

Annual reporting hours: 952 (FR 2030: 47; FR 2030a: 13; FR 2056: 860; FR 2086: 1; FR 2086a: 30; FR 2087: 1).

Estimated average hours per response: 0.5 (for each form).

Number of respondents: 1,901 (FR 2030: 93; FR 2030a: 26; FR 2056: 1,719; FR 2086: 2; FR 2086a: 60; FR 2087: 1). Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§ 222, 248, 282, 287, 288, and 321 and 12 C.F.R. §§ 209.1, 209.3, 209.5(b), 209.7, and 209.8]. Upon request from an applicant, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)).

Abstract: These applications must be submitted to Federal Reserve Banks by organizing and existing member commercial banks requesting the issuance, adjustment, or cancellation of Federal Reserve Bank stock. National banks, chartered by the Comptroller of the Currency, are required to become members of the Federal Reserve System. State-chartered commercial banks may elect to become members if they meet the requirements established by the Board of Governors of the Federal Reserve System. When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in the District where the bank is located. In addition to the conditions of membership, the bank also is advised by

the Reserve Bank that it must subscribe to the capital stock of the Federal Reserve Bank of its District in an amount equal to 6 percent of the bank's paid-up capital and surplus, including reserve for dividends payable in common stock, pursuant to Section 5 of the Federal Reserve Act and Regulation I. However, the bank is required to make payment for only 50 percent of the subscription, which is recorded as paid-in capital on the Reserve Bank's balance sheet. The remaining 50 percent is subject to call by the Board of Governors of the Federal Reserve System. On December 31, 1998, there were 3,401 Federal Reserve member banks, and their consolidated paid-in capital at the twelve Federal Reserve Banks was $5.6 billion.

These applications are necessary in order to obtain account data on the bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock. Another purpose of the applications is to verify that a request has been duly authorized and to prevent unauthorized requests for issuance or cancellation of Federal Reserve Bank stock.

Current Actions: The most significant changes would be (1) revising the items included in the capital stock and surplus section on the FR 2056, (2) combining the FR 2086a and FR 2086b, and (3) adding an optional field to each of the applications for the institution's ABA number. On the FR 2056, the capital and surplus would be reported as shown on the institution's most recent Report of Condition (instead of on the date of the application). Also, the capital stock section would include common stock, preferred stock (including sinking fund preferred stock), and paid-in surplus less the aggregate of retained earnings, gains(losses) on securities available-for-sale, and foreign currency translation gains or losses, if such aggregate is a deficit. Finally, information on ''reserve for dividends payable in common stock'' would be deleted.

The FR 2086a would be used for all member banks converting or merging into nonmember banks. This application would now include national banks converting into nonmember banks and therefore the FR 2086b application would be eliminated.

The Certificate of Issuance of Federal Reserve Bank Stock would be eliminated from the FR 2030, FR 2030a, and FR 2056 applications and the Certificate of Cancellation of Federal Reserve Bank stock would be eliminated from the FR 2056, FR 2086, FR 2086a, and FR 2087 applications. Also, minor clarifications would be made to all of the applications to improve consistency and make filing of the applications more expeditious and user-friendly.

2. Report title: Applications for Membership in the Federal Reserve System.

Agency form numbers: FR 2083, 2083A-2083E.

OMB control number: 7100-0046.

Frequency: On occasion.

Reporters: Commercial banks and certain mutual savings banks.

Annual reporting hours: 2,805 burden hours.

Estimated average hours per response: 35.5 hours.

Number of respondents: 79. Small businesses are affected.

General description of report: This information collection is required [12 U.S.C. §§ 321, 322 and 333]. The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

Abstract: The application for membership is a required one-time submission, pursuant to Section 9 of the Federal Reserve Act, that collects the information necessary for the Federal Reserve Board to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.

Current Actions: The Federal Reserve proposes to (1) revise the application to conform with changes to Regulation H, (2) combine the FR 2083B, C, and D, which are filed by mutual savings banks, into one application and (3) replace Section IV of the application with a reference to the Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100-0134).

With respect to the Regulation H changes, the instructions would be revised as follows: the ''Preparation of Application'' section would be updated regarding examination and Reserve Bank consultation and would define those institutions that qualify for expedited treatment and the ''Public Notification'' section would be eliminated. On the FR 2083E, which would be renamed the FR 2083C, references to capital stock would be revised to capital stock and surplus. Capital stock and surplus includes Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus any allowance for loan and lease losses not already included in Tier 2 capital.

The FR 2083B, C, and D would be combined in an effort to streamline the applications and Section IV would be replaced with FR 2081c for consistency purposed. Also, the Federal Reserve would incorporate several formatting changes to all of the applications to improve consistency and clarify the information to be reported.

Board of Governors of the Federal Reserve System, July 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–17267 Filed 7–7–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Agency form number: unnum Reg B.

OMB Control number: 7100-0201.

Frequency: Event-generated.

Reporters: State Member Banks.

Annual reporting hours: 123,892 hours.

Estimated average hours per response: Notification: 2.50 minutes; Credit history reporting: 2 minutes; Monitoring: 30 seconds; Appraisal report upon request: 5 minutes; Notice of right to appraisal: 15 seconds; Recordkeeping of self-test: 2 hours; Recordkeeping of corrective action: 8 hours.

Number of respondents: Notification, Credit history reporting, Monitoring, Appraisal report upon request, and Notice of right to appraisal 988; Recordkeeping of self-test 45; Recordkeeping of corrective action 11. Small businesses are affected.

General description of report: This information collection is mandatory (15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (80 of the Freedom of Information Act (5 USC 522(b)).

Abstract: The act and regulation prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. Creditors are subject to various mandatory, event-generated disclosure requirements, notification provisions, credit history reporting, and monitoring rules. Creditors are also required to retain records for twelve or twenty-five months as evidence of compliance.

Board of Governors of the Federal Reserve System, July 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–17268 Filed 7–7–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. B&L Bank ESOP, Lexington, Missouri; and Erwin Oetting, Jr., Norman Vialle, and Steve Oliaro, all of Lexington, Missouri, as Trustees; to acquire voting shares of Lexington B&L Financial Corp., Lexington, Missouri, and thereby indirectly acquire voting shares of Lafayette County Bank of Lexington/Wellington, Lexington, Missouri.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17270 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. David L. Grey, Ipswich, Massachusetts; to acquire voting shares of Ipswich Bancshares, Inc., Ipswich, Massachusetts, and thereby indirectly acquire voting shares of Ipswich Savings Bank, Ipswich, Massachusetts.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17334 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. AmSouth Bancorporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First American Corporation, Nashville, Tennessee, and thereby indirectly acquire First American National Bank, Nashville, Tennessee.

In connection with this application, AmSouth Bancorporation also has applied to acquire First American Federal Savings Bank, Dalton, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and to acquire First American Community

Development Corporation, Nashville, Tennessee, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

In addition, AmSouth Bancorporation and First American corporation each have applied to acquire up to 19.9 percent of the other's voting shares pursuant to stock options granted in connection with the proposal. The options would terminate on consummation of the proposal.

2. Synovus Financial Corporation, Columbus, Georgia; to merge with Merit Holding Corporation, Tucker, Georgia, and thereby indirectly acquire Mountain National Bank, Tucker, Georgia, and Charter Bank and Trust Company, Marietta, Georgia.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17269 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire 100 percent of the voting shares of Delaware Bancshares, Inc., Jay, Oklahoma, and thereby indirectly acquire The Delaware County Bank, Jay, Oklahoma.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17333 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-16703) published on page 35660 of the issue for Thursday, July 1, 1999.

The Federal Reserve Bank of Chicago heading in paragraph A. and the entry for HSBC Holdings plc, London, United Kingdom, HSBC Finance, Netherlands, London, England, HSBC Holdings BV, Amsterdam, Netherlands, and a newly established intermediate holding company, (USHoldco, New York, New York) are corrected to read as follows

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. HSBC Holdings plc, London, United Kingdom (HSBC Holdings), HSBC Finance, Netherlands, London, England, HSBC Holdings BV, Amsterdam, Netherlands, and a newly established intermediate holding company (USHoldco, New York, New York), to acquire all of the voting shares of Republic New York Corporation, New York, New York (RNYC), and thereby acquire the following bank subsidiaries of RNYC: Republic National Bank of New York, New York, New York (Republic Bank), and Republic Bank California, National Association, Beverly Hills, California. Following these transactions, HSBC would merge RNYC with and into HSBC Americas, Inc., Buffalo, New York, a bank holding company that is the current parent of HSBC Bank USA, Buffalo, New York. RNYC would survive this merger and be renamed HSBC USA. HSBC Holdings and its subsidiaries (collectively HSBC) may form one or more intermediate bank holding companies to facilitate these transactions.

In connection with the proposed transaction, HSBC has provided notice to acquire all of the nonbank subsidiaries of RNYC and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that previously have been determined to be permissible for bank holding companies. HSBC also would continue to control all its existing bank and nonbank subsidiaries. The nonbanking companies that HSBC proposes to acquire are listed in the notice filed with the Board and include Republic Bank Delaware, National Association, Wilmington, Delaware; Republic New York Securities Corporation, New York, New York (RNYSC); Republic Business Credit Corporation, New York, New York. The nonbanking activities of the companies to be acquired also are listed in the notice and include extending credit and servicing loans, pursuant to 12 CFR 225.28(b)(1); performing functions or activities that may be performed by a trust company, pursuant to 12 CFR 225.28(b)(5); providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to 12 CFR 225.28(b)(7); and underwriting and dealing in government obligations and money market instruments, engaging in certain investing and trading activities as principal, and buying and selling bullion and related activities, pursuant to 12 CFR 225.28(b)(8).

In connection with the proposed transaction, HSBC also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of RNYC common stock. This option would expire upon consummation of the merger.

Comments on this application must be received by July 26, 1999.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17335 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to

acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FNB Financial Services Corporation, Reidsville, North Carolina; to acquire Black Diamond Savings Bank, FSB, Norton, Virginia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than July 30, 1999.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa, and Southwest Partners, Inc., Des Moines, Iowa; to engage *de novo* through a joint venture subsidiary, United Mortgage Group, San Diego, California, in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17271 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to engage *de novo* through its subsidiary, Old Kent Securities Corporation, Grand Rapids, Michigan, in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage services, ''riskless principal,'' and private placement services, pursuant to § 225.28(b)(7)(i), (ii) and (iii) of Regulation Y; underwriting and dealing in obligations that state member banks of the Federal Reserve System are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 (''bank-eligible securities''), and engaging in investing and trading activities, pursuant to §§ 225.28(b)(8)(i) and (ii) of Regulation Y; underwriting and dealing to a limited extent in all types of debt and equity securities other than shares of open-end investment companies (mutual funds); See, *J.P. Morgan & Co. Incorporated et al.*, 75 Fed. Res. Bull. 192 (1989); and providing administrative and other shareholder services to mutual funds; see, *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993); *State Street Boston Corporation*, 81 Fed. Res. Bull. 297 (1995); *Barclays PLC*, 82 Fed. Res. Bull. 158 (1996); *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996).

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa, and Southwest Partners, San Diego, California; to engage *de novo* through a joint venture subsidiary, Gold Coast Mortgage, San Diego, California, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17336 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC has submitted the information collection requirements contained in five Commission rules and one administrative category to OMB for review and clearance under the Paperwork Reduction Act (44 USC 3501 *et seq.*) (PRA). On January 8, 1999, the FTC solicited comment concerning these information collection requirements, providing the information specified in 5 CFR 1320.5(a)(iv). 64 FR 1203. The FTC received no comments. The current OMB clearances for four of the five rules and the one administrative category expire on September 30, 1999. The current OMB clearance for the HSR Form and Rules expires on August 31, 1999. The FTC has requested that OMB extend these paperwork clearances for a period of three years.

DATES: Comments must be filed on or before August 9, 1999.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Elaine W. Crockett, Attorney, Office of the General

Counsel, Room 598, 600 Pennsylvania Avenue, NW 20580. Telephone: (202) 326–2453. Fax: (202) 326–2477. E-mail: ecrockett@ftc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed extensions of the information requirements should be addressed to Elaine W. Crockett at the address listed above.

SUPPLEMENTARY INFORMATION:

1. Title: FTC Hart-Scott-Rodino (''Permerger Notification'') Rules and form, 16 CFR Parts 801–803—(OMB Control Number 3084–0005)—Extension

The Antitrust Improvements Act Notification and Report Form (''Report Form'' or ''Form'') implements the notification requirements contained in the Premerger Notification Rules, 16 CFR 801–803 (1998) and Section 7A of the Clayton Act, 15 USC 18a. Under the Act and its associated rules, certain parties contemplating acquisitions of a specified size must notify the FTC and the Antitrust Division of the Department of Justice (''the enforcement agencies'') and wait for 30 days (or, in the case of cash tender offer, 15 days) before consummating the transaction. The FTC has established the Report Form as the means for accomplishing the notification mandated by the Act. The Report Form provides the enforcement agencies with the information needed to make prompt, preliminary determinations of the antitrust implications of the reported transactions.

On June 14, 1994, the FTC published a **Federal Register** Notice in which it proposed certain changes to the Report Form. 59 FR 30545. At that time, the FTC requested comments on any paperwork burdens imposed by those changes. *Id.* at 30588. Based on comments received in response to the Notice, as well as other input from interested parties, the enforcement agencies are continuing their review of the Report Form. Any future proposal to change the Form as a result of this review will include a request for comments on any paperwork burdens imposed by the proposal.

This request is for an extension of the Rules and the Form as they currently exist. This notice proposes no amendments or changes to the Rules or the Form, nor does it address any of the changes proposed in 1994. The purpose of this notice is simply to comply with those PRA requirements that will allow the Report Form to be used in its current format pending any amendments to the Rules or Form.

Estimated Annual Burden Hours

The total estimated burden associated with completing and filing the Form is 260,443 hours (based on fiscal year 1997 figures). We have estimated that, depending on a number of different factors, it takes anywhere from 8 to 160 hours to complete and file the Form.[1] The average, based on historical experience, is approximately 39 hours. In certain circumstances, only an index or copies of filings made with another regulatory agency are required to be submitted to the FTC in lieu of the Form (''index filing''). We have estimated that 2 hours is needed to comply with the filing requirements in these instances. The enforcement agencies received notice of 3622 transactions in 1997, of which 59 were reported to other regulatory agencies. Thus the total 1997 burden was (3517 transactions × 39 hours) + (59 transactions × 2 hours), or 260,443 hours. The increase from the 1994 estimated burden of 107,985 hours (when last calculated for OMB clearance) is solely a function of the increase in filing since 1994. Although the number of reported transactions totaled 3,622 in 1997, because of variations in the number of fillings received for these transactions is approximately 6,734.[2]

Estimated Labor Costs

Using the burden hours estimated above, the total cost associated with the Rule and Form would be approximately $78,132,000 (260433 hours × $300 hour). To verify this cost estimate, staff conducted an informal survey of actual billings by several antitrust practitioners for preparation of the Form.[3] These estimates, based on the type and complexity of each filing[4] closely approximated our estimate, based on burden hours. This information is summarized below. Only the first category, the index filing, has been terminated on an hourly fee basis. The remaining figures are calculated on the following basis:

6734 filings minus 59 index filings = 6675

Index filing: 59 × $600 (2 hours @ $3.00/hr) + $35400

Simple filings ([35% × 6675] × $2000) + 4,672,000

Moderately complex filings ([60% × 6675] × $15,000) = 60,075,000

Very complex filings ([5% × 6675] × $50,000) = 16,700.000

Total = $81,482,400

This estimate is comparable to, although slightly higher than, our estimate of $78,132,000. We conservatively have adopted the $81,482.400 estimate as the total annual labor cost.

Esimated Capital or Other Non-Labor Costs

The Rule imposes no current start-up costs and minimal capital costs. The rule first took effect in 1979, so law firms and companies already have incurred any necessary start-up costs associated with filing the Form. Moreover, law firms already have access, for other business purposes, to the ordinary office equipment needed for compliance, and the Rule has no consequential effect on the cost of operating and maintaining that equipment.

[1] These factors include the extent of the filing person's United States operations; the number of different industries in which the filing person is engaged; the firm's prior experience and familiarity with the premerger notification program; the existence of horizontal overlays or vertical relationships in the businesses in which the parties to the transaction derive revenue, and the organizational structure and recordkeeping system of the reporting entities.

[2] For example, of the 3622 transactions reported, 164 were joint ventures, (c)(6) transactions or (c)(8) transactions; only one filing is required for each transaction. If the remaining 3458, approximately 80 percent, or 2766, require two filings per transaction: one each from the acquiring person and the acquired person. The other 20 percent (692) represent certain transactions for which the consideration given is voting stock. A typical example of these transactions is the acquisition of company B's voting stock by company A. As payment for the B stock, A will give the B shareholders certain shares of company A stock. A shareholder of B will acquire an amount of company A stock that will require the B shareholder to submit a separate filing as an acquiring person. For HSR purposes, the company A/company B filings make up transactions, and the B shareholder/company A filings comprise a second transaction. However, company A generally needs to submit only one filing for the two transactions. Therefore the two transactions require three filings, computed as 1.5 filings per transaction. (The 1.5 figure is a slight overestimation, since in some cases more than one shareholder of company B has a fling obligation as an acquiring person. Each shareholder's notification is treated as a separate transactions, and company A's filing as an acquiring person serves as the acquired party's filing for each of the shareholder transactions. Thus, for example, four transactions—a primary transaction with three related shareholder transactions—may have a total of only five filings.)

[3] The $45,000 Hart-Scott-Rodino filing fee is not included in these cost estimates because the fee does not fall within either of the two cost categories defined by OMB: (1) Total hour burden and annualized costs of hour burden (labor), and (2) non-labor costs, consisting of total capital and start-up costs and total operation and maintenance costs. *See* OMB Instructions for Completing OMB Form 83–I.

[4] The survey was based on number of filings because each side to transaction is represented by a different law firm. Therefore, practitioners do not have cost information relating to an entire transaction.

2. Title—Negative Option Plans by Sellers in Commerce ("Negative Option Rule") 16 CFR Part 425—(OMB Control Number 3084–0104)—Extension

The Negative Option Rule protects consumers who participate in negative option plus (*e.g.*, record or book "clubs"), contractual arrangements whereby a seller periodically ships merchandise to subscribers without an affirmative order by the subscriber. The Rule requires sellers to send an advance notice to subscribers describing merchandise offered for sale. The subscriber may instruct the seller, in accordance with the terms of the plan, to refrain from shipping the merchandise. The Rule also requires that promotional materials disclose the terms of membership clearly and conspicuously, and establish procedures for the administration of such "negative option" plans.

Estimated Annual Burden Hours

The Rules's estimated annual burden is approximately 14,375 hours per day. We estimate that approximately 175 existing clubs spend about 75 hours each to comply with the Rule's disclosure requirements, for a total of 13,125 per year (175 clubs × 75 hours).

We have revised the number of hours from 125 to 75 hours per year for each existing club to comply with the information collection requirements contained in the Rule. These clubs should be familiar with the Rule, which has been in effect since 1974, so their "burden" of compliance has diminished over the years. Also, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would not make these disclosures absent any regulatory requirement because the Rule has assisted in fostering long-term relationships with consumers.

In addition, approximately 10 new clubs come into existence each year. These clubs spend about 125 hours complying with the Rule, making the total hours that new clubs spend per year 1,250 (10 new clubs × 125 hours). For new clubs, we have retained the estimate of approximately 125 hours to comply with the rule (including start up-time). The total of 14,375 hours per year for both existing and new clubs is a reduction from 15,000 burden hours that the FTC estimated in 1995.

Estimated Labor Costs

Total labor costs are approximately $367,697 per year. According to the Bureau of Labor Statistics, the average compensation for advertising managers is $27.88 per hour. Compensation for clerical personnel is approximately $10.00 per hours. Assuming that managers perform the bulk of the work, while electric personnel perform some associated tasks, such as placing advertisements and responding to inquiries about offering or prices, the total cost to the industry for the Rule's paperwork requirements would be approximately $367,497 (65 hours managerial time × 175 existing negative option plans × $27.88 per hour = $317,135) plus (10 hours clerical time × 175 existing negative option plans × $10.00 per hour - $17,500) plus (115 hours managerial time × 10 new negative option plans × $27.88 per hour = $32,062) plus (10 hour clerical time × 10 new negative option plans × $10.00 = $1,000).

Estimated Capital or Other Non-Labor Costs

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the capital and start-up costs. For the few new clubs that enter the market each year, the capital and start-up costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis.* Negative option clubs already have access to the ordinary office equipment necessary for compliance with the Rule.

Similarly, the Rule imposes few, if any, printing and distribution costs. the required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution costs are incurred anyway to market the product, inserting the required disclosures constitutes only a *de minimis* incremental expense.

3. Title: Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432—(OMB Control Number 4084–0105)—Extension

The Amplifier Rule assists consumers by requiring disclosure of four performance characteristics whenever representations are made concerning power output, power band or power frequency, and distortion characteristics of home audio equipment. The Rule also specifies the test conditions to be used to obtain the FTC disclosures.

Estimated Burden Hours

The annual burden is approximately 1,500 hours. the Rule's provisions require affected entities to test the power output of amplifiers in accordance with specified FTC protocol. Approximately 300 new amplifiers and receivers come on the market each year. Since high fidelity manufacturers routinely conduct performance tests as part of any new product development, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up ("precondition") period that the Rule requires before measurements are taken may add approximately one hour to the time testing entails. Thus, we estimate that the Rule imposes approximately 300 hours (1 hour × 300 new products) of added testing burden annually.

The Rule requires disclosures if an advertisement makes a power output claim. Assuming that ten advertisements per magazine are placed each month in ten existing magazines carrying audio equipment advertisements, we estimate that approximately 1,200 magazine advertisements annually would be required to carry the FTC disclosures. The cost of these disclosures is limited to the time needed to draft and review the language pertaining to power output specifications.

Because this Rule became effective in 1974, and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, we estimate the time involved for this task to be a maximum of 1 hour per advertisement, for a total burden of 1,200 hours. The total annual burden impose by the Rule is therefore approximately 1,500 burden hours. (300 testing hours + 1,200 disclosure hours). This is a reduction from 2,700 burden hours estimated in 1995.

Estimated Labor Costs

According to staff at the Bureau of Labor Statistics, the average hourly compensation for electronics engineers in the industry is $28.73, and the average hourly compensation for marketing, advertising and public relations managers is $27.88. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $28.73 = $8,619.00), and marketing, advertising or public relations managers prepare advertisements (including required disclosures) (1,200 hours × $27.88 = $33,456.00). Based on this information, we estimate the cost to the industry for the Rule's paperwork requirements to be $42,075.00 per year ($33,456.00 + $8,619.00).

Estimated Capital or Other Non-Labor Costs

The Rule imposes no capital or other non labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

4. Title: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (''Franchise Rule''), 16 CFR Part 436—(OMB Control Number 3084–0107)—Extension

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, and the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee (''earnings claims''). Franchisors must also preserve the information that forms a reasonable basis for such claims. The Rule is designed to help protect potential investors from fraudulent claims.

Estimatd Annual Burden Hours

The current public disclosure and recordkeeping burden for collections of information contained in the Rule is 36,200 hours. This figure may change depending upon Commission action on the Advance Notice of Proposed Rulemaking (''ANPR'') in the **Federal Register,** announcing the Commission's intention to consider amending the Rule. *See* 62 Fed. Reg. 9115 (February 28, 1997).

A review of the trade publications and information from state regulatory authorities shows that approximately 5,000 American franchise systems, consisting of 2,500 business format franchises and 2,500 business opportunity sellers, currently exist.[5] We have calculated burden based on this estimate, although some of these franchisors, for a variety of reasons, are not covered by the Rule in certain situations (*e.g.*, when a franchisee buys bona fide inventory but pays no franchisor fees).

Estimated Annual Costs

Labor Costs

The Rule's required disclosure document provides franchisees with information on twenty broad-ranging subjects that affect the franchisors, the franchisors's business, and the nature of the proposed franchise relationship. This includes not only generally available information, such as the official name and address and principal place of business of the franchisor, but also less commonly available information such as, among other things, the previous 5 years business experience of each of the franchisors's current directors and executive officers and whether any of these individuals has been convicted of a felony or embezzlement, or has filed in bankruptcy or been adjudged bankrupt during the previous 7 years. All information in the disclosure statement must be updated and revised according to the express time requirements set forth in the Rule.

An attorney likely would prepare or update this disclosure document. Accordingly, we estimate the attorney-related labor costs of complying with the Rule's requirements as follows: 500 new franchisors each incur attorney's fees of approximately $250 per hour for 30 hours to develop the disclosure document, and 4,500 current franchisors each incur attorney's fees of approximately $250 per hour of 3 hours to update the disclosure document, for a total burden of 28,500 hours and a total cost of $7,125,000.

Printing the Disclosure Document

To comply specifically with the Rule, franchisors must incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. We estimate, however, that 2,500 business format and product franchisors print and mail 100 disclosure documents per year at a cost of $35.00 per document. Further, we estimate that another 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15.00 per document, for a total cost of $12,500.000.

Cover Sheet

The franchisor also must provide and disseminate an FTC cover sheet that identifies the franchisor, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of ''collection of information'' under the PRA. 5 CFR 1320.3(c)(2). Nonetheless, franchisors must spend some time in providing the rest of the required information. Further, there are reproduction and mailing costs. Accordingly, we estimate that 5,000 franchisors complete and disseminate 100 cover sheets per year at a cost of approximately $.55 per cover sheet, or a total cost of approximately $277,000.

Recordkeeping Costs

The franchisor may require additional recordkeeping of information pertaining to the sale of franchise in non-registration states. At most, franchisors would spend an additional hour each year at a cost of $10 per hour to save material to show potential franchisees. This would result in a total of 5,000 hours per year for all affected entities at a total cost of $50,000.

Estimate of Capital and Other Non-Labor Costs

There are no significant current capital or other non-labor costs associated with this Rule.

5. Title: Labeling and Advertising of Home Insulation (''R-Value Rule''), 16 CFR Part 460—(OMB Control Number 3084–0109)—Extension

The R-Value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated Annual Burden Hours

The Rule's requirements include product testing, recordkeeping, and third-party disclosure's on labels, fact sheets, advertisements and other promotional materials. These requirements apply to certain manufacturers and their testing laboratories; home insulation installers; new home sellers who make energy savings claims; and retailers who sell home insulation for do-it-yourself installation by consumers.

Based on information provided by members of the insulation industry, staff estimate that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,500 installers who sell home insulation; (3) 130,000 new home builders/sellers of site-built home and approximately 7,000 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Manufacturers and Testing Laboratories: Under the Rule's testing

[5] These figures have been revised since the notice published January 8, 1999, requesting an OMB extension of this Rule. *See* 64 FR 1203. The new figures reflect calculations more recently prepared by staff.

requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

As for third-party disclosure requirements in advertising and other promotional materials, staff estimate that most manufacturers spend an average of approximately 20 hours per year to comply with this requirement. Only the five or six largest manufacturers require additional time (approximately 80 hours each). Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours (144 manufacturers × 20 hours + 6 manufacturers × 80 hours).

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep these records of testing in the ordinary course of business. Staff estimate that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers: Installers are required to show the manufacturers' insulation fact sheet to retail consumers prior to purchase. Installers must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to be installed. Staff estimate that two minutes per sales transaction is sufficient for complying with these requirements. Approximately 835,000 retrofit insulations are installed by approximately 1,500 installers per year, and therefore, the annual burden is approximately 27,833 hours (835,000 sales transactions × 2 minutes). Staff also estimate that one hour per year per installer is sufficient for including required disclosures in advertisements and other promotional materials. The burden for this requirement is approximately 1,500 hours per year (1,500 installers × 1 hour).

Also, installers must keep records that indicate the substantiation relied upon for savings claims. The addition time for complying with this requirement is minimal, approximately 5 minutes per year per installer, for a total of approximately 125 hours (1,500 installers × 5 minutes).

New Home Sellers: New home sellers must make contract disclosures concerning the type, thickness and R-value of the insulation they install in each part of a new home. Staff estimate that no more than one minute per sales transaction is required to comply with this requirement, for a total annual burden of approximately 283,333 hours (1.7 million new home sales × 1 minute).

New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records anyway in the ordinary course of business, staff estimate that the one minute burden for disclosures would be more than adequate to cover this recordkeeping requirement, as well.

Retailers: The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers prior to purchase. This can be accomplished by, *e.g.,* placing copies in a display rack, or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets takes approximately one hour per year per retailer, for a burden estimate of approximately 25,000 annual hours (25,000 retailers × 1 hour).

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is extremely small because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer is sufficient for compliance with this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis.* The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 125 recordkeeping and 29,333 disclosure hours for installers; 283,333 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. This figure has been rounded to 366,400 burden hours.

Estimated Annual Labor Costs:

The total annual labor costs for the Rule's information collection requirements is $7,290,030, derived as follows: $600 for testing, based on 30 hours for manufacturers (30 hours × $20 per hour for skilled technical personnel); $2,750 for complying with the recordkeeping requirements of the Rule, based on 275 hours (275 hours × $10 per hour for clerical personnel); $33,360 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $10 per hour for clerical personnel); and 47,253,320 for compliance by installers, new home (362,666 hours × $20 per hour for sales persons).

Estimate of Capital and Other Non-Labor Costs

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

6. Title: FTC Administrative Activities (OMB Control Number 3084–0047)—Extension

Currently, the FTC has OMB clearance for certain administrative and/or procedural activities relating to: (1) FTC procurement activities; (2) the document order form used by the FTC public reference branch; (3) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); and (4) rules governing claims against the FTC under the Equal Access to Justice Act.

The FTC seeks to delete items (1), (2), and (4). With respect to item (1), OMB has advised the FTC that it must seek clearance only for any agency-unique information collections that have been published as a supplement to the Federal Acquisition Regulations. The FTC has no such supplement and accordingly, there is no requirement to obtain OMB approval. Deleting this item eliminates 1,000 of 2,300 hours estimated in the FTC's 1995 submission for OMB Control No. 3084–0047.

With respect to item (2), FTC Form 14 is excluded from the PRA's definition of ''information'' because the form asks only for the respondent's name, address, a description of the records and the number of copies requested. *See* 5 CFR 3(h)(1) (the definition of ''information'' excludes an ''affidavit'' or ''certification'' that merely asks the respondent for identifying information such as his or her name, address, the date, and the nature of the instrument), OMB Implementing Guidance to the Paperwork Reduction Act of 1995 (Preliminary Draft), February 3, 1997. Deleting this item eliminates another 1,000 of 2,300 hours.

With respect to item (4), the ''law enforcement'' exception of the PRA excludes this category, because it involves collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceedings designed to determine fines or other penalties *See* 5 CFR 1320.4(a)(1)–(3). Deleting this item eliminates another 200 hours of the 2,300 hours previously estimated for this submission.

With respect to item (3), the FTC is requesting an extension for those provisions covered by that category. Several of the Commission's rules contain provisions that allow certain modifications to, or exemptions from, a rule. For example, Part 901 of the Commission's Rules, 16 CFR Part 901, implementing the Fair Debt Collection Practices Act, 15 U.S.C. 1692, sets forth the procedures and standards for approving petitions received from a state that is requesting permission to apply state law in lieu of federal standards.

Also, the Commission recently amended Rule 4.11(e), 16 CFR 4.11(e), which establishes procedures for agency review of compulsory process issued to the Commission or its employees in matters to which the agency is not a party. The revised rule requires requesters who seek voluntary testimony by Commission employees to submit a statement in support of their requests. This amendment increases the burden imposed by ''FTC Administrative Activities'' by 24 hours and $6,000 per year. On June 11, 1999, the FTC filed an OMB Form 83–C, Paperwork Reduction Act Change Worksheet that reflected those increases.

The FTC also recently received approval from the Office of Government Ethics (''OGE'') to use an alternative form (instead of OGE Form 450, OMB clearance No. 3209–0006) for Commission consultants to report financial and other conflicts of interest. This alternative form, which requires a simple certification instead of a detailed listing of the reporter's financial interests, is appropriate for FTC consultants, most of whom work only on specific projects for short periods of time, and many of whom serve without pay. While this form will save FTC consultants several hours per year in complying with financial disclosure and conflict of interest requirements, it also will increase the burden attributed to the FTC by approximately 2 hours per year because it replaces hours attributable to OGE. There is no significant cost associated with completing the form.

Estimated Annual Burden Hours

Most applications to the Commission generally fall within the ''law enforcement exception'' discussed above, and those that are not are rare and any burden associated with them is *de minimis.* For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice) are also infrequent and difficult to quantify. An example is a request for a waiver of costs for obtaining Commission records. *See* 16 CFR 4.8(e). Nonetheless, in order to cover any potential'' collections of information'' for which we have not otherwise requested clearance, we are requesting a total of 100 burden hours as an estimate of the time needed to submit any relevant responses.

Estimated Annual Labor Costs

Based on 124 burden hours, and an hourly rate of $250 for attorney time, we estimate the annual cost burden to be no more than $31,000. There is no cost associated with the alternative financial reporting form.

Estimated Capital and Start-Up Costs/ Operation and Maintenance

Not applicable

John D. Graubert,

Acting General Counsel.

[FR Doc. 99–17313 Filed 7–7–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the international project. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on July 13, 1999 from 11:30 am to 12 noon.

Dates/Times	Location
July 13, 1999, 8:30 am–5:00 pm.	Jerome C. Hunsaker Room, University Park Hotel, 20 Sidney Street, Cambridge, Massachusetts.
July 14, 1999, 8:30 am–12 Noon.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at

bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: July 1, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–17243 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. *Young People in Alternative Education Settings: Preventing HIV and Other STDs*—New—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Adolescent and School Health—The purpose of this request is to obtain OMB clearance to conduct a randomized trial of a curriculum to reduce behaviors related to HIV/STD transmission among 14 to 18 year old students in 30 court and community schools in Northern California. Participants will respond to surveys of attitudes, knowledge, and behavior related to HIV/STD transmission and prevention at baseline and at 6, 12, and 18 month post-tests. Reduction of behaviors among adolescents related to HIV and STD transmission, and reduction of the prevalence of STDs is the focus of at least seven objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions.* There have been few studies assessing the effectiveness of curricula to reduce HIV/STD related risk behaviors in this high-risk adolescent population. Data gathered from this study will provide information about how HIV/STD risk behavior may be effectively reduced among alternative school students. The total annual burden hours are 7,680.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Alternative school students	1,920	4	1.0

2. *Evaluation of Customer Satisfaction of the Agency for Toxic Substances and Disease Registry (ATSDR) Internet Home Page and Links*—New—ATSDR proposes to conduct consumer satisfaction research around its Internet site. Information on the site focuses on prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. The site is designed to serve the general public, persons at risk for exposure to hazardous substances, and health professionals. This research will ensure that these audiences find the information easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or ''customers'' to the Internet site.

The initial 60 day **Federal Register** Notice was solely for the evaluation of the National Center for HIV, STD, and TB Prevention (NCHSTP) web-site, but after an internal meeting the instrument has been modified for use on the ATSDR web-site. The total annual burden hours are 2,000.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Visitors to ATSDR Internet Site	12,000	1	0.1667

3. *Use of Laboratory Information Systems (LIS) to Transmit Infectious Diseases Test Results (HL7 Messages) to Public Health Agencies*—New—Public Health Program Office (PHPPO), Division of Laboratory Systems. CDC proposes to gather data through the use of a mail/telephone survey of all United States vendors of LIS used for recording and processing microbiology data. The use of a mail/telephone-assisted survey instrument will be an efficient, cost-effective approach for performing the data collection. No computerized data collection systems have been developed for this survey because the number of respondents is small. Instead, trained telephone interviewers knowledgeable about LIS and about the specific messages that CDC is interested in transmitting will gather data. The interviewers will have the flexibility to answer technical questions, probe for further information and provide explanations of coding vocabularies, security needs and other issues that may not be readily understood by the LIS vendors.

The data will provide the government, LIS vendors, laboratory practitioners,

committees that make recommendations regarding messaging and other stakeholders with information about the projected costs to vendors and laboratories and about the time frames required for and the barriers to implementation.

CDC will use the survey to gauge the technological readiness and the cost factors affecting secure electronic transmission of infectious disease data to government agencies. These transmissions will act as part of an early warning system leading to more timely response to infectious disease outbreaks. This survey responds to President Clinton's request for the increased use of modern technology to identify and prevent outbreaks of food-borne illness. The total annual burden hours are 121.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Contact Information Form	56	1	0.1667
Mail Survey	56	2	0.50
Telephone Follow-up	56	2	0.50

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–17273 Filed 7–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Vessel Sanitation Operations Manual; Public Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Discussion of the second draft of the revised Vessel Sanitation Operations Manual—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.–4:30 p.m., October 5, 1999; 9 a.m.–4:30 p.m., October 6, 1999; 9 a.m.–12 noon, October 7, 1999.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: CDC announced its intention to revise the *Vessel Sanitation Operations Manual* in the **Federal Register** of July 9, 1998 (Volume 63, Number 131). Input and comments from the public were requested of and received from the cruise ship industry, private sanitation consultants, and other interested parties, and were discussed in detail at a public meeting held in Fort Lauderdale on April 14–16, 1999. On the basis of comments received, VSP staff have written a second draft of the revised manual and will discuss the revisions at this public meeting.

Matters To Be Discussed: Agenda items will include a thorough discussion of each section of the second draft of the revised operations manual. A copy of the second draft will be available for review by August 6, 1999. To obtain a copy, contact the VSP in Atlanta at the address or phone number below, or go to the VSP Home Page on the Internet at *http://www.cdc.gov/nceh/programs/vsp*.

For a period of 15 days following the meeting, through October 22, 1999, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting. VSP staff will then finalize the revised operations manual and publish the final in the **Federal Register**.

Advanced registration for this important meeting is encouraged. If you plan to attend, please provide your name, title, company name, mailing address, telephone number, facsimile number, and E-mail address to Dorothy Johnson, Management Assistant, facsimile 770/488–4127 or E-mail: *dgj0@cdc.gov*.

Contact Person for More Information: David Forney, Acting Chief, VSP, telephone 770/488–7333 or E-mail: *dlf1@cdc.gov;* or Daniel Harper, Senior Environmental Health Officer, VSP, telephone 770/488–3524, E-mail: *dmh2@cdc.gov;* or write to us at Vessel Sanitation Program, CDC, 4770 Buford Highway, NE, M/S F–16, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–17274 Filed 7–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1110]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''CGMP Regulations for Finished Pharmaceuticals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 19, 1999 (64 FR 19180), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0139. The approval expires on June 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: June 30, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–17332 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0670]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Labeling Requirements for Color Additives (Other Than Hair Dyes)—21 CFR 70.25 and Petitions—21 CFR 71.1 (OMB Control Number 0910-0185—Extension)

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA's scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94–295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Description of Respondents: Business or other for profit.

In the **Federal Register** of April 12, 1999 (64 FR 17672), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	5	1	5			
71.1	5	1	5	1,866	9,330	$14,200
Total					9,330	

[1] There are no capital costs associated with this collection of information.

This estimate is based on the average number of new color additive petitions received in 1997 and 1998. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for the number of respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of two Category A and three Category B color additive petitions are expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of five color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $14,200 (2 x $2,600 + x $3,000 listing fees = $14,200).

Dated: June 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17242 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1938]

Review of Guidances for Industry on the Development of Generic Drug Products; Development and Use of FDA Guidance Documents; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), Office of Generic Drugs (OGD) is providing notice to drug manufacturers on its plans for reviewing policy and procedure guides (PPG's) and other existing OGD documents that provide guidance on the development of generic drug products. This effort is being undertaken consistent with the agency's good guidance practices (GGP's) policy. The goal of this long-term effort is to identify documents that need to be revised, reformatted to fit the GGP policy, or withdrawn because they are no longer current. OGD hopes this process will result in guidances for industry that better reflect the current thinking of the agency on generic drug development. OGD also is seeking input from the public on topics for future guidance development.

DATES: Written comments by September 7, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of agency guidance documents can be obtained on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rita R. Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5845.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice explaining its policy for guidance document development, issuance, and use. The notice included an agency document entitled ''Good Guidance Practices'' (GGP's), which sets forth agency policies and procedures for developing, issuing, and using guidance documents.

Since the early 1990's, OGD has developed and issued more than 40 PPG's to provide information to industry on the development of generic drug products and to set forth procedures for the review of generic drug applications. In addition, other guidance has been provided in the form of letters and other communications to industry. OGD is undertaking a long-term effort to review all of its guidances and identify those that need to be revised, those that need to be reformatted for consistency with GGP's, and those that need to be withdrawn because they are no longer current. As an initial step in this process, OGD is planning to withdraw a number of drug-specific bioequivalence guidances that are outdated and no longer reflect the current thinking of the agency. Guidances that are being withdrawn include the following:

Guidance	Date of Issuance
Alprazolam (tablets)	November 27, 1992
Bumetanide (tablets)	April 23, 1993
Captopril (tablets)	May 13, 1993
Carbidopa and Levodopa (tablets)	June 19, 1992
Cefaclor (capsules and suspension)	April 23, 1993
Diflunisal (tablets)	May 16, 1992
Diltiazem Hydrochloride (tablets)	May 16, 1992
Flurbiprofen (tablets)	June 8, 1995 (2d Revision)
Gemfibrozil (tablets and capsules)	June 15, 1992 (Revision)
Guanabenz Acetate (tablets)	April 23, 1993
Hydroxychloroquine Sulfate (tablets)	December 28, 1995
Indapamide (tablets)	April 23, 1993
Ketoprofen (capsules)	April 23, 1993
Leucovorin Calcium (tablets)	August 4, 1988 (Revision)
Medroxyprogesterone Acetate (tablets)	September 17, 1987 (Revision)
Metoprolol Tartrate (tablets)	June 12, 1992
Nadolol (tablets)	May 16, 1992
Naproxen (tablets)	June 8, 1995 (Revision)
Nortriptyline Hydrochloride (capsules)	June 12, 1992
Pentoxifylline (extended-release tablets)	December 22, 1995
Pindolol (tablets)	April 23, 1993
Piroxicam (capsules)	June 15, 1992
Ranitidine Hydrochloride (tablets)	April 23, 1993
Trazodone Hydrochloride (tablets)	April 30, 1988 (Revision)

It is possible that some of the remaining drug-specific guidances on bioavailability and bioequivalence also will be withdrawn after they are reassessed. However, several CDER guidances currently under development will serve as core guidances on bioavailability and bioequivalence once they have been finalized, and they will replace the product-specific guidances. On rare occasions, the agency may wish to provide bioavailability and bioequivalence guidance for specific drug products, and these will be developed and issued consistent with the agency's GGP policy.

The agency welcomes public comment on its efforts to review existing guidances related to the development of generic drugs and revise, reformat, or withdraw them as appropriate. The agency also is requesting public comment on topics for future guidance development regarding generic drugs.

This information is being issued consistent with FDA's GGP's. It does not

create or confer any rights for or on any person and does not operate to bind FDA or the public.

Interested persons may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–17331 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0209 and HCFA–R–0245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies (HCFA–3006–IFC) and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* HCFA–R–0209 (OMB# 0938–0761); *Use:* The information collection requirements contained in the HCFA–3006 regulation state that HHAs must report data from the OASIS data set as a condition of participation for HHAs. Specifically, the above named rule provides guidelines for HHAs for the electronic transmission of the OASIS data set as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to establish a prospective payment system for HHAs and to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs.; *Frequency:* As determined by HHA and monthly; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 10,492; *Total Annual Responses:* 10,492; *Total Annual Hours:* 1,274,866.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Use of Outcome and Assessment Information Set (OASIS) as Part of the Conditions of Participation for Home Health Agencies (HCFA–3007–F) and Supporting Regulations in 42 CFR 484.55; *Form No.:* HCFA–R–0245 (OMB# 0938–0760); *Use:* These information collection requirements revise the existing conditions of participation that home health agencies (HHAs) must meet to participate in the Medicare program. Specifically, this final rule requires that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. In addition, this final rule requires that as part of the comprehensive assessment, HHAs use a standard core assessment data set, the OASIS, when evaluating adult, non-maternity patients. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care.; *Frequency:* Upon patient assessment; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 10,492; *Total Annual Responses:* 10,492; *Total Annual Hours:* 1,238,056.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 30, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17374 Filed 7–7–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis of Proarrhythmic Medicines and Primary Cardiac Arrest.

Date: August 9, 1999.

Time: 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies, SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Bypass Angioplasty Revascularization Investigation (BARI II).

Date: August 10, 1999.

Time: 8:00 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Open Artery Trial (OAT).

Date: August 10, 1999.

Time: 9:00 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17387 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 28, 1999.

Time: 12:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17380 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 29, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Peter R. Jackson, Chief, ACERRB, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17381 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 29, 1999.

Time: 3:00 PM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (ROOM 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17382 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, July 16, 1999, 8:00 AM to July 16, 1999, 5:30 PM, Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on June 4, 1999, 64 FR 30045.

The meeting will be held on July 26, 1999. The meeting is closed to the public.

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17383 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 26, 1999.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17384 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 27, 1999.

Time: 12:00 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17385 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 15, 1999.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17386 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Abuse Warning Network, (OMB number 0930–0078, extension)—The Drug Abuse Warning Network (DAWN) collects data on drug-related medical emergencies and deaths as reported from about 660 hospitals and medical examiners nationwide. Used by Federal, State, and local agencies, this on-going data system supports efforts to identify drug abuse trends, assess health hazards associated with substance abuse, and schedule substances under the Controlled Substances Act. The annual burden estimate is 15,284 hours as shown below:

	Number of respondents	Number of responses/ respondent	Hours per response	Gross burden hours	IR [1] reporting hours	Total adjusted burden (hrs)
HOSPITALS						
ED Forms	520	334	0.15	26,052	12,876	13,176
ED Logs	520	48	0.02	499	247	252
Hospital Total				26,551	13,123	13,428
MEDICAL EXAMINERS						
ME Forms	140	107	0.25	3,745	1,953	1,792
ME Logs	140	48	0.02	134	70	64
ME Total				3,879	2,023	1,856
DAWN Total				30,430	15,146	15,284

[1] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 1, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–17275 Filed 7–7–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council; Notice of Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Bay-Delta Advisory Council. The purpose of the Bay-Delta Advisory Council is to provide advice on the development of a long-term solution for problems affecting the public values in the California San Francisco Bay/Sacramento-San Joaquin Delta and its watershed estuary.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. You may also call Mr. Rick Breitenbach, Bureau of Reclamation, at 916–657–2666.

The certification of establishement is published below:

Certification

I hereby certify that renewal of the Bay-Delta Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 26, 1937 (Ch. 832, 50 Stat. 850), as amended.

Dated: June 21, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–17413 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–013827

Applicant: International Golden Lion Tamarin Management Committee, National Zoo, Washington, DC

The applicant requests a permit to import 9 captive-bred golden lion tamarins (*Leontopithecus rosalia*) from the Brazilian Government (IBAMA) Rio Primate Center for the purpose of enhancement of the survival of the species through captive propagation.

PRT–014154

Applicant: Henry Doorly Zoo, Omaha, Nebraska

The applicant requests a permit to import skin biopsy and fecal samples

collected from wild and captive-held lowland anoa (*Bubalus quarlesi*) and mountain anoa (*Bubalus depressicornis*) from Sulawesi, Indonesia, for scientific research.

PRT–014225

Applicant: Zoological Society of San Diego, San Diego, California

The applicant requests a permit to import a male oriental white stork (*Ciconia boyciana*) which was bred-in-captivity in Vogelpark Walsrode, Walsrode, Germany, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–012875

Applicant: Forstner, Jenna McKnight, University of Miami, Florida

The applicant requests a permit to import blood and tissue samples from captive-held and wild American crocodile (*Crocodylus acutus*), Cuban crocodile (C. rhombifer), Orinoco crocodile (C. intermedius), and Morelet's crocodile (C. moreletti) from Mexico, Central America, South America, and the Caribbean region for the purpose of enhancement of the species through scientific research.

PRT–013811

Applicant: Center for Environmental Research and Conservation, Columbia University

The applicant requests a permit to import blood samples collected from wild and captive-held Asian elephants (*Elephas maximus*) from Sri Lanka for scientific research.

PRT–013680

Applicant: Warren Parker, Blue Springs, MO

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–013842

Applicant: Gary Plumlee, White River Bison Farm, Anderson, IN

The applicant requests a permit to import five male and five female captive-born wood bison (*Bison bison athabascae*) from Canada for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

PRT–013808

Applicant: Tom Stehn, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Region 2, Austwell, TX

The applicant requests a permit to import captive-bred/captive-hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples from captive-bred/wild specimens, and salvaged materials from captive-bred/wild specimens of Whooping cranes (*Grus americana*) from Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvage materials may include, but are not limited to, whole or partial specimens, feathers, eggs and egg shell fragments. This notification covers activities conducted by the applicant over the next 5 years.

PRT–013805

Applicant: William Weidemoyer, Sellersville, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–013996

Applicant: William H. Bynum, Kingsville, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–013997

Applicant: Donald N. David, Soldotna, AK

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–013682

Applicant: New College of the University of South Florida, Sarasota, FL,

Permit Type: Take for scientific research

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), up to 8

Summary of Activity to be Authorized: The applicant requests a permit to take up to 4 pair of salvaged manatee eyes and export them for analysis of spectral classes of receptors.

Source of Marine Mammals: Salvage specimens obtained opportunistically.

Period of Activity: Up to 5 years, if issued.

PRT–837923

Applicant: New College of the University of South Florida, Sarasota, FL

Permit Type: Take for scientific research.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), 2

Summary of Activity to be Authorized: The applicant requests an amendment to their permit to take 2 captive held manatees undergoing rehabilitation for the purpose of scientific research to study the manatee tactile ability as well as the visual acuity previously authorized.

Source of Marine Mammals: Two captive-held manatees housed at Mote Marine Laboratory, Sarasota, Florida.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–014173

Applicant: Edward Minto, Davison, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–014003

Applicant: Mike H. Boyd, Cartersville, Georgia

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–014002

Applicant: John F. Babler, Mahtomedi, Minnesota

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–014293

Applicant: Thomas L. Place, Janesville, Iowa

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–013922

Applicant: Gary R. Tuohy, Alpena, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 2, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–17396 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On March 25, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 57, Page 14460, that an application had been filed with the Fish and Wildlife Service by Bradley W. Nicholson for a permit (PRT–008875) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on May 13, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 25, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 57, Page 14460, that an application had been filed with the Fish and Wildlife Service by Robert Landis for a permit (PRT–008656) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on May 13, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by David Petrella for a permit (PRT–010260) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Aldrege Fabian,for a permit (PRT–010261) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Catherine Rondeau for a permit (PRT–010262) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Robert Rondeau, Jr. for a permit (PRT–010287) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 7, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 88, Page 24673, that an application had been filed with the Fish and Wildlife Service by Allen Ebnet for a permit (PRT–011207) to import one polar bear (*Ursus maritimus*) trophy taken from the McClintock Channel population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Dube Viateur for a permit (PRT–010660) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 16, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 13, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 92, Page 25899, that an application had been filed with the Fish and Wildlife Service by John Conti for a permit (PRT–011394) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on June 28, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16

U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 2, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–17397 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed Resolutions and Agenda Items Being Considered; Species Being Considered for Amendments to the CITES Appendices; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The eleventh regular meeting of the Conference of the Parties to CITES (COP11) will be held at the United Nations Environment Programme (UNEP) Headquarters in Nairobi, Kenya, April 10–20, 2000.

With this notice we:

(1) List potential proposed resolutions and agenda items that the United States is considering submitting for consideration at COP11;

(2) List potential proposed amendments to the CITES Appendices (species proposals) that the United States is considering submitting for consideration at COP11;

(3) Invite your comments and information on these potential proposals;

(4) Announce a public meeting to discuss these potential proposals; and

(5) Provide information on how non-governmental organizations based in the United States can attend COP11 as observers.

DATES: The public meeting will be held on July 28, 1999, at 1:30 P.M. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, and agenda items that the United States is considering submitting for consideration at COP11, and other items relating to COP11, if we receive them by September 7, 1999.

ADDRESSES: The public meeting will be held in the Large Buffet Room of the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. Directions to the building can be obtained by contacting the Office of Management Authority or the Office of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT**, below). Please note that the room is accessible to the handicapped and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority or the Office of Scientific Authority as soon as possible.

Comments pertaining to proposed resolutions and agenda items should be sent to the Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: r9oma__cites@fws.gov. Comments pertaining to species proposals should be sent to the Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via E-mail at: r9osa@fws.gov. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Office of Management Authority or the Office of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Office of Management Authority, Branch of CITES Operations, phone 703/358–2095, fax 703/358–2298, E-mail: r9oma__cites@fws.gov; or Office of Scientific Authority, phone 703/358–1708, fax 703/358–2276, E-mail: r9osa@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Management Authority or the Office of Scientific Authority at the above addresses, from our World Wide Web site http://www.fws.gov/r9dia/applinks.html, or from the official CITES Secretariat Web site at http://www.wcmc.org.uk/CITES/english. Currently, 145 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, and agenda items for consideration by the other Parties. Only Party countries may submit species proposals, resolutions, and agenda items for consideration at the meeting of the Conference of the Parties. Accredited non-governmental organizations may participate in the meeting as approved observers, and may speak during sessions, but may not vote.

This is our fourth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). We published our first such **Federal Register** notice on January 30, 1998 (63 FR 4613), and with it we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Office of Scientific Authority at the above address. We published our second such **Federal Register** notice on September 4, 1998 (63 FR 47316), and with it we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register**

notice, and on proposed resolutions and agenda items, from the Office of Management Authority at the above address. We published our third such **Federal Register** notice on February 26, 1999 (64 FR 9523), and with it we announced the time and place of COP11, announced the times and places for the next meetings of the CITES Animals and Plants Committees, and announced a public meeting to discuss issues that will be raised at the Animals and Plants Committee meetings. You may locate our regulations governing this public process in 50 CFR §§ 23.31–23.39.

I. Recommendations for Resolutions and Agenda Items for the United States to Consider Submitting at COP11

In our **Federal Register** notice published on September 4, 1998 (63 FR 47316), we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. We received recommendations for resolutions and agenda items from the following organizations or individuals: Animals of Montana, Inc.; Center for International Environmental Law; Earthtrust; Feld Entertainment, Inc.; Institute for Conservation Education and Development of Antioch University Southern California; International Wildlife Coalition; Kay Rosaire's Big Cat Encounter; Riverglen Tigers; Safari Club International; Species Survival Network; Steve Martin's Working Wildlife; and The Hawthorn Corporation.

We considered all of the recommendations of the above organizations and individuals when compiling a list of possible resolutions and agenda items that the United States might submit for consideration by the Parties at COP11. We also considered all of the recommendations of the above organizations and individuals when compiling a list of resolutions and agenda items for consideration at COP11 that the United States is either not considering submitting at this time, plans to address in ways other than through draft resolutions or agenda items, or is currently undecided about submitting. There are some issues for which we may consider submitting documents, depending on the outcome of discussions in the Animals, Plants, and Standing Committees.

We welcome your comments and information submissions regarding the resolutions and agenda items that the United States might submit, those that the United States is currently not planning to submit, or those that the United States is currently undecided about submitting.

A. What Resolutions and Agenda Items is the United States Considering Submitting for Consideration at COP11 or Considering Supporting at COP11?

1. Establishment of a Simplified System to Transport Crocodilian Swatch Samples Across International Borders

The CITES Parties have encouraged the ranching and farming of a number of species, particularly crocodilians. This has resulted in significant progress in protecting certain species and in species' recovery. The United States would like to explore ways to facilitate legitimate trade in specimens of ranched and captive-bred crocodilians. Sample pieces of crocodilian skins are used to provide a buyer or potential buyer a way to determine the quality of tanning and the appearance of the various dyes used to color the skins. Although the samples themselves are not for sale, they are used to generate sales. The international movement of these samples generates considerable paperwork for both the importing and exporting countries and may result in delays for the importer and/or exporter. We are considering submitting a proposed resolution that would establish a system to allow sample pieces of crocodilian skins that would not be sold to be transported to or through any CITES country. We believe such a system could facilitate legitimate trade in certain crocodilian species, while maintaining strict permitting requirements for commercial trade in products.

We are planning to ask another crocodilian range country to co-sponsor such a resolution with the United States and are considering presenting a draft for review at the next meeting of the Animals Committee in July 1999. The United States will make its decision on whether to submit this resolution for consideration at COP11 after the Animals Committee meeting and will base its decision on the results of the Animals Committee's discussions of the issue.

2. Trade in African Bushmeat

The International Wildlife Coalition and the Institute for Conservation Education and Development of Antioch University Southern California recommended that the United States submit an agenda item addressing African bushmeat trade. Both commenters pointed out that an increasing number of conservation organizations and wildlife researchers are concerned about the growing food trade for Central and West African wildlife species (both non-CITES and CITES listed). Both commenters expressed concern about the impact of bushmeat trade on African elephants and primates, especially the great apes. One estimate suggests that more than 2,000 gorillas and 4,000 chimpanzees are killed annually by bushmeat hunters.

We recognize that international commercial trade in bushmeat is a growing conservation concern. We believe that CITES is an appropriate arena for discussing the movement of bushmeat of CITES-listed species across country borders. The United States is considering submitting a discussion paper on the commercial African bushmeat trade and plans to seek one or more co-sponsors in submitting the paper. In addition, the United States plans to encourage the African range states involved in the bushmeat trade to convene a regional meeting to discuss the issue.

3. Recognition of the Important Contribution Made by Observers to the CITES Process

We received a comment from the International Wildlife Coalition requesting that we submit a resolution for consideration at COP11 recognizing the important contributions made by observers to the CITES process and affirming that observer participation in COPs is vital to the ability of the Conference of the Parties to discuss issues with the fullest possible available information. The International Wildlife Coalition expressed their concerns about the limited level of participation afforded observers in Committee I at the tenth meeting of the Conference of the Parties (COP10).

We agree that the participation of observers in the discussions of issues at COPs is essential. For many of the issues submitted for discussion at COPs, the greatest level of expertise is within the community of non-governmental organizations that attend as observers. Therefore, the United States is considering submitting a discussion paper on this issue for consideration at COP11, which it would present under the agenda item entitled ''Admission of Observers,'' which is a standard agenda item raised at the beginning of each COP.

4. Synergy with FAO

The United States is very supportive of synergy and cooperation with international organizations, including the United Nations Food and Agriculture Organization (FAO). The United States proposes to submit a discussion paper to COP11 to promote

synergy and cooperation between CITES Parties and the FAO in the implementation of FAO plans of action on ''seabirds, sharks and over-capacity,'' and the review of CITES listing criteria. The United States proposes to submit this paper under the agenda item ''Co-operation/synergy with Other Conservation Conventions and Agencies.'' We expect the Secretariat to include this agenda item on the provisional agenda for COP11 pursuant to Decision 10.63.

At its February 1999 meeting, the FAO Committee on Fisheries endorsed, for adoption by the FAO Conference in late 1999, plans of action to reduce seabird by-catch, conserve sharks, and manage fishing fleet overcapacity. The three action plans are global tools for implementing parts of the FAO Code of Conduct for Responsible Fisheries, and their approval has been a major U.S. objective since 1997. These voluntary plans of action will be implemented through national plans of action developed by FAO member states. The plans of action are available on the FAO Website at http://www.fao.org.

Many CITES Parties are also Members of FAO. In its discussion paper on this issue, the United States will call upon Parties to expeditiously implement the FAO plans of action and to examine areas of cooperation between CITES and the FAO in this endeavor.

The Sixth Session of the FAO Committee on Fisheries (COFI), Sub-Committee on Fish Trade, in June 1998, proposed that FAO initiate a scientific review of CITES listing criteria as they might apply to large-scale commercially harvested species, beginning with an ad hoc group to make suggestions on how such a process of scientific review might best be pursued. The ad hoc group met in November 1998, and produced a report for COFI. In that report, it recommended that FAO convene a scientific review process of the CITES listing criteria, leading to the development of recommendations to modify, if necessary, the existing CITES criteria. Those recommendations will be presented to CITES through the CITES Standing Committee.

In Resolution Conf. 9.24, the CITES Parties recommended: ''* * * that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties (COP12) with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms.'' The CITES listing criteria in Conf. 9.24 were designed to cover all flora and fauna, but it was clear from the extensive discussions prior to and at the ninth meeting of the Conference of the Parties (COP9) that taxon-specific criteria could be beneficial. It was agreed that development of such taxon-specific criteria would best take place after the Parties had experience (two COPs) utilizing the new criteria in Conf. 9.24. At its 41st meeting in February 1999, the Standing Committee discussed this issue, and agreed that this should be a CITES-driven process, with leadership and direction from the Animals and Plants Committees. The United States concurs with that view. The Standing Committee agreed that the Chairs of the Animals and Plants Committees should be asked to prepare terms of reference for the review of the criteria (as spelled out in Conf. 9.24), and report these terms of reference to COP11. The Chairs of the Animals and Plants Committees will also be asked to oversee this review, to consider findings and develop any recommendations for consideration at the twelfth meeting of the Conference of the Parties (COP12). The Standing Committee encouraged the Committee Chairs to ''consult with international technical bodies, such as FAO and COFI, but to ensure that the work plan for this effort must remain a CITES process.'' The United States will encourage cooperation with FAO on any review of the CITES listing criteria for marine fish through this proposed discussion paper.

5. Reaffirmation of the Synergy Between CITES and the IWC

We received a comment from the Species Survival Network requesting that we submit a resolution reaffirming the relationship between CITES and the International Whaling Commission (IWC). The United States, under the agenda item ''Co-operation/synergy with Other Conservation Conventions and Agencies,'' which we expect the CITES Secretariat to include on the provisional agenda for COP11 pursuant to Decision 10.63, intends to inform the Conference of the Parties of an important resolution on this topic which was overwhelmingly adopted at the 51st Meeting of the IWC, in Grenada, May 23–27, 1999. The resolution, IWC/51/43, directs the IWC Secretariat to advise the CITES Conference of the Parties that the IWC has not yet completed a revised management regime which ensures that future commercial whaling catch limits are not exceeded and whale stocks can be adequately protected. The resolution further directs the IWC Secretariat to advise the CITES Conference of the Parties that zero catch limits are still in force for species of whales which are managed by the IWC.

The United States also notes that Resolution Conf. 2.9, ''Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling,'' was overwhelmingly reaffirmed by COP10 in 1997 by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC resolution IWC/51/43 also welcomes the CITES COP10 decision ''to uphold CITES Resolution Conf. 2.9.'' For clarification, Conf. 2.9 calls on the CITES Parties to ''agree not to issue any import or export permit, or certificate for introduction from the sea * * * for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling.'' The United States intends to submit this important IWC resolution to the CITES Secretariat for distribution to the Parties at COP11.

6. Introduction from the Sea

At the 14th Meeting of the CITES Animals Committee, held in Caracas, Venezuela, in June 1997, the government of Australia presented a document on Implementation of Articles IV(6) and IV(7) (Introduction from the Sea). At the suggestion of the government of Australia, an informal Working Group, consisting of the governments of Australia, Japan, and the United States, was formed to examine this complex matter in more detail, with the understanding that the Group would decide whether to report back to the Committee at its next meeting. The government of Australia is coordinating this discussion. The U.S. Government, led jointly by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, working with the Department of State, has participated in an exchange of letters with the government of Australia expressing U.S. views on this topic. The U.S. comments on this issue have focused on practical solutions to potential problems related to implementation of the provisions of the Convention for CITES-listed species taken in the marine environment, particularly outside the jurisdiction of any country, including but not limited to implementation of both Articles IV and XIV. Australia has indicated that, based on discussions of the informal Working Group, they intend to submit the topic for discussion at COP11. The United States intends to continue to participate in discussions of this issue

and, if acceptable progress is made, expects to be in support of the results of the discussions. If expected progress is not made, however, the United States will consider whether it should develop its own proposed resolution on these issues for consideration during COP11.

7. Use of Annotations in the Appendices

We consider the issue of the use of annotations in the Appendices to be one of the most important for consideration at COP11. We received comments from the following organizations, recommending that we submit a resolution to clarify the criteria to be used when transferring populations or species from Appendix I to II with a product annotation: the Center for International Environmental Law; the International Wildlife Coalition; and the Species Survival Network. We also received comments from Safari Club International requesting that we work to preserve the flexibility of CITES through the use of annotations. All of these organizations provided useful information on the annotations issue, which was considered in developing our views on this issue.

Annotations are footnotes in the CITES Appendices that are being used by the CITES Parties for a number of purposes. In recent years, they are increasingly used when species or geographically distinct populations of species are transferred from Appendix I to II with an annotation; the annotation specifies that certain parts, products, or specimens are allowed to be traded under the provisions of Appendix II, whereas other parts and products are still treated as Appendix-I species. Such downlistings can serve a conservation purpose, but the United States and many other countries are quite concerned that there are no criteria or guidelines in place for the Parties on how to use, adopt, or amend these annotations. For example, there are annotations of this kind for the Appendix II listing of the African elephant in Zimbabwe, Botswana, and Namibia. A great deal of confusion arose at and after COP10 as to what products can or cannot be traded under that annotation. The United States has taken an active leadership role on this issue. At COP10, the Parties adopted Decision 10.70, which directed the Standing Committee to do the following: ''Ways and means of clarifying legal and implementation issues related to the use of annotations in the Appendices shall be considered and a report shall be presented at the 11th meeting of the Conference of the Parties.'' At its 40th meeting in March 1998, the Standing Committee established a Working Group to explore this issue and develop a draft resolution for submission to COP11. The United States participated in that Working Group, along with Switzerland (Chair), Argentina, Canada, Germany, and Namibia. The Working Group corresponded via E-mail on the issue, and met at the 41st meeting of the Standing Committee in February 1999. A consensus draft resolution was presented to the Standing Committee by the Working Group. The Standing Committee endorsed the text, and agreed to submit it to the Conference of the Parties for their consideration at COP11. The full text is available upon request from the Office of Scientific Authority.

Key elements of the draft resolution include: (1) A differentiation between annotations that are for reference purposes only and those that are substantive, integral, and obligatory parts of a species' listing in the Appendices; (2) clarification that any proposal to introduce, amend, or delete substantive annotations must follow the provisions of the CITES listing criteria (Resolution 9.24), and can only be approved by a vote of the Conference of the Parties; (3) clarification that specimens containing parts or products of the species that are not specifically included in a substantive annotation for Appendix II should be considered to be retained in Appendix I, and should be subject to all of the provisions of CITES Article III; (4) requirement that Parties submitting proposals with substantive annotations should clearly specify what is meant by all aspects of the annotation, including what can and cannot be traded commercially; (5) requirement that proposals for such annotations should not become effective if the Party has entered a reservation for the species, unless the Party agrees to remove its reservation within 90 days of the close of that COP; and (6) direction to the Secretariat to investigate any information on increases in illegal trade or poaching of species subject to such annotations, and to report its findings to the Standing Committee.

The United States is pleased with the draft resolution, as an important consensus of the Standing Committee, and proposes to support it at COP11. We welcome your comments on the document.

8. Transborder Movements of Live Animals for Exhibition Purposes

At COP10, the Parties adopted Decision 10.142, directing the Secretariat to prepare recommendations on transborder movements of live animals for exhibition to simplify transborder movements of live animals traveling to other countries for exhibition purposes; register and identify live animals used in exhibitions; and present documents and animals to appropriate border control officers when traveling to other countries for exhibition purposes. At the 40th meeting of the Standing Committee in March 1998, the Committee agreed to establish an informal Working Group to focus on drafting recommendations. The members of the Working Group—the United States (Chair), Germany, Switzerland, and the Secretariat—have been working on draft language based on revising current Resolutions Conf. 8.16 (Travelling Live-Animal Exhibitions) and Conf. 10.20 (Frequent Transborder Movements of Personally Owned Live Animals).

We received comments from six organizations—Animals of Montana, Inc.; Feld Entertainment, Inc.; The Hawthorn Corporation; Kay Rosaire's Big Cat Encounter; Riverglen Tigers; and Steve Martin's Working Wildlife—that would like to see the development of a simplified, more workable system for the registration and movement of traveling live animal exhibitions that has adequate safeguards to prevent illegal trade in or laundering of wild animals. Comments included the following suggestions: adopt a specimen-based passport-type system; require marking by microchip or tattoo of animals in exchange for granting a lifetime CITES certificate; eliminate the publication in the **Federal Register** of a notice of receipt of applications for public comment for endangered species; use the U.S. Department of Agriculture's exhibitors license in lieu of CITES permits; establish a registration/certification system; and exempt captive-bred tigers and pre-Convention elephants from CITES regulation. Although we recognize the need for simplified procedures, we are only considering those comments that have a legal basis under the U.S. Endangered Species Act and meet the provisions of CITES. Thus, we have forwarded to the Working Group suggestions about a passport-type system and a review of marking requirements. Because the United States is participating in the Working Group, we anticipate that the United States will most likely be able to support what the Secretariat recommends to the Standing Committee. Thus, we are not planning to submit our own separate resolution to COP11.

B. What Resolutions and Agenda Items is the United States Currently Not Planning To Submit for Consideration at COP11 or Undecided About?

1. Preparation of Standards for Making Non-detriment Findings

We received comments from the Center for International Environmental Law and the International Wildlife Coalition recommending that we submit a resolution on standards for the issuance of non-detriment findings. The CITES Treaty requires scientific non-detriment findings for all exports and introductions from the sea for CITES-listed species, and for all imports of Appendix-I species. We are highly committed to the issuance of scientifically based non-detriment findings based on biologically sound information. The United States agrees that the conservation of species subject to international trade would benefit greatly from increased attention by the CITES Parties to the bases for issuance of non-detriment findings. Towards that end, the United States worked closely with the IUCN—the World Conservation Union, which convened an international Workshop to Develop Guidance on the Making of Non-Detriment Findings, in Hong Kong in October 1998. The United States provided funding for the Workshop through the U.S. Department of State's annual funding to IUCN. Our Office of Scientific Authority was an invited speaker at the Workshop, which was the first-ever opportunity to develop an international consensus on the CITES scientific decision-making process. The Workshop was very productive, and produced a useful report, which may lead to a document to be presented to COP11 for further discussion. The CITES Secretariat and Animals and Plants Committees will be involved in this process as well. However, the United States does not believe that it would be useful to submit a resolution at this time, and prefers instead to work through the aforementioned process.

2. Captive Breeding

At COP10 in June 1997, the Parties discussed the issue of registration of facilities breeding Appendix-I species in captivity for commercial purposes, and whether there was a need to amend or revise Resolution Conf. 8.15. This issue pertains to implementation of Article VII of the CITES Treaty. At COP10, the Parties adopted Decision 10.77, which charged the Animals Committee to ''examine the effectiveness of and the need for the existing registration system for operations breeding specimens of Appendix-I species in captivity for commercial purposes.'' The same Decision also called upon the Animals Committee to consider the proposed definition of ''bred in captivity for commercial purposes.'' The issue was discussed at length at the 14th meeting of the CITES Animals Committee held in Caracas, Venezuela, in June 1997. The Animals Committee meeting participants agreed by consensus to a number of elements of any revision of Conf. 8.15 pertaining to the registration of facilities. At that meeting, the Chair of the Committee appointed a Working Group to examine Resolution Conf. 8.15 and draft a revised resolution from recommendations agreed upon at the 14th Meeting. Germany was asked to chair this Working Group and the United States was asked to participate. The Working Group was asked to report back to the 15th meeting of the Animals Committee. The Chair of this Working Group has circulated drafts to Working Group members for comments. The U.S. Government, represented by the U.S. Fish and Wildlife Service's Office of Management Authority and Office of Scientific Authority, has participated actively in an exchange of letters with the Working Group Chair expressing U.S. views on this topic. The U.S. comments on this issue have focused on practical solutions to problems related to the registration of commercial breeding operations, including streamlining the process when feasible, allowing for and encouraging range state consultation, and defining what breeding for commercial purposes is, while at the same time supporting the consensus views of the Animals Committee meeting participants (as expressed in Venezuela in June 1997). The Chair of the Working Group has provided a draft resolution, based on comments received from the Working Group, to the CITES Secretariat. The Secretariat has requested additional comments that it will consider in preparing a document to be discussed at the 15th meeting of the CITES Animals Committee to be held in Madagascar in July 1999. The Animals Committee intends to submit a draft revision of Resolution Conf. 8.15 for discussion by the Parties at COP11. The United States intends to continue to participate in discussions of this issue and, if acceptable progress is made, expects to support of the results of the discussion.

3. Definition of the Term ''Hunting Trophy''

The Center for International Environmental Law submitted comments that provided a suggested definition of ''sport-hunted trophy'' and recommended that the United States submit a resolution to amend Resolution Conf. 2.11 (Rev.) on Trade in Hunting Trophies of Species Listed in Appendix I. Several resolutions (Conf. 2.11 (Rev.), Conf. 10.14, and Conf. 10.15) and annotations to the Appendices (i.e., specified populations of southern white rhinoceros and African elephant) refer to hunting trophies without defining that term. This creates implementation problems and opens the possibility of trade in hunting trophies of Appendix-I and Appendix-II species for primarily commercial purposes. We agree that a definition would assist Parties in implementing the CITES Treaty. However, the United States is currently undecided on whether to develop such a resolution for COP11. We believe that this issue warrants further discussion and we welcome draft language or comments.

4. Possible Illegal Trade in Appendix-I Southeast Asian Freshwater Turtles for the East Asian Food Market

Reports from U.S. scientists working and traveling in Asia suggest that there is a very large international trade in live freshwater turtles for East Asian food markets. International reports also document Southeast Asian government interceptions of very large shipments of protected or regulated live freshwater turtles, without the appropriate documentation, being exported to supply this market. Since many of the turtles reported in these markets and in trade are believed to be CITES Appendix-I and Appendix-II species, we are seeking public comment on options within CITES to review this situation and consult with range and consuming countries on this issue.

5. Establishment of a Neutral Parliamentarian and Adoption of a Guide to the Rules of Procedure

We received comments from two organizations concerning procedures for conducting COPs. The Center for International Environmental Law submitted a draft Guide to the Rules of Procedure and draft text for a resolution that would establish a neutral parliamentarian to assist in interpreting the Rules of Procedure at COPs. Safari Club International wrote in support of continuing the option of voting by secret ballot at COPs.

The United States agrees that CITES would be best served if the Rules of Procedure were applied consistently at COPs. However, we believe that it is the responsibility of the CITES Secretariat to function at COPs as a neutral adviser to the Chairs of the Plenary, Committee I, and Committee II regarding the Rules of Procedure. The United States feels

that establishing a parliamentarian is unnecessary. Establishing a neutral parliamentarian would require amending the Rules of Procedure, which cannot be done by resolution. The appropriate venue for amending the Rules of Procedure is in Plenary session when the Parties consider adoption of the Rules as one of the first orders of business at a COP.

CITES Notification to the Parties No. 1998/18 asked the Parties to submit to the Secretariat comments and suggestions on improving practical and procedural arrangements for COPs. In written comments submitted to the Secretariat in response to Notification No. 1998/18, the United States suggested actions that the Secretariat could take to dispel some of the confusion evident at COP10, including briefing or training the COP Chairs prior to commencement of a COP, and preparing a Guide to the Rules of Procedure with the assistance of the United Nations Office of Legal Counsel.

With regard to secret ballots, the United States feels that their excessive use at COP10 precluded meaningful debate on many issues and did not foster transparency in the decision-making process. The United States prefers that, with the exception of the vote for the host country of the next meeting, secret ballots be eliminated at CITES meetings or made more difficult to obtain.

The United States believes that the best strategy for addressing these and other procedural issues is for the Secretariat to review all the comments submitted in response to CITES Notification No. 1998/18, including those submitted by the United States, and to take these comments into consideration in its preparations for COP11. The Secretariat intends to present a document on this issue for discussion at the 42nd meeting of the Standing Committee in Lisbon, Portugal, in September 1999. This document will discuss the intention of the Secretariat to review and, where appropriate, revise practical and procedural arrangements for future COPs. The United States will review the Secretariat's recommendations, taking into account discussions of the document at the Standing Committee meeting, and will decide whether to support the Secretariat's recommendations or consider raising procedural issues on its own under the COP11 ''Rules of Procedure'' agenda item.

6. Reaffirmation of the Preamble to CITES

We received comments from the International Wildlife Coalition recommending that the United States submit a resolution to reaffirm the Preamble to the CITES text. They noted in their comments that the Study of the Effectiveness of the Convention, adopted at COP10, showed that a majority of the Parties believe CITES to be the best and most flexible instrument available for protecting species from over-exploitation in international trade. The International Wildlife Coalition also noted that reaffirming the CITES Preamble would assure the world that the Parties remain committed to the goals of CITES.

Recognizing that the CITES Effectiveness Study has already shown that the Parties believe CITES to be the best and most flexible instrument available for protecting species from over-exploitation through international trade, the United States does not believe it is necessary to submit a resolution to reaffirm the Preamble at this time. It would be inconsistent with international law to submit or adopt such a resolution.

7. Amend the CITES Preamble to Invite Participation of Religious Environmental Leaders and Organizations

The Institute for Conservation Education and Development of Antioch University Southern California submitted to us a draft agenda item calling for an amendment to the CITES Preamble. The proposing organization would like to see the CITES Preamble amended to invite the participation of religious environmental groups as well as encourage the development of religious and spiritual alternatives to exploitation of endangered wildlife. The 1997 Study of the Effectiveness of the Convention demonstrated that the majority of the CITES Parties believe that the text of the Convention should not be amended, and to do so would be logistically difficult and expensive. The United States concurs with this view.

However, the Convention currently provides for non-governmental observer participation at meetings of the Conference of the Parties, and all technically qualified non-governmental groups are invited to participate as approved observers. We encourage all interested environmental groups, including those with religious approaches to conservation, to pursue this avenue to participate in COPs.

8. Clarification of the Difference Between CITES Decisions and Resolutions

We received comments from the Center for International Environmental Law and the Species Survival Network recommending submission of a draft resolution clarifying the distinction between CITES resolutions and decisions. Some Parties and observers consider CITES resolutions to be statements of policy that should be implemented by Parties until repealed. Some Parties and observers consider CITES decisions to be limited to statements directed towards a committee or institution for the completion of a specific task. There is confusion as to whether resolutions are of greater importance than decisions and whether decisions are only effective for a specific time period, such as from one COP to the next.

The United States agrees that this is an issue that needs clarification, but does not believe that a new resolution is necessary at this time. We feel that this matter can be successfully resolved during open discussions in the Plenary sessions, when the Parties are voting to adopt resolutions and decisions. We also believe that the Secretariat may be developing a document clarifying the difference between resolutions and decisions. We welcome comments and information on this issue.

9. Prohibit the Down-listing of any Whale Stocks from Appendix I Until a Standardized, Externally Verified DNA Testing Protocol is Adopted

We received comments from Earthtrust recommending that the United States propose a resolution prohibiting the transfer of any whale stocks from Appendix I to Appendix II until a standardized, externally verified DNA testing protocol is adopted.

The United States has actively participated in efforts aimed at developing protocols for and coordination of activities concerning DNA testing, in both the IWC and CITES fora, and strongly supports such work. However, we believe that a requirement for such a testing protocol is inconsistent with the CITES listing criteria as they are currently written in that they contain no such requirement. The United States notes that the listing criteria will be reviewed and, perhaps, proposed for revision in preparation for COP12. The Animals Committee will devise a process and schedule for this review at its 15th Meeting in July 1999 in Madagascar. This issue could be discussed at that time.

There are a number of reasons that the United States does not support transfer of whale stocks to Appendix II, which go beyond the issue of DNA testing protocols. We continue to believe that it is inappropriate to consider these species for downlisting until the IWC completes the revision of its

management regime to bring all whaling under effective IWC control. Therefore, although the United States is opposed to the transfer of whale stocks to Appendix II, it nonetheless does not intend to propose a resolution prohibiting the downlisting of whale stocks from Appendix I until a standardized, externally verified DNA testing protocol is adopted.

10. Periodic Review of Reservations, Particularly for Those Countries that are not Range States for the Species in Question

The Species Survival Network proposed that the United States submit a resolution calling on Parties to periodically review any species reservations that they have entered. The Species Survival Network submitted draft resolution text, which recommended that Parties which are not range states that have reservations should conduct these periodic reviews. They proposed that a resolution should instruct the Animals and Plants Committees to review the conservation merit or harm of existing reservations and make recommendations to the Parties that have entered them.

We support the idea that Parties should periodically review and refine their CITES implementation procedures, particularly with respect to unilateral actions permitted under the Convention, such as species reservations or Appendix-III listings. The United States concurs that resolutions adopted by the Conference of the Parties are powerful tools that should be used where they are likely to accomplish the most for species conservation and management. We believe that this suggestion springs from positive motivations to advance the conservation goals of CITES. However, if adopted, it would most likely discourage significant species conservation and management benefits on the part of those Parties that have acceded to CITES requirements for most listed species subject to specific species reservations.

We note that Parties have a right to enter reservations. Reservations to the listing of species in Appendices I, II, or III may be entered by any Party, in accordance with the provisions of Articles XV, XVI, and XXIII of the CITES Treaty. For Appendix-I and Appendix-II species, those reservations may only be entered when a country accedes to the Treaty, or within 90 days of the species' inclusion in that Appendix. Under the requirements of the CITES Treaty, until a country withdraws its reservation it is to be treated as non-Party to the Convention with respect to trade in the particular species. However, the United States agrees that commercial trade in an Appendix-I species under a reservation has the significant potential to undermine the effectiveness of the Convention. The United States has no reservations to CITES listings.

There have been recent cases where the review of reservations to Appendix-I listings have appropriately resulted in removal of those reservations by reserving Parties that are not range states for the species. For example, Japan had a reservation until 1992 on the listing of the hawksbill sea turtle (*Eretmochelys imbricata*). Trade that was legal under the Treaty continued in that highly endangered species, which the United States felt was undermining the effectiveness of the Convention and putting the species at further risk of extinction. After review and evaluation, the government of Japan withdrew that reservation (and informed the United States that it would phase out the domestic use of bekko, or hawksbill sea turtle shell). More recently, Switzerland evaluated its reservation to the Appendix-I listing of the Tibetan antelope (*Pantholops hodgsonii*), and based on that review, removed its reservation. Therefore, the United States believes that reviews of any reservations in force, particularly for Appendix-I species, would be very useful, especially when the reserving Parties conduct such reviews in consultation with range countries.

However, at this time the United States does not propose to submit a draft resolution recommending such review. Rather, we propose to discuss this matter at COP11 to determine if it would be advisable to ask the Animals and Plants Committees to coordinate such a review. We invite your comments on such a review and on this process.

11. The Transfer of a Species to Appendix I May Not Be Challenged for at Least Two Meetings of the Conference of the Parties

The International Wildlife Coalition proposed that the United States submit a resolution recommending to the Parties that any transfer of a species to Appendix I not be challenged for at least two COPs. The United States does not propose to submit such a resolution, for several reasons. First, such a recommendation would necessitate an amendment to Resolution Conf. 9.24 (''Criteria for Amendment of Appendices I and II''). The Parties have already recommended in Resolution Conf. 9.24 ''that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions notes, and guidelines and their applicability to different groups of organisms.'' We therefore prefer that the listing criteria in Conf. 9.24, which have only been used for one COP (COP10), be used to their fullest at the upcoming COP (COP11) before making or recommending any further modifications to the criteria. Between COP11 and COP12, the Parties will put into place a process for further review. This recommendation of the International Wildlife Coalition can be evaluated at that time. Secondly, Conf. 9.24 also says ''any species included in Appendix I for which sufficient data are available to demonstrate that it does not meet the criteria listed in Annex 1 should be transferred to Appendix II only in accordance with the relevant precautionary measures listed in Annex 4.'' We are hopeful that the precautionary measures in Annex 4 provide ample safeguards that species will not be transferred from Appendix I to II with undue haste. We agree that one interval between meetings of the Conference of the Parties may not be sufficient time to ensure the recovery of a species that was just included in Appendix I. However, the United States does not propose to submit a resolution on this issue for consideration at COP11. We do intend to actively participate in the review of the listing criteria in Conf. 9.24, which will take place between COP11 and COP12. The United States was an active participant in all scientific and technical discussions and Working Groups that led to the development of Conf. 9.24, and intends to fully participate in the proposed review of the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms.

12. Definition and Interpretation of ''Sustainable Use'

The International Wildlife Coalition proposed that the United States submit a resolution recommending that the Parties develop a definition and interpretation of the term ''sustainable use.'' We agree that the term is used extensively in CITES-related documents, although it is not referred to in the CITES Treaty. We also agree that the term may be over-used, and a definition and clear understanding of the concept would be beneficial. The concept of sustainable use of wild flora and fauna is particularly relevant in a CITES context to the issuance of non-detriment findings, particularly for Appendix-II species subject to

commercial trade. However, the United States does not propose to submit a resolution asking that CITES undertake such a definitional task, for the reasons discussed below.

From a U.S. perspective, we have already defined the term. We have defined sustainable use in regulations implementing the Wild Bird Conservation Act (WBCA). The WBCA complements CITES, and we view the definition of sustainable use in the WBCA implementing regulations as an appropriate basis for all CITES non-detriment findings. That definition states: ''*Sustainable use* means the use of a species in a manner and at a level such that populations of the species are maintained at biologically viable levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.'' We believe that the above definition of sustainable use is appropriate for the determination of whether or not an export is non-detrimental.

We note that IUCN recently undertook a process to define sustainable utilization, but has not been able to reach consensus or complete the task. Therefore, we believe that it would be more fruitful for the CITES Parties to work to develop a consensus understanding of what is meant by non-detriment and how non-detriment findings should be issued, in the context of sustainable utilization.

To effectively define non-detriment, in the context of sustainable utilization of wildlife, we prefer to work within the context of the IUCN-sponsored process discussed above (under ''*Preparation of Standards for Making Non-detriment Findings*''). We believe that the CITES Secretariat will be sponsoring a follow-up workshop in late 1999, where sustainable use and non-detriment will be discussed, with submission of a product to the Parties at COP11. We will recommend the inclusion of a definition or at least discussion of sustainable utilization in any final CITES product that arises from this process. In its comments to us, the International Wildlife Coalition submitted a document titled ''Criteria for Assessing the Sustainability of Trade in Wild Fauna and Flora.'' These criteria provide useful information, and we will make sure that they are considered during any IUCN or CITES-sponsored process on this issue.

13. Criteria for Assessment of Export Quotas for Trophies of Appendix-I Species

The International Wildlife Coalition proposed that the United States submit a resolution outlining the information that should be submitted by any Party that submits a proposal for a trophy-hunting quota for an Appendix-I species, along with standards for the assessment of those proposed quotas by the Conference of the Parties. The United States agrees that this recommendation raises some important issues that should be discussed further by the CITES Parties, but does not propose to address it through a resolution at this time.

There is a significant difference between transfer of a species from Appendix I to II with a quota, that might include sport-hunted trophy specimens, and quotas for trophy specimens of species included in Appendix I. Parties may issue Appendix-I import and export permits for sport-hunted trophies, as long as all of the requirements of the Treaty are satisfied, including but not limited to those in Article III. Parties that wish to export sport-hunted trophies of native species are not obligated to have their quota approved by the Conference of the Parties. However, many countries have chosen to submit their trophy-hunting quotas to the Conference of the Parties for approval, to help expedite the findings required by the importing country (under Article III). For example, trophy-hunting quotas have been approved by the Conference of the Parties through a resolution process for the leopard (*Panthera pardus*) from 11 countries, and for the markhor (*Capra falconeri*) from Pakistan. Any quotas that are an integral part of a species listing, or are adopted by resolution of the Conference of the Parties, require the full evaluation of the Parties at a COP, and should of course be fully evaluated by Parties' scientific authorities.

The United States agrees with the commenter on this issue that clear guidelines to the Parties as to what should be submitted by the proponent of such a quota would be very helpful, and should mirror the types of information required for a listing proposal, pursuant to Resolution Conf. 9.24. The United States does not believe that a resolution should be submitted to COP11 with draft guidelines, but rather COP11 could direct a process for review and possible adoption at COP12. We believe that the COP should direct this issue to the Animals Committee for further evaluation, for possible submission of guidelines to the Conference of the Parties at COP12. We invite your views on this approach, and propose to discuss this issue with other attendees at the upcoming meeting of the Animals Committee.

II. Recommendations for Species Proposals for the United States To Consider Submitting at COP11

We published a notice in the **Federal Register** on January 30, 1998 (63 FR 4613), in which we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. In addition to possible species proposals that we have been developing on our own, we received recommendations from the public for possible proposals for 58 different taxa (at the species, genus, or family levels). We have undertaken extensive evaluations of the available trade and biological information on all of these taxa. Even if all of these species qualified for listing or transfer between the Appendices (uplisting, downlisting, or removal from the Appendices), we would not submit all of them for consideration at COP11, due to workload and time factors. Our first task was to determine if the requested action qualified under the CITES listing criteria (in Resolution Conf. 9.24). If a proposal qualifies under the listing criteria, we then must decide whether to consider its submission or not. We therefore must look at the conservation priorities associated with these different proposals, as well as the views and scientific assessment of the range countries, when the species is not native to the United States.

Below, we have provided the potential actions that the United States is considering taking at COP11 with regard to all of the species proposals recommended by the public. We have also provided the potential actions that the United States is considering taking at COP11 with regard to possible species proposals we have been developing on our own.

A. What species proposals is the United States considering submitting for consideration at COP11?

The United States is considering the submission of the following proposals. We welcome your comments and, in particular, any biological information on these species. For each species, more detailed information is on file in the Office of Scientific Authority than is presented in the summary below. For some of the species below, particularly those not native to the United States, additional consultation with range

countries and others is proceeding (see discussion), and a final decision is pending the outcome of those consultations. Several letters have already been sent to range countries asking for additional biological information on the species or taxon in question and several responses have already been received.

Plants

1. White wicky (*Kalmia cuneata*)

White wicky, an endemic plant of the North and South Carolina coastal plain, has been listed in CITES Appendix II since 1983. The Office of Scientific Authority (OSA) recommends that the species be deleted from the CITES Appendices. The recent OSA review of CITES-listed plant taxa native to the United States, as part of the ongoing Plants Committee taxa review process, determined that White wicky has not been in international trade in recent years, and that the main threats to the species are habitat loss due to land development, conversion to agriculture or production forestry, and fire suppression. For these reasons, the United States is considering a proposal to delete this species from Appendix II.

2. Holywood lignum-vitae (*Guaiacum sanctum*)

Holywood lignum-vitae, a valuable timber species widely distributed in the Florida Keys, West Indies, and Central America, has been listed in Appendix II since 1975. OSA recommends that the species be transferred to Appendix I. The recent OSA status review of CITES-listed plant taxa native to the United States determined that the species has been depleted through deforestation and felling for timber, such that it has now been extirpated or is extremely rare on most of the Caribbean islands. Remaining populations in Central America and Florida are confined to restricted areas and are still threatened by habitat loss and over-exploitation. The taxon is considered endangered by the IUCN. For these reasons, the United States is considering a proposal to transfer this species to CITES Appendix I.

Invertebrates

3. Eastern hemisphere tarantulas (*Poecilotheria* spp.)

The eleven known species of eastern hemisphere tarantulas occur only in the forests of southern India and Sri Lanka. None of the species is currently listed under CITES, and none has previously been proposed for listing. The entire genus *Poecilotheria* was recommended for listing in Appendix II by R.C. West of the Royal British Columbia Museum. With the listing of western hemisphere tarantulas (Brachypelma spp.) in CITES Appendix II in 1994, the commercial pet trade shifted to eastern hemisphere tarantulas. The natural reproductive potential of these species is relatively low and cannot keep up with current demand for the pet trade. In addition, captive propagation of these species is rarely successful and is unlikely to provide enough individuals to meet demand. Finally, the native forest habitat of these species is declining due to deforestation. For these reasons, the United States is considering either (1) submitting a proposal to list all eastern hemisphere tarantulas (i.e., the genus *Poecilotheria*) in CITES Appendix II, or (2) co-sponsoring or supporting a range country's proposal for listing all eastern hemisphere tarantulas in Appendix II. We have consulted with India and Sri Lanka with regard to this proposal and have already received useful comments from Sri Lanka.

Fish

4. Seahorses (*Hippocampus* spp.)

The Humane Society of the United States and the International Wildlife Coalition recommended that the United States propose seahorses for listing in Appendix II. There are approximately 35 species of *Hippocampus*. All species are marine; they live among sea grasses, mangroves, and coral reefs worldwide, between 45° north and south latitude, with most species in the western Atlantic or Indo-Pacific regions. Seahorses are characterized by sparse distributions, low mobility, small home ranges, low natural adult mortality, low fecundity, long parental care, and mate fidelity. They range in size from a 10–20 mm Australian seahorse to a 300 mm Pacific seahorse. Life history strategies of seahorses make populations susceptible to over-exploitation.

A rapidly growing trade in *Hippocampus* spp. for traditional Chinese medicine and its derivatives, aquarium pets, souvenirs, and curios is resulting in over-exploitation of wild populations. It is estimated that at least 20 million seahorses are captured annually from the wild. At least 20 nations worldwide are exporting seahorses; the largest known exporters are India, Indonesia, the Philippines, Thailand, and Vietnam, with annual exports for each country estimated at 3–15 tons of dried seahorses. The number of seahorses landed in the United States (Florida) has steadily increased since records began in 1992, with more than 112,000 seahorses taken in 1994.

The largest importers for dried seahorses are China, Hong Kong, and Taiwan, with an estimated annual consumption of 45 tons (16 million seahorses) in Asia. Seahorses are sold as whole, dried animals for preparation into tonics. There has been a recent increase in numbers of seahorses used in prepared medicines (pills) in Asia, possibly in response to decreases in size of individuals obtained in fisheries catch. Seahorses are also used in traditional medicines in Indonesia, the Philippines, and India, and at least eight seahorse medicines are now sold in North America. Dried seahorses are also utilized as curios with a high availability in beach resorts and shell shops around the world.

Live specimens for aquarium pets are exported primarily to North America, Europe, Japan, and Taiwan. Five species are preferred for aquaria, including four Indo-Pacific species in the *Hippocampus histrix* complex and *H. kuda* complex, and one North American species, *H. erectus*. Virtually all aquarium seahorses come from the wild. Seahorses are highly unsuitable aquarium fishes, and few survive in captivity.

The main threats to seahorse populations are widespread over-fishing and habitat loss. Seahorse populations in Indo-Pacific countries are estimated to have declined by 25–75% over the last five years. Size of individuals taken has also declined concomitant with an increased take of immature males in fisheries catch, which may have grave implications for reproductive potential. The United States believes that these species qualify for inclusion in Appendix II. Considering the substantial threats to these species and their importance in international wildlife trade, the United States is considering *Hippocampus* spp. for inclusion in Appendix II and seeks additional information about the biological or trade status of these species. We intend to consult with all CITES Parties, through the Secretariat, on the merits of such a proposal.

Reptiles and Amphibians

5. Timber rattlesnake (*Crotalus horridus*)

The timber rattlesnake occurs in 27 States in the northeastern, southeastern, and Midwestern United States. The species was proposed for listing in CITES Appendix II by the United States at COP10, but that proposal was withdrawn. A number of organizations, including the International Affairs Committee of the International Association of Fish and Wildlife

Agencies (IAFWA), the Humane Society of the United States, and the International Wildlife Coalition, have recommended that the timber rattlesnake be listed in Appendix II at COP11. Research, long-term monitoring, and anecdotal observations indicate that timber rattlesnake populations are declining throughout the majority of the species' range. In most States only relict populations remain. Large local populations are considered to be rare. Timber rattlesnakes are threatened by ongoing habitat degradation and loss, highway mortality, rattlesnake roundups, collection for domestic and international trade, and intentional killing. The numerous threats to the timber rattlesnake are exacerbated by the species' low reproductive potential. Females in the northeastern United States often do not breed until eight or nine years of age, and may produce young only every two or three years. For these reasons, the United States is considering submitting a proposal to list the timber rattlesnake in CITES Appendix II.

6. Spotted turtle (*Clemmys guttata*)

The spotted turtle occurs in southern Ontario, Canada, and in northeastern, upper Midwestern, mid-Atlantic, and southeastern States in the United States. The species is not currently listed under CITES, and has not previously been proposed for CITES listing. OSA and the International Affairs Committee of IAFWA have recommended that the species be listed in CITES Appendix II. The primary threats to the spotted turtle are over-collection, habitat fragmentation, alteration and destruction, and road mortality. Habitat alterations include grazing impacts, draining and filling of wetlands, artificial control of water levels in wetlands, pollution, and development. The quantity and quality of spotted turtle habitat in southern Maine, southeastern New Hampshire, and many other parts of the species' range have been reduced by human population growth and associated development over the past two decades. The spotted turtle is listed as endangered, threatened, or a species of special concern at the State/provincial level throughout its range. Illegal commercial collecting and incidental collection by hobbyists are depleting populations in many areas. Substantial numbers of spotted turtles were exported from the United States in 1995 through 1997. For these reasons, the United States is considering submitting a proposal to list the spotted turtle in CITES Appendix II.

7. Sonoran green toad (*Bufo retiformis*)

The Sonoran green toad, limited to portions of Arizona and Sonora, Mexico, has been included in CITES Appendix II since 1975. The International Affairs Committee of the IAFWA has recommended that the Sonoran green toad be deleted from Appendix II; the Humane Society of the United States has recommended that the species be retained in Appendix II. Although this species has a limited geographic distribution, its population status within that distribution is considered to be stable. Much of the distribution falls within protected areas such as national monuments and military ranges. There is little or no documented international trade in this species, and no other significant threats to the species have been identified. For these reasons, the United States is considering a proposal to delete this species from Appendix II.

Birds

8. Gyrfalcon (*Falco rusticolus*)

The gyrfalcon is circumpolar in distribution. The North American population occurs in both the United States (primarily Alaska) and Canada (northern British Columbia, Labrador, Northwest Territories, Quebec, and Yukon Territory). The gyrfalcon was listed in Appendix I in 1975. The North American gyrfalcon population was transferred to Appendix II in 1981 (the third meeting of the Conference of the Parties), but was returned to Appendix I in 1985 (the fifth meeting of the Conference of the Parties) because of concern over illegal trade. At present the North American gyrfalcon population occurs over a large area of wilderness habitat, demonstrates density and productivity levels characteristic of the species, and has remained stable since surveys began over 20 years ago. Evidence indicates that the North American gyrfalcon population has not declined due to legal or illegal international trade since 1981. For these reasons, the United States is considering a proposal to transfer the North American gyrfalcon population from Appendix I to Appendix II. To allay concerns expressed by some European countries regarding potential illegal trade in the species, particularly of the European population, the United States is considering whether to include an annotation to the downlisting, with a zero quota on commercial trade for specimens removed from the wild.

Mammals

9. Steller's sea lion (*Eumetopias jubatus*)

The western stock of Steller's sea lions ranges from about Prince William Sound, Alaska, west through the Gulf of Alaska and the Aleutian Islands to Russia and Japan. The eastern stock extends from 144° W, through southeast Alaska and south to central California. The global population was estimated at over 300,000 Steller's sea lions in the late 1970s. Declines in abundance began in the eastern Aleutian Islands in the early 1970s, and by 1985 the declines had spread throughout the Aleutian Islands and eastward into the Gulf of Alaska, at least to the Kenai Peninsula. The Alaskan population, which numbered close to 157,000 non-pups in the 1970s, had declined to about 64,000 by 1989, a decline of almost 60%. The Alaskan population continues to decline. The species was listed as threatened under the U.S. Endangered Species Act in November 1990. Since then, two stocks, an eastern (stable population trends) and western (declining trends) have been identified. In 1997, the status of the western stock of Steller's sea lions was changed to endangered.

The magnitude of the decline in such a short time is startling. The rookery at Walrus Island in the Bering Sea once was the birthplace of over 2,800 pups annually; in 1991 only 50 pups were counted. Once Marmot Island near Kodiak Island was the largest Steller's sea lion rookery in the world. In 1979, 6,741 pups were born there, but only 804 pups were observed in 1994. Similar declines have occurred in both adult and pup counts in most of Alaska and Russia. From 1955 to 1968, the Steller's sea lion population in the Kuril Islands, Russia, was stable at about 15,000–20,000 individuals, but it declined steadily since that time to 5,000 in 1989.

It is presumed that international trade occurs in this species, particularly within the western North Pacific Ocean part of the species' range, based on the presence of Steller's sea lion meat available for purchase at shops at international airports in Japan. The actual level of take from the wild is unknown, but a harvest by the Japanese has been estimated based on interviews with local authorities. During 1991–1993, an average of 91 sea lions were killed per year; a high of 247 sea lions were killed per year during 1981–1985. Struck and lost rates are much higher (high in 1977–1980 of 559 sea lions struck and lost). This harvest comes from sea lions inhabiting the west coast

of Asia with breeding rookeries found on islands and coastal areas of Russia, the Kuril Islands, the Okhotsk Sea, the Commander Islands, and the Kamchatka Peninsula. Sea lions marked in the Kuril Islands have been sighted in Japanese waters.

Steller's sea lions are considered by some in Japan to conflict with commercial fish harvests and are therefore subject to a directed take to reduce or eliminate damage to gear and depredation on fish stocks. This take is in the form of hunters commissioned by the government to shoot sea lions. These takes are within Japanese territorial waters. However, some of the meat is recovered and processed into a canned product that is then sold, primarily as a novelty to tourists. A significant portion of the sea lions that are killed incidental to fisheries in Japan may be from the Kuril Islands stock. The United States considers this species to meet the criteria for inclusion in Appendix I. The United States is considering submitting a proposal to add the species to Appendix I and seeks further information on its biological and trade status.

10. Bottlenose dolphin, Black Sea/Sea of Azov population (*Tursiops truncatus*)

The Humane Society of the United States recommended that the United States propose this population of the bottlenose dolphin for transfer from Appendix II to Appendix I. The subspecies *Tursiops truncatus ponticus* is endemic to the Black Sea and isolated from other populations of bottlenose dolphins in the Mediterranean and other waters. The species is distributed worldwide in temperate and tropical waters. It is believed that overall abundance of dolphins in the Black Sea has declined greatly due to severe over-exploitation up into the 1980s, for human consumption and for industrial products. A very large purse-seine fishery conducted by the former Soviet Union, Bulgaria, and Romania collapsed in the 1960s due to over-harvesting, and large takes by rifle continued by Turkey until a ban in 1983 and possibly thereafter. The proportions of the three endemic small cetaceans (bottlenose dolphin, harbor porpoise *Phocoena phocoena relicta,* and long-beaked common dolphin *Delphinus delphis ponticus*) in these catches and their relative degrees of depletion are not known with confidence. The size of the present population of bottlenose dolphins is unknown, and no estimates exist of sustainable levels of take. The habitat is thought to be highly degraded and declining in quality due to contamination by sewage and industrial effluents, algal blooms, decrease in prey species due to over-fishing, and by-catch in fisheries.

There has been a substantial international commercial trade in bottlenose dolphins from the Black Sea. Exporters in the Ukraine, Russia, and Georgia have been able to obtain CITES permits for export of bottlenose dolphins to several countries, including Cyprus, Malta, Turkey, Israel, Argentina, and Hungary, by stating that the purpose was to establish breeding colonies for conservation and research, but in all cases the actual purpose was commercial. The majority of the animals died during or shortly after transport; there were also some cases of illegal importation. Only one captive birth (in Israel) has occurred, and we are not aware of any scientific research papers that have resulted from the trade. The United States considers this population of bottlenose dolphin to meet the criteria for inclusion in Appendix I.

B. What species proposals is the United States considering submitting for consideration at COP11, pending additional information?

The United States is still undecided on whether to submit the following proposals. We welcome your comments, and especially any biological and trade information on these species. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below. For potential proposals, we delineate what additional information we are seeking or have sought to assist us in making our decision.

Fish

1. Great white shark (*Carcharodon carcharias*)

We received a recommendation from the Humane Society of Australia and the Humane Society of the United States to propose the great white shark (*Carcharodon carcharias*) for inclusion in Appendix I. The cosmopolitan great white shark is a coastal and offshore inhabitant of continental and insular shelves. It is distributed throughout temperate and subtropical oceans of the northern and southern hemispheres, and occasionally, seasonally strays into tropical waters and colder temperate waters.

In North American waters, the great white shark is occasionally found in the Western North Atlantic from Newfoundland to Florida, with the East Coast as a center of summer distribution around the New York Bight. It has been reported in the Bahamas, Cuba, northern Gulf of Mexico, Brazil, and Argentina. In the Eastern Pacific it occurs from the Gulf of Alaska to the Gulf of California and from Panama to Chile. It has a wide but sporadic distribution in the rest of the world's temperate oceans.

Great white sharks are exploited worldwide by incidental fisheries, as a by-catch of longline fishing and gillnet fishing. In the past, occasional captures have been routinely marketed for the curio trade, with jaws and individual teeth across the entire size and maturity range commanding high prices in international markets. There is a lesser market for flesh and fins. The flesh may be utilized for pet or human consumption. Shark fins can command a price as high as US$25.50/kg. Great white sharks have also been used for leather and a source for squalene oil from the liver for cosmetics. Single teeth in the United States can sell for as high as $30 to $80. Prepared jaws may command over $4,000 in collector's circles.

Information from worldwide commercial catches, recreational catches, and captures in beach-meshing operations suggests that numbers are declining. Sources of mortality of the great white shark result from commercial by-catch from large-scale longlining and gillnetting operations. Mortality also occurs from entanglement in fish traps, pound nets, and coastal weir nets, and in protective beach-meshing operations. Little data have been recorded on these captures. However, because of its rarity and the evident decline in catches, the United States considers this species to meet the biological criteria for inclusion in Appendix I.

Since 1993, the great white shark has been managed in the U.S. Atlantic and Gulf of Mexico as part of the Large Coastal Shark quota by the Fishery Management Plan for Sharks of the Atlantic Ocean. It received individual protection on April 2, 1997, when the National Marine Fisheries Service published a final rule that prohibited all directed fishing for the great white shark. Sharks are also protected in the States of California and Florida, and in the Maldives Islands and Namibia. The United States is considering the proposal of the great white shark for inclusion in Appendix I and seeks additional information about the species, particularly regarding its abundance and conservation status.

2. Whale shark (*Rhincodon typus*)

The whale shark is a pantropical species occurring in tropical and warm-temperate waters of the Atlantic, Pacific, and Indian Oceans, most often

encountered in a band around the equator extending to roughly 30 °N and 35 °S. It is basically pelagic and can be encountered in very deep water far from land. However, shallow waters near the mouths of some rivers and estuaries could constitute feeding or breeding/birthing grounds; whale sharks gather there seasonally.

The whale shark is highly migratory. Movements of thousands of kilometers over periods of weeks or months have been recorded through satellite tracking in the eastern Pacific and Southeast Asia. One shark that had been satellite-tagged in the Mindanao Sea in the inner Philippines traveled over 3,000 km to the EEZ of Vietnam in two months. Another tagged on the coast of Sabah in Malaysia traveled offshore and then returned to coastal Malaysian waters over a 2,152-km route. Several sharks satellite-tagged in the Gulf of California, Mexico, moved over 12,000 km southeast into international waters and the waters offshore of South Pacific nations.

The species is rare, although little is known about its population size. Local seasonal populations have declined drastically in some areas, and fishing effort and price have greatly increased. In the Philippines, significant declines in catch-per-unit-of-effort in two traditional whale-shark fishing regions (Bohol and Misamis Occidental) have led to attempts to develop new fishing areas. Similar declines, possibly caused by over-exploitation, have been noted in Taiwan and the Maldives. It is not known to what degree fishing in one area affects populations in other areas, although the fact that at least some of the sharks migrate long distances within ocean basins suggests that the effects may not be purely local. The United States considers this species to meet the criteria for inclusion in Appendix II.

Sharks in general are more vulnerable to exploitation than are most other fishes, because of their longevity, delayed maturation, and relatively low fecundity. International trade in whale shark products takes place in Southeast Asia. The whale shark is fished for its fins and meat throughout Asia (India, Pakistan, China, Indonesia, the Philippines, Taiwan, Japan, the Maldives, and elsewhere), in some cases despite legal protection (e.g., in the Philippines). In very recent years, a market for fresh whale shark meat has developed rapidly in Taiwan, supplied by the Philippines. Ecotourism industries based on viewing whale sharks now exist in Thailand, Australia, South Africa, and the Maldives, as well as the Philippines. The United States is considering proposing the whale shark for inclusion in Appendix II and seeks additional information about this species.

Amphibians and Reptiles

3. Mantella frogs (*Mantella* spp.)

Mantella frogs occur only on the island of Madagascar. Four species, *Mantella bernhardi, M. cowani, M. haraldmeieri,* and *M. viridis,* were proposed for listing in Appendix II at COP10. That proposal was withdrawn when Madagascar agreed to list the four species in Appendix III. However, to date this listing has not taken place. Thus, the Humane Society of the United States, the International Wildlife Coalition, and Friends of Animals have recommended that these four species be listed in Appendix II at COP11. These Mantella frogs have limited distributions because of limited habitat availability, and available habitat is continuing to decline due to deforestation. These species are known to be in international trade, and population declines have been documented at several locations following heavy collection for international trade. For these reasons, the United States is considering either (1) submitting a proposal to list these four *Mantella* species in CITES Appendix II or (2) co-sponsoring an Appendix II listing proposal with Madagascar. We have contacted Madagascar with regard to this proposal.

4. Southeast Asian box turtle (*Cuora amboinensis*) / Chinese three-striped box turtle (*Cuora trifasciata*)

The Southeast Asian box turtle occurs throughout much of Southeast Asia, including Indonesia, Malaysia, Brunei, Burma/Myanmar, the Philippines, Thailand, Vietnam, and probably Cambodia, Lao People's Democratic Republic, and Singapore. It has also been reported from Bangladesh and India. The Chinese three-striped box turtle has a much more limited range, occurring from northern Vietnam through southern China (including Hainan Island). Neither species is currently listed under CITES. Both the Humane Society of the United States and the International Wildlife Coalition have recommended that the Southeast Asian box turtle be listed in Appendix II, and the International Wildlife Coalition has also recommended that the Chinese three-striped box turtle be listed in Appendix II. The Southeast Asian box turtle has been exploited heavily for food throughout much of its range. The Chinese three-striped box turtle is in heavy demand for medicinal use and as a food item. Both species have been documented in international trade, which primarily involves the movement of turtles from source countries to China. The Chinese three-striped box turtle is also considered valuable in the pet trade in Europe and the United States. For these reasons, the United States is considering either (1) submitting a proposal to list these two *Cuora* species in CITES Appendix II or (2) co-sponsoring an Appendix-II listing proposal for the genus *Cuora.* We have consulted with CITES range countries (Bangladesh, Brunei, Cambodia, China, India, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and possible proponents with regard to these proposals. Comments have already been received from some range countries.

5. Parson's chameleon (*Chamaeleo parsonii parsonii*)

Parson's chameleon is endemic to the rainforests of eastern Madagascar. The species was listed in CITES Appendix II in 1977. The Chameleon Information Network has recommended that Parson's chameleon be transferred to Appendix I. The primary threats to this species are the continued loss of its rainforest habitat and exports for the live reptile trade. Parson's chameleons require dense forest cover, most of which has already been lost through deforestation. Parson's chameleons have been exported for the pet trade and as zoological specimens since 1988. Trade records from the World Conservation Monitoring Centre (WCMC) indicate that over 14,000 Parson's chameleons were exported from Madagascar from 1990 through 1997. Legal commercial exports were suspended in 1995, and relatively few captive offspring are produced. These two factors have served to drive up both the demand from hobbyists and the selling price of chameleons imported prior to the ban or born in captivity. In the event that trade resumes, Parson's chameleon would be placed under heavy pressure from collectors supplying exporters. For these reasons, the United States is considering a proposal to transfer Parson's chameleon from Appendix II to Appendix I. We have consulted with Madagascar with regard to this proposal.

C. What species proposals is the United States still undecided on, pending additional information and consultations?

The United States is still undecided on whether to submit the following proposals. We welcome your comments, especially any biological and trade information on these species. For each species, more detailed information is

available in the Office of Scientific Authority than is presented in the summary below. For each potential proposal, we delineate what additional information we are seeking or have sought to assist us in making our decision.

Plants

1. Bigleaf mahogany (Swietenia macrophylla)

The Rainforest Coalition, Friends of the Earth, and Defenders of Wildlife have requested that the United States propose bigleaf mahogany for inclusion in Appendix II. The United States is the largest importer of wood of this species, which occurs in range states from Mexico to Brazil and Bolivia. Brazil and Bolivia are the two largest exporters; the other 11 range states export far less. Bigleaf mahogany (from the Americas) was listed in Appendix III by Costa Rica in November 1995, including its saw-logs, sawn wood, and veneer sheets (i.e., other derivatives such as furniture are exempt from CITES requirements). Bolivia listed bigleaf mahogany in Appendix III in March 1998, and Brazil and Mexico took the same action in July 1998 and April 1999, respectively. Species listed in Appendix III can be traded commercially. Once a species is added to Appendix III, the countries that list the species are required to issue permits and ensure that specimens are legally acquired; non-listing range countries must issue certificates of origin; and importing countries are required to ensure that all shipments are accompanied by the appropriate CITES documents.

Proposals to include this species in Appendix II were submitted to the eighth meeting of the Conference of the Parties (COP8) by Costa Rica and the United States, to COP9 by the Netherlands, and to COP10 by Bolivia and the United States. At COP8, the proposal was withdrawn; at COP9 it gained 60 percent of the vote, short of the two-thirds majority needed for adoption. The COP10 proposal also received the majority of the votes, but did not obtain the required two-thirds majority. At COP10, Brazil offered to host a Mahogany Working Group meeting that would examine the conservation status of the species, including related forest policies and management, and international cooperation and trade, and make recommendations accordingly.

The Working Group met in Brasilia in June 1998. Attendees included seven range states, including the six largest (Brazil, Bolivia, Peru, Ecuador, Colombia, and Venezuela), the major importing countries, including the United States, the Food and Agriculture Organization of the United Nations (FAO), the International Tropical Timber Organization (ITTO), non-governmental organizations (NGOs), experts, and others. The group affirmed the utility of Appendix-III listings and the need for forest inventories. The group agreed to joint actions, which include evaluating the status of commercial timber species, technical and scientific cooperation for the species' sustained management and reproduction, and commercial and industrial cooperation, as well as supervision, control, and inspection of the products. The Amazon Cooperation Council affirmed the results of the Mahogany Working Group and passed a resolution calling for increased information sharing and coordination among Amazonian Cooperation Treaty (ACT) countries to preserve commercial-grade timber species. However, we are not aware of any progress on the implementation of important decisions and resolutions.

The United States is considering proposing *Swietenia macrophylla* for listing in Appendix II of CITES, and we are seeking additional information. At this time, the various interested and affected agencies of the U.S. Government are reviewing all pertinent information related to such a proposal. In particular, the U.S. Government seeks new information, especially regarding progress in addressing the sustainable use and trade in this species by the range countries, and any follow-on actions since the June 1998 Mahogany Working Group meeting. We are in the process of consulting directly with the range nations to obtain additional information, including in particular biological and trade information relevant to Resolution Conf. 9.24, and their views regarding a possible proposal to list *Swietenia macrophylla* in Appendix II; their views on possibly including certain populations of the species in Appendix II; for the countries that have listed bigleaf mahogany in Appendix III, their views on the implementation of that listing; and the views of other countries on the prospect of additional Appendix III listings.

Fish

2. Patagonian toothfish (*Dissostichus eleginoides*)

The Antarctic and Southern Ocean Coalition, Animal Protection Institute, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States consider proposing Patagonian toothfish (*Dissostichus eleginoides*) for listing in CITES Appendix II. The geographic distribution of *D. eleginoides* occurs along slope waters in the Pacific off of Chile from 30°S to Cape Horn, in the southern Atlantic along the coast and slope waters of southern Patagonia and Argentina, to south of South Africa and south of New Zealand, including the sub-Antarctic waters of the Indian Ocean and Macquarie Island on the Indo-Pacific boundary of the Southern Ocean. A look-alike species, the Antarctic toothfish, *Dissostichus mawsoni*, reportedly has a similar and overlapping distribution to that of *D. eleginoides*.

The fishery for Patagonian toothfish is relatively new, and there are no long-term fishery data by which to establish trends. However, there have been rapid increases in catch over the last few years. In addition, there are several characteristics of the life history of *D. eleginoides* that make the species vulnerable to overexploitation, such as its low fecundity, slow growth, long life, and late maturation. Over-harvest due to illegal trade is of prime concern to the United States and other Parties of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The co-generic species, *D. mawsoni*, also falls under the authority of CCAMLR and has been subjected to intense fishing in CCAMLR and international waters. The Government of Australia is reviewing the status and trade of both species. Available evidence suggests that *D. eleginoides* may meet the criteria for inclusion in Appendix II, and *D. mawsoni* may meet the similarity of appearance criteria for inclusion in Appendix II.

The United States and other Parties have made proposals to CCAMLR for a toothfish catch certification program. Proposals were introduced at the October 1998 CCAMLR annual meeting, and addressed at an intersessional meeting of CCAMLR April 27–29, 1999. The results of the intersessional meeting discussions will be reviewed at the November 1999 CCAMLR annual meeting, the earliest that CCAMLR Parties could adopt a catch certification program. Any action taken by the CCMLAR Parties at their annual meeting in November 1999 will be considered in developing the final U.S. position on any listing proposal for the Patagonian toothfish.

Reptiles and Amphibians

3. Pancake tortoise (*Malacochersus tornieri*)

The pancake tortoise ranges from central Kenya southward through

central Tanzania. Within that range, the species tends to be patchily distributed because of its rigid habitat requirements. The species is found only where suitable rock crevices and outcroppings are found in thorn-scrub and savannah vegetation. The pancake tortoise was listed in CITES Appendix II in 1975. The Humane Society of the United States has recommended that the species be transferred to Appendix I. Kenya banned trade in the species in 1981. Immediately following the ban in Kenya, there was an increase in exports from Tanzania. Field surveys conducted in the early 1990s indicated that pancake tortoise populations had become depleted in much of the species' range in Tanzania, especially in readily accessible areas. Additional collection pressure, combined with a low reproduction rate and specialized habitat requirements, could cause the species to become severely threatened throughout its range in Tanzania in the near future. For these reasons, the United States is considering a proposal to transfer the pancake tortoise from Appendix II to Appendix I. We are currently consulting with Kenya and Tanzania with regard to this proposal.

4. New Caledonian geckos (*Rhacodactylus* spp.)

The six species of *Rhacodactylus* geckos are endemic to New Caledonia and some nearby islands. None of the species is currently listed under CITES. The Humane Society of the United States has recommended that four species, *Rhacodactylus chahoua, R. ciliatus, R. leachianus,* and *R. sarasinorum,* be listed in Appendix II. These species are threatened by ongoing habitat destruction due to agricultural and related burning, deforestation, and mining; introduction of exotic species; and collection for the international commercial pet trade. Collection pressure appears to be most intense on some of the more remote uninhabited islands, where it is difficult to control collection. For these reasons, the United States is considering a proposal to list the above-mentioned four *Rhacodactylus* species in Appendix II. We have consulted with New Caledonia and France with regard to this proposal. We have already received preliminary comments from New Caledonia.

Birds

5. Lesser sulphur-crested cockatoo (*Cacatua sulphurea*)

The sulphur-crested cockatoo is endemic to islands in central Indonesia, and wild populations have declined due to trapping for the international bird trade. This species was proposed by Germany for transfer from Appendix II to I at COP10, but the proposal was withdrawn because the Indonesian government and BirdLife Indonesia reported that they had developed a recovery plan for the species, with a goal of establishing a community-based sustainable-use management plan for the species. Furthermore, the Indonesian government banned the export of the subspecies *Cacatua sulphurea citrinocristata* in 1992 and all other sub-species in 1995. It is believed that these export bans have been at least partially successful in reducing the level of trade in this species. Given that an Appendix-I listing could remove economic incentives for implementing the recovery plan for the species, it was recommended at COP10 that the species remain listed in Appendix II, but be reconsidered for transfer to Appendix I at COP11 if implementation of the recovery plan had not progressed. We are consulting with Indonesia on the implementation of its recovery plan for this species to determine if an Appendix-I listing is appropriate for this species at this time. We invite the submission of any information relevant to whether the recovery plan has progressed since COP10.

Mammals

6. Asian pangolins (*Manis* spp.)

There are three species of Asian pangolin. *Manis pentadactyla,* the Chinese pangolin, is found in Cambodia, India, Laos, Burma/Myanmar, Nepal, northern Thailand, Viet Nam, southern China, and Taiwan. *M. crassicaudata,* the Indian pangolin, occurs in Sri Lanka, peninsular India, Pakistan, Bangladesh, and China. *M. javanica,* the Malay pangolin, occurs throughout Burma/Myanmar, Brunei, Cambodia, Thailand, Laos, the Philippines, Vietnam, Malaysia, and much of Indonesia. All three species have been listed in CITES Appendix II since 1975. The International Wildlife Coalition has recommended that all three species be transferred from Appendix II to Appendix I. Pangolins are heavily exploited for food, for skins (used in the manufacture of leather goods such as boots), and medicinal uses (their scales are utilized in traditional Asian medicines). There is considerable international trade. Little information is available on the status of wild populations of these three species. The United States is considering submitting a proposal to transfer all three Asian pangolin species to Appendix I. We have consulted with CITES range countries (Bangladesh, Brunei, Burma/Myanmar, Cambodia, China, India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam) with regard to this proposal. We have already received responses from some of these countries.

7. Musk deer (*Moschus* spp.)

Musk deer are native to Asia, ranging from eastern Siberia south through Manchuria and central China to the Hindu Kush-Karakoram-Himalayan region of Afghanistan, Pakistan, and India. The number of *Moschus* species is not resolved, with authorities describing anywhere from four to seven species. This, in turn, affects subspecies classification. The subspecies *Moschus moschiferus moschiferus* was first listed in CITES Appendix I in 1975. In 1979, the listing was changed so that *Moschus moschiferus* (Himalayan population) was listed in Appendix I and all remaining populations of *Moschus* spp. were listed in Appendix II. In 1983, the listing was once again changed such that all musk deer populations of Afghanistan, Bhutan, India, Burma/Myanmar, Nepal, and Pakistan were listed in Appendix I and all other musk deer populations were listed in Appendix II. The International Wildlife Coalition has recommended that all musk deer taxa be listed in Appendix I. The limitations of clear taxonomic description, in combination with very little distribution information for some taxa, adds to the argument for listing all members of the genus in Appendix I. In addition, available information indicates that musk deer populations continue to decline throughout their ranges due to widespread poaching for international trade. Modification and loss of forest and scrub-forest habitat are additional threats in many portions of the range. For these reasons, the United States is considering submitting a proposal to transfer all *Moschus* populations currently in Appendix II to Appendix I. We have consulted with CITES range countries (Afghanistan, China, India, Republic of Korea, Mongolia, Burma/Myanmar, Nepal, Pakistan, Russia, and Vietnam) with regard to such a proposal. We have already received responses from some of these countries.

8. Urial sheep (*Ovis vignei*)

Urial sheep are native to central Asia, ranging from Iran and Turkmenistan in the west to northern India (Ladakh) in the east. Within this range, urial tend to have a patchy distribution associated with mountain ranges and rugged hill and canyon country. The number of urial subspecies is not resolved, with

authorities describing from five to seven. The nominate subspecies, *Ovis vignei vignei* has been listed in CITES Appendix I since 1975; no other subspecies are currently listed. The Humane Society of the United States and the International Wildlife Coalition have recommended that all currently unlisted subspecies be listed in Appendix I. Urial populations appear to have declined across the species' entire range over the past 20–30 years as a result of poaching and habitat degradation due to domestic livestock grazing. Recent population figures are unavailable for Afghanistan and Iran. Urial are subject to sport hunting in several countries, but the sustainability of that hunting cannot readily be determined.

For these reasons, the United States is considering submitting, supporting, or co-sponsoring a proposal to list the entire species in Appendix I. We are currently consulting with range countries (Afghanistan, India, Kazakhstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan) with regard to this proposal.

D. What species proposals does the United States not plan to submit for consideration at COP11?

The United States does not plan to submit the following proposals, based on the information discussed below. We welcome your comments. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below. Some of the species may qualify for the proposed action, but due to resource availability, time constraints, or potential conservation benefit from the action, we do not propose to submit the proposal for COP11; that decision is independent of whether or not we still may support such a proposal if submitted by another Party.

Plants

1. Pau rosa (*Aniba duckei* and *Aniba rosaeodora*)

The Humane Society of the United States has requested that the United States propose pau rosa for inclusion in Appendix II. These species are harvested for the oil contained in their trunks and large branches, which is used as an ingredient in certain perfumes. The United States is the largest importer of pau rosa oil, followed by Switzerland, France, and other European countries. These species occur in the northern and western areas of greater Amazonia, including Brazil, Peru, Colombia, Ecuador, Suriname, French Guiana, Guyana, and Venezuela. The sole producer of pau rosa oil at present is Brazil.

Though areas within the range of these species lack mature trees (i.e., where they have been utilized by the oil industry), natural regeneration has been documented and substantial wild stands are likely to exist in inaccessible areas that may remain unexploited for logistical and economic reasons. International trade in pau rosa oil has declined by about 80 percent since the 1960s, largely due to the replacement of natural rosewood oil by synthetic substitutes.

The United States does not plan to propose the listing of *Aniba duckei* and *A. roseaodora* in Appendix II of CITES. However, we invite the submission of information regarding the status of these species in the wild and the impact of international trade on their status. This will assist us in monitoring the situation in the future. We are also seeking comments in relation to the CITES listing criteria in Resolution Conf. 9.24. In addition, the United States will discuss the status of these species, their international trade, and the potential impacts of CITES protection with the government of Brazil.

Invertebrates

2. Giant clams (*Tridacna gigas* and *T. derasa*)

The Commonwealth of Northern Mariana Islands' Division of Fish and Wildlife, Center for Tropical and Subtropical Aquaculture's Industry Advisory Council, and Micronesian Environmental Services made recommendations concerning giant clams (*Tridacna gigas* and *T. derasa*). These organizations requested that the United States propose the removal of these species from Appendix II or propose to exempt giant clam mariculture farms from CITES permitting requirements.

There are nine species of giant clams (7 *Tridacna* spp. and 2 *Hippopus* spp.) distributed throughout coral reef habitats in the western Pacific and Indian Oceans. The largest species of giant clam, *T. gigas*, is native to Australia, Indonesia, Fiji, the Federated States of Micronesia, Japan, Kiribati, New Caledonia, Guam, Malaysia, the Marshall Islands, Burma/Myanmar, the Northern Marianas, Palau, Papua New Guinea, the Philippines, the Solomon Islands, Taiwan, Thailand, Tuvalu, and Vanuatu. Today, abundant populations of *T. gigas* are known only in Australia and the Solomon Islands; this species is extinct in Fiji, Guam, New Caledonia, and the northern Marianas, and has been eliminated from most of the Federated States of Micronesia, Japan, the Philippines, Taiwan, Tuvalu, and Vanuatu. Cultivated stocks of *T. gigas* have been reintroduced to Fiji, the Federated States of Micronesia, and the Philippines, and introduced to the Cook Islands, Western Samoa, American Samoa, Tonga, and Tuvalu, although high mortality has been reported and self-sustaining populations have not been established in the wild.

T. derasa has a more restricted distribution than does *T. gigas*, and occurs in nine countries and territories, with confirmed centers of abundance in Palau, Papua New Guinea, Australia, the Solomon Islands, New Caledonia, Fiji, and Tonga. *T. derasa* is extinct in parts of Indonesia, the Philippines, Vanuatu, Guam, and the Northern Marianas. Although this species has been widely introduced, wild stocks have become established only in Yap.

A primary threat to *T. gigas* and *T. derasa* is over-exploitation from commercial utilization, poaching, and subsistence utilization, despite the protection afforded them in Appendix II of CITES. All species of giant clams are further threatened by habitat degradation, increased incidence of bleaching (loss of symbionts) and mortality associated with elevated sea water temperatures in 1997–1998, and low reproductive potential and recruitment success due to severe depletion of populations.

Wild stocks of these two species have declined dramatically over the past two decades, and they have been extirpated from many areas. The United States considers that wild populations of *T. gigas* and *T. derasa* still meet the listing criteria for inclusion in Appendix II. Furthermore, exemption of mariculture products of a listed species from regulation under CITES is not possible under the CITES Treaty. There are provisions in the Treaty for the issuance of CITES permits or certificates indicating that specimens were obtained from animals bred in captivity, if they meet CITES criteria for that designation. Therefore the United States does not intend to submit a proposal for a listing change for these species.

3. Hard Corals

The Center for Tropical and Subtropical Aquaculture's Industry Advisory Council recommended re-evaluation of the listing in Appendix II for these species, although no further information or explanation was given. Seventeen genera of hard corals were first listed in Appendix II in 1985. Because of law enforcement problems associated with the partial listing of a

large group of taxa that are difficult to distinguish from one another, the entire orders of Scleractinia and Coenothecalia, and the family Tubiporidae (Order Stolonifera) were listed in Appendix II in 1989.

Over the last decade, coral reefs have experienced widespread declines in the abundance of coral reef species and live coral coverage at locations around the world. The 1998 *Reefs at Risk* study found that 58% of the world's reefs are potentially threatened by human activity, including coastal development, destructive and over-fishing practices, over-exploitation of marine resources, marine pollution, and runoff from deforestation and agriculture. Reefs have also been damaged by natural events such as coral disease outbreaks, crown-of-thorns sea star infestation, and several strong hurricanes and tropical cyclones, and these disturbances are being compounded by human impacts. In 1998, coral reefs around the world suffered the most extensive and severe coral bleaching episode in modern record, with subsequent mortality affecting 70–80% of all shallow-water corals on many Indo-Pacific reefs.

The collection of live coral and live rock (reported as Scleractinia) for the aquarium trade has increased each year since 1990, at a rate of approximately 25–30% per year. Commercial harvest of coral causes localized destruction of coral reef habitats and can result in extirpations of rare species. Nine of the ten dominant taxa for the aquarium trade consist of large-polyp corals that are slow-growing, long-lived, and often rare; these life-history characteristics render them vulnerable to over-exploitation. There has recently been increased demand for the faster-growing taxa (small-polyp corals), and coral husbandry programs are in the early stages of development to provide captive-reared specimens to hobbyists. However, the United States has concerns that major exporting countries involved in captive propagation of corals may be exporting first-generation corals as captive-reared or captive-bred animals. Although coral husbandry programs may eventually reduce the demand for wild-harvested specimens of some species, fast-growing corals that can be captive-reared are the taxa that suffered extensive mortality from the bleaching episode of 1998.

As part of the U.S. Government's implementation of President Clinton's Executive Order on Coral Reefs, the United States is evaluating recommendations concerning the trade in coral and coral products. The United States Coral Reef Task Force (USCRTF) has recognized that the international trade in coral and other coral reef species is driving destructive and potentially unsustainable fishing practices, particularly in the Indo-Pacific region. The International Working Group of the USCRTF (an interagency group) is concerned that the destruction of coral reef ecosystems will continue unless conservation efforts are improved at all points along the trade stream. In order to address the sustainability of the coral trade, we and the National Marine Fisheries Service have initiated a comprehensive examination of trade in live and dead coral and coral products. The United States considers these coral species to continue to meet the criteria for listing and retention in CITES Appendix II, and does not intend to propose a listing change for any species of hard coral.

Fish

4. Sawfishes (Pristiformes spp.)

We received a recommendation from Friends of Animals to include all species of the order Pristiformes (sawfishes) in Appendix II. The order consists of only one family, Pristidae, incorporating seven species (although the taxonomy of the group is debated). These species are: *Pristis pectinata* (smallmouth sawfish), inhabiting marine habitats in selected parts of the eastern Pacific Ocean, western and eastern Atlantic Ocean, Mediterranean Sea, Indo-Pacific, and Red Sea, and freshwater habitats in North, Central, and South America, Africa, and India; *P. clavata* (dwarf or Queensland sawfish), inhabiting nearshore and estuarine waters of northern Australia; *P. zijsron* (green sawfish), inhabiting marine habitats of the Indo-West Pacific from South Africa to the Persian Gulf, the Indian subcontinent, Indonesia, Australia, and Viet Nam, and throughout the Indo-Australian Archipelago, and also freshwater habitats in Thailand, Malaysia, Indonesia, and Australia; *P. pristis* (common sawfish), inhabiting marine habitats in the western Mediterranean and eastern Atlantic, possibly Africa; *P. microdon* (freshwater, Leichhardt's, great-tooth, or largetooth sawfish), inhabiting marine habitats in the Indo-West Pacific and freshwater habitats in Africa, Asia, Pacific Islands, and Australia; *P. perotteti* (largetooth sawfish), inhabiting warm-temperate to tropical-marine waters in the Atlantic and eastern Pacific, possibly in the eastern Mediterranean, and freshwater habitats in Central and South America and Africa; and *Anoxypristis cuspidata* (knifetooth, pointed, or narrow sawfish), inhabiting marine habitats in the Indo-West Pacific from the Red Sea and Persian Gulf to Australia and China, and brackish waters in Papua New Guinea, India, Myanmar, and Thailand. Of these species, *P. perotteti* and *P. pectinata* occur in U.S. waters.

Sawfishes have several life-history characteristics (e.g., slow growth, low fecundity, late sexual maturity, long life-span, long gestational period) that render them more vulnerable to reduced survivorship than many bony fishes. Other factors increasing the potential vulnerability of these species are restriction to a narrow depth range and disjunct distribution patterns. Threats to sawfishes include collection for the curio trade, habitat degradation, direct and incidental take in fisheries, destructive fishing practices (such as cyanide and dynamite fishing), and acquisition for live displays in public aquaria. Most species have exhibited either severe population declines or have an extremely localized distribution. Although data on international trade and other forms of exploitation of sawfishes are sketchy, localized effects can be seen in individual populations.

The United States proposed these species for inclusion in Appendix I at COP10, based on our view that they meet the criteria for inclusion in that Appendix. The proposal lost by a vote of 24–50. In their interventions, many Parties indicated that they believe that the main threats to the species are habitat degradation and incidental take, and not trade. Two species of sawfish in the United States are under consideration as candidate species for the U.S. Endangered Species Act. The United States will evaluate the possibility of addressing under domestic law the threats posed to sawfish. Therefore the United States does not intend to propose these species for listing at COP11.

5. Spiny dogfish shark (*Squalus acanthias*)

The Humane Society of the United States and International Wildlife Coalition have recommended that the United States consider proposing spiny dogfish shark (*Squalus acanthias*) for listing in CITES Appendix II at COP11. According to the most recent (1998) scientific assessment, spiny dogfish in the Northwest Atlantic is over-fished. Although total stock biomass is currently at a high level, present harvest levels and exploitation rates cannot be sustained. Spawning stock biomass declined by 50% during the 1990s. Current harvest rates exceed the replacement level for the stock and recruitment has declined. Much of the

harvest from the species enters into international trade. If the recent level of unmanaged harvest and exploitation rate were to continue for an extended period of time, the species would meet the criteria for listing in Appendix I.

Under the Magnuson-Stevens Act, a Fishery Management Plan (FMP) has been developed for spiny dogfish. The FMP contains a rebuilding plan to alleviate the over-fished condition of this species and rebuild stocks within 10 years. The FMP has recently been adopted by the relevant Fishery Management Councils and has been sent to the National Marine Fisheries Service for review. If the FMP is adopted, landings will decrease significantly and international trade in this product will likely cease. The United States believes that rebuilding of this stock can be accomplished under the Magnuson-Stevens Act and, therefore, does not intend to propose this species for listing in CITES Appendix II.

6. Atlantic swordfish (*Xiphias gladius*)

The International Wildlife Coalition has recommended that the United States consider proposing Atlantic swordfish (*Xiphias gladius*) for inclusion in CITES Appendix II. Atlantic swordfish is being managed as two separate stocks (North Atlantic and South Atlantic) in the Atlantic Ocean. The North Atlantic swordfish stock has been in decline and is over-exploited. The most recent stock assessment (1997, with revisions in 1998) indicated that the current level of fishing mortality exceeds twice the fishing mortality needed to produce the maximum sustainable yield. The South Atlantic swordfish stock is being harvested at a level that exceeds twice the fishing mortality necessary to achieve maximum sustainable yield. The demand for *Xiphias gladius* is considerable and the United States is a major market for fresh and frozen swordfish. The United States considers that this species meets the criteria for inclusion in Appendix II. However, the United States believes that progress is being made to control the harvest of this species through management and trade actions.

Specifically, the International Convention for the Conservation of Atlantic Tunas' (ICCAT) scientific body, the Standing Committee on Research and Statistics (SCRS), indicated that North Atlantic swordfish is over-exploited and that South Atlantic swordfish is being over-harvested and is in decline. To address the decline in the resource, ICCAT has adopted reductions in quotas in addition to other conservation and management measures. In the fall of 1999, the SCRS will reassess the swordfish stock and ICCAT members will consider the adoption of appropriate new management measures for Atlantic swordfish that support rebuilding.

ICCAT has taken a number of concrete steps to address the problem of non-compliance among both member and non-member nations, some of which are discussed here. ICCAT members that were responsible for over-harvests of North Atlantic swordfish under the terms of a 1996 ICCAT compliance recommendation acknowledged these overages at the 1998 ICCAT meeting and pledged to reduce their quotas accordingly. Recognizing the problems associated with vessels fishing under flags of convenience, ICCAT adopted a measure to address unreported and unregulated catches of swordfish by large-scale longline vessels. This measure can lead to the revocation of the registration or fishing licenses of vessels that are acting improperly and, if necessary, the use of trade restrictive measures.

In addition, the National Marine Fisheries Service has developed a rebuilding plan for swordfish as part of the Highly Migratory Species (HMS) Fishery Management Plan (FMP), as required by the Magnuson-Stevens Act. A draft HMS FMP was published in October 1998 and was approved on April 26, 1999. The FMP includes a 10 year recovery period and recognizes the international nature of this fishery. The plan includes targets for recovery, limits, and explicit milestones for measurable improvement of the stock. The plan also includes limited entry for the commercial fishery and a time/area closure to reduce juvenile swordfish mortality.

Finally, in March 1999, the National Marine Fisheries Service published a final rule that bans the import of swordfish less than 33 pounds, extends dealer permitting and reporting requirements to swordfish imports, and implements a Certificate of Eligibility program to improve tracking of swordfish imports. Under this swordfish import monitoring program, all swordfish importers must submit data to the National Marine Fisheries Service regarding their swordfish importing activities. These regulations are designed to facilitate enforcement of the ICCAT minimum size limits and should also improve the collection of information relating to trade in Atlantic swordfish.

Given this progress, and the fact that the United States believes there is sufficient progress to manage this species under the auspices of ICCAT and the Magnuson-Stevens Act, the United States does not intend to submit a proposal to COP11 to list this species in CITES Appendix II.

Amphibians and Reptiles

7. California mountain kingsnake (*Lampropeltis zonata*)

The California mountain kingsnake has a restricted distribution on the west side of the Sierra Nevada mountain range in California and in the coast ranges from southwestern Oregon to northern Baja California, Mexico. This species is not currently listed under CITES. The Humane Society of the United States and the International Wildlife Coalition have recommended that the California mountain kingsnake be listed in Appendix II. Major threats to this species are habitat loss, particularly in southern California, and collection for commercial trade. To date, however, available information on the status of California mountain kingsnake populations and the impact of collection on populations is extremely limited, and appears to be inadequate to fulfill the CITES listing criteria. Therefore, the United States does not intend to submit a listing proposal for the California mountain kingsnake at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

8. Eastern diamondback rattlesnake (*Crotalus adamanteus*)

The eastern diamondback rattlesnake ranges along the coastal plain from southeastern North Carolina to the Florida Keys to southern Mississippi and extreme southeastern Louisiana. The species is not currently listed under CITES. The Humane Society of the United States, the International Wildlife Coalition, and R. H. Mount, Professor Emeritus at Auburn University, have all recommended that the eastern diamondback rattlesnake be listed in CITES Appendix II. The major threats to this species include habitat loss and degradation (due primarily to conversion of suitable habitat to loblolly pine plantations, agricultural fields, and commercial and residential areas), collection for trade and rattlesnake roundups, and intentional killing. However, the magnitude and extent of the threat posed by international trade have not, as yet, been adequately determined. Therefore, the United States does not intend to submit an Appendix-II listing proposal for the eastern diamondback rattlesnake at COP11. We will continue to monitor the conservation status and status in international trade of this endemic U.S. species.

9. Common snapping turtle (*Chelydra serpentina*)

The common snapping turtle occurs throughout the United States east of the Rockies, north into southern Canada, and south into Central America, Colombia, and Ecuador. The common snapping turtle is not currently listed under CITES. The Humane Society of the United States, International Wildlife Coalition, and New York Turtle and Tortoise Society recommended that the common snapping turtle be listed in Appendix II. Common snapping turtles are harvested in large numbers both for food and for the pet trade. Although certain local or regional populations may have been depleted by over-harvest, this species continues to be generally common and widely distributed. Much of the market is domestic, although international trade involving the United States may be increasing. The species does not appear to qualify for listing in Appendix II, given the general abundance of the species throughout most of its range. Therefore, the United States does not intend to submit a listing proposal for the common snapping turtle at COP11.

10. Alligator snapping turtle (*Macroclemys temminckii*)

The Friends of Animals, New York Turtle and Tortoise Society, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States submit a proposal to list the alligator snapping turtle (*Macroclemys temminckii*) in CITES Appendix II. The United States submitted a proposal to COP10 to include the alligator snapping turtle in Appendix II. The proposal was withdrawn after some countries expressed the view that international trade is minimal and conservation problems for the species should be addressed through domestic measures. There was also opposition from the State of Louisiana to the proposal. Many countries at COP10 indicated that, for an endemic species such as the alligator snapper (which is confined to the United States in river systems that drain into the Gulf of Mexico), inclusion in Appendix III would be preferable.

Given that there is likely to be little support at COP11 for another Appendix-II proposal, and given the advantages of an Appendix-III listing, the United States now believes that an Appendix-III listing for the alligator snapping turtle may be the preferable approach. Listing U.S. native species in Appendix III would improve the regulation, protection, and control of the species in domestic and international trade. The United States does not intend to submit this proposal, but is actively considering whether to include the species in CITES Appendix III. A **Federal Register** notice to that effect may be published in the near future.

11. Map turtles (*Graptemys* spp.)

The Friends of Animals, New York Turtle and Tortoise Society, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States submit a proposal to list all map turtles (*Graptemys* spp.) in CITES Appendix II. The United States submitted a proposal to COP10 to include nine of the twelve species of map turtles in Appendix II (and to leave as unlisted the three more common species). The proposal received a majority of votes, but did not receive the two-thirds majority required for adoption (37 votes for and 19 votes against).

The United States now believes that it may be preferable to include all 12 map turtle species in Appendix III, to adequately monitor trade and obtain the advantages of an Appendix-III listing. Listing U.S. native species in Appendix III would improve the regulation, protection, and control of the species in domestic and international trade. The United States does not intend to submit this proposal, but is actively considering whether to include the species in CITES Appendix III. A **Federal Register** notice to that effect may be published in the near future.

12. Southeast Asian softshell turtles (Trionychidae)

Softshell turtles are in the family Trionychidae. There is some scientific disagreement over the number of genera within this family. Some authorities recognize six genera. Other authorities recognize 14 genera, having subdivided the single genus *Trionyx* into eight genera (*Amyda, Apalone, Aspideretes, Dogania, Nilssonia, Palea, Pelodiscus,* and *Trionyx*), six of which are monotypic. For purposes of this notice, we have chosen to recognize fourteen genera.

Fourteen recognized species of Trionychidae occur in southern and southeastern Asia. Of these, three species (listed as *Trionyx,* but considered here to be *Aspideretes*) are listed in CITES Appendix I, and one *Lissemys* species is listed in Appendix II. The Humane Society of the United States and the International Wildlife Coalition have recommended that certain southeast Asian species of softshell turtle be listed in Appendix II. Non-CITES-listed Southeast Asian softshell turtles include *Lissemys scutata, Amyda cartilaginea, Aspideretes leithii, Chitra indica, Dogania subplana, Nilssonia formosa, Palea steindachneri, Pelochelys bibroni, Pelodiscus sinensis,* and *Rafetus swinhoei.* Although investigations have documented that several of these species are utilized for food and are traded internationally, available information on the biological status of the species and the levels and effects of international trade is inadequate to fulfill CITES listing criteria. Thus, the United States does not intend to submit a listing proposal for the Southeast Asian softshell turtles at COP11. We will continue to gather information on the conservation status and status in international trade of these species.

13. North American softshell turtles (*Apalone* spp.)

There are three species of North American softshell turtles. Some authorities place these species in the genus *Trionyx,* others place them in the genus *Apalone.* For purposes of this notice, we have chosen to use the genus *Apalone.* The three *Apalone* species, *Apalone spinifera, A. mutica,* and *A. ferox,* occur in the eastern, southeastern, and Midwestern United States. The Humane Society of the United States and the International Wildlife Coalition have recommended that all three *Apalone* species be listed in Appendix II. The New York Turtle and Tortoise Society has recommended that all North American *Trionyx* be listed in Appendix II. These turtles are threatened by habitat modification and loss, and by harvest for pets and human consumption. Records show that, since the early 1990s, U.S. exports of *Apalone* spp. have been steadily increasing. Few populations of *Apalone* have been well studied, so the effects of harvest on populations is poorly documented. For this reason, the United States does not intend to submit a listing proposal for the North American softshell turtles at COP11. We will continue to gather information on the conservation status and status in international trade of these species.

14. Malaysian giant turtle (*Orlitia borneensis*)

The Malaysian giant turtle occurs in Indonesia (Sumatra and Kalimantan), Malaysia (peninsular, Sarawak, and perhaps Sabah), and perhaps Brunei. The species is not currently listed under CITES, and has not previously been proposed for listing. The Humane Society of the United States and the International Wildlife Coalition have recommended that the Malaysian giant turtle be listed in CITES Appendix II.

The limited available data on the status of wild populations appear to indicate that the Malaysian giant turtle is still relatively widespread and common in most of its range. Although anecdotal information indicates that Indonesian exports of this species for food have increased substantially in recent years, quantitative data are lacking. Because available information on the biological status of the species and the levels and effects of international trade is inadequate to fulfill CITES listing criteria, the United States does not intend to submit a listing proposal for the Malaysian giant turtle at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

15. Burmese roofed turtle (*Kachugu trivittata*)

The Burmese roofed turtle is known only from the Salween and Irrawaddy River basins in Burma/Myanmar. The Humane Society of the United States and the International Wildlife Coalition have recommended that the Burmese roofed turtle be listed in CITES Appendix II. Virtually nothing is known of the status of the species in the wild, and very little information is available on current levels of exploitation of the species. Because available information on the biological status of the species and the levels and effects of international trade are inadequate to fulfill CITES listing criteria, the United States does not intend to submit a listing proposal for the Burmese roofed turtle at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

16. Red-eared slider (*Trachemys scripta elegans*)

The red-eared slider occurs in the Mississippi River drainage from Illinois to the Gulf of Mexico and from eastern New Mexico to Tennessee and Alabama. The species is not currently listed under CITES. The International Wildlife Coalition and the New York Turtle and Tortoise Society have recommended that the red-eared slider be listed in Appendix II. The red-eared slider is probably the most commonly kept pet turtle in the United States. Red-eared sliders are also exported in large numbers as pets and food items. A number of turtle farms in the southern United States produce large quantities of sliders for the pet and food industries. These farms remove adult females from the wild each year to replace breeding stock. Additional adults are removed from the wild for international trade. Despite these harvests, we are not aware of any scientific reports indicating that wild populations are declining over large areas as a result of harvest, or that current levels of harvest are unsustainable. Thus, the United States does not intend to submit a listing proposal for the red-eared slider at COP11.

17. Beaded lizard and Gila monster (*Heloderma* spp.)

The beaded lizard occurs in Mexico and Guatemala, whereas the Gila monster occurs in the southwestern United States and northern Mexico (Sonora and Sinaloa). Both species have been listed in CITES Appendix II since 1975. The Humane Society of the United States and the International Wildlife Coalition have recommended that these species be transferred to Appendix I. Legal collection of both species is regulated in the United States and Mexico. The major threat to the species appears to be illegal commercial trade resulting from the high demand (and, therefore, high value) among collectors, although there are also localized habitat threats. There are few reliable data on the status of wild populations of either species, although both are considered relatively stable in most of their respective ranges. The Gila monster has been assigned a rank of G4 in The Nature Conservancy's Global Conservation Status ranking system. The G4 category is ''Apparently Secure.'' The species is considered uncommon, but not rare, and is usually widespread. Therefore, an Appendix-I listing does not appear to be warranted for either species at the present time. The United States does not intend to submit an Appendix I listing proposal for *Heloderma* spp. at COP11.

18. Orange-throated whiptail lizard (*Cnemidophrus hyperythrus*)

The orange-throated whiptail lizard is limited to extreme southwestern California, Baja California, Mexico, and some islands off Baja California. This species was listed in Appendix II of CITES in 1975. The International Affairs Committee of the IAFWA has recommended that this species not be listed under CITES. The Humane Society of the United States and the International Wildlife Coalition have recommended that the species be retained in Appendix II. The primary threat to this species is loss of suitable, contiguous habitat in southern California, particularly in San Diego County, as a direct result of urban, commercial, and agricultural development. Habitat threats are exacerbated by ongoing commercial collection. However, the magnitude and extent of the threat posed by international trade has not, as yet, been adequately determined. As such, the United States believes that information is inadequate to warrant the submission of a proposal to delist the orange-throated whiptail lizard at COP11, and does not plan to propose any change to its CITES listing status.

19. Chuckwalla (*Sauromalus obesus*)

The chuckwalla is found in the deserts of the southwestern United States (southeastern California, southern Nevada, southern Utah, western Arizona) and northwestern Mexico. The chuckwalla is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States and the International Wildlife Coalition have recommended that the species be listed in Appendix II. The chuckwalla has a moderately large range, and the overall population is considered to be stable within that range. The species has been assigned a rank of G5 in The Nature Conservancy's Global Conservation Status ranking system. The G5 category is ''Secure.'' The species is considered to be common, typically widespread, and abundant. Although localized habitat damage is occurring within its range, that damage is not considered extensive enough to pose a threat to the chuckwalla. The primary threat to this species appears to be increased commercial harvest in specific areas (e.g., Nevada). However, over much of its range harvest is either prohibited or restricted to small numbers of specimens, and overall the species does not appear to be threatened by legal commercial harvest. Thus, an Appendix-II listing for chuckwalla does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

20. Desert iguana (*Dipsosaurus dorsalis*)

The desert iguana is found in the creosote-bush deserts of the southwestern United States (southeastern California, southern Nevada, southern Utah, western Arizona) and northwestern Mexico. The desert iguana is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States has recommended that the species be listed in Appendix II. The desert iguana has a moderately large range, being found almost everywhere that creosote bush is found. The species is considered abundant throughout that range. The species has been assigned a rank of G5 in The Nature Conservancy's Global

Conservation Status ranking system. As with the chuckwalla, the desert iguana is threatened by habitat loss and degradation in localized portions of its range, and by increased commercial harvest in specific areas (e.g., Nevada). Overall, however, the desert iguana does not appear to be threatened by legal commercial harvest. Thus, an Appendix-II listing for the desert iguana does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

21. Desert collared lizard (*Crotaphytus bicinctores*)

The desert collared lizard has a wide distribution extending from southeastern Oregon and southern Idaho south through northeastern California, the Great Basin of Nevada, and western and lowland central Utah to southeastern California and western Arizona. The desert collared lizard is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States has recommended that the species be listed in Appendix II. Habitat loss and degradation, and localized commercial collection threaten this species. However, overall, the desert collared lizard appears to be common, stable in distribution and population numbers, and not threatened by legal commercial harvest. The species has been assigned a rank of G5 in The Nature Conservancy's Global Conservation Status ranking system. Thus, an Appendix-II listing for the desert collared lizard does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

Birds

22. Black-billed parrot (*Amazona agilis*)

The black-billed parrot is endemic to humid forests in the mountainous regions of Jamaica. This species was proposed by Germany for transfer to Appendix I at COP10. That proposal was supported by the United States, but was withdrawn by Germany because it was claimed that an Appendix-I listing might actually stimulate illegal trade in the species by increasing its desirability as a rare species. We have no evidence that such a claim can be proven for any species. However, the species has been subject to little trade while listed in Appendix II. Data from WCMC for 1990–1997 indicate that only eight specimens were traded, and those were captive-bred. Therefore, although we believe that the species meets the biological criteria for listing in Appendix I, resource considerations and the lack of discernible trade in this species do not warrant a priority effort to propose a listing, and the United States does not plan to submit such a proposal at COP11.

23. Yellow-headed parrot (*Amazona oratrix*)

The yellow-headed parrot is found primarily in Mexico, although it also occurs in Belize, and it has been found recently in Guatemala. We considered a similar proposal to transfer this species from Appendix II to I at COP10, but consultation with Mexico, the primary range country for the species, revealed that they did not support such a proposal even though they supported a similar proposal for the red-crowned parrot (*Amazona viridigenalis*). From various discussions and meetings with CITES authorities in Mexico, we are aware of efforts in that country to better control domestic trade in indigenous birds, as well as the fact that Mexico prohibits the export of any native species unless their export is part of an approved community-based, sustainable-use management plan. In part because the yellow-headed parrot is currently a potential candidate species for a sustainable-use program, Mexico does not support the transfer of this species to Appendix I. We acknowledge that this species is a popular cage bird and has been subject to significant illegal trade between the United States and Mexico; however, U.S. and Mexican wildlife law enforcement personnel already devote significant effort to interdiction of illegal trade in this and other parrot species, and it is doubtful that these enforcement efforts would be affected by transfer of the species to Appendix I. Therefore, the United States does not plan to submit a proposal for this species, but will continue to consult with Mexico on its status.

24. Rimatara or Kuhl's lorikeet (*Vini kuhlii*)

Vini kuhlii is a small nectivorous parrot that occurs primarily on the island of Rimatara in French Polynesia and on remote islands of Kiribati, where it has been introduced. The total population is estimated to be about 3,500 birds and the species is classified as Endangered by IUCN. The primary threat to the species is predation by rats. There is little to no trade in the species. Although one live specimen was reported to exist in the United States when the species was considered for transfer to Appendix I at COP10, trade data from WCMC for 1990 to 1997 (the most recent year for which data are available) show that no specimens of this species were traded during this period. This species was proposed by Germany for transfer to Appendix I at COP10, but the proposal was rejected. Although we concur that the species qualifies for an Appendix-I listing on biological grounds, because of the lack of trade pressure as well as the prohibition on imports of wild-caught birds by importing countries, it is doubtful that such a proposal would be given priority consideration by the Parties at COP11. Therefore, the United States does not plan to submit a proposal for this species.

25. Tahitian lorikeet (*Vini peruviana*)

The Tahitian lorikeet is another small nectivorous parrot that has a fairly wide, irregular distribution in Southeast Polynesia. It occurs on various islands in French Polynesia and various other island groups, including the Cook Islands of New Zealand, where it was probably introduced. The species is classified by IUCN as Vulnerable, and wild populations are stable, increasing, or decreasing, depending on the subpopulation in question. The primary threat to the species is rat predation, and although the species is protected in parts of its range, some collection for keeping of pets may occur locally. Low levels of illegal trade are alleged to occur, but documentation of recent occurrences is lacking. During 1980–1992, only 14 birds were traded legally, and none since 1991. This species was proposed by Germany for transfer to Appendix I at COP10, but the proposal was rejected. The species qualifies for an Appendix-I listing on biological grounds, but because of the lack of trade pressure and protected status in parts of its range, as well as the prohibition on imports of wild-caught birds by importing countries, it is doubtful that such a proposal would be given priority consideration by the Parties at COP11. Therefore, the United States does not plan to submit a proposal for this species.

26. Ouvea horned parakeet (*Eunymphicus cornutus uvaeensis*)

The Ouvea horned parakeet is one of two subspecies of the horned parakeet (*Eunymphicus cornutus*) endemic to the French territory of New Caledonia in the South Pacific Ocean. This subspecies is found only on the Island of Ouvea and has a population estimated in 1993 at around 600 birds. This subspecies was proposed by Germany for transfer from Appendix II to I at COP10, but the proposal was withdrawn. The United States opposed Germany's COP10 proposal for this subspecies because the two subspecies of horned parakeets are

extremely similar and occur in the same jurisdiction, and we believed that the proposed split-listing would be practically unenforceable and would be inconsistent with Annex 3 of CITES Resolution Conf. 9.24, which discourages the listing of a species in more than one Appendix because of enforcement difficulties that could result. Our position on the split-listing of this species has not changed. Therefore, the United States does not intend to propose the Ouvea horned parakeet for transfer to Appendix I at COP11.

27. Northern helmeted curassow (*Pauxi pauxi*)

The northern helmeted curassow is a gallinaceous bird that occupies very dense, wet, cool montane forest in northern Venezuela and adjacent areas of Colombia. The Netherlands proposed this species for inclusion in Appendix II at COP10, but withdrew the proposal. According to that proposal, the species was formerly common within its range in Venezuela, but its status in the Andes along the Colombia-Venezuela border and in adjacent areas of Colombia is unknown. The species is threatened by habitat loss and indiscriminate hunting (even in protected areas) in the range countries. The species has declined considerably from the 1950s to the present time. The total population is estimated at fewer than 2,500 mature individuals and severely fragmented, although good information is lacking on the population in Colombia. Trade data included in the proposal for COP10 showed that a total of 10 specimens were traded internationally from 1980 to 1992. The species was listed in Appendix III by Colombia in 1988, so trade data prior to listing may be incomplete. However, according to information reported by WCMC for the period 1990–1997, only 20 specimens were exported, 12 of which were captive-bred. Published conservation assessments do not mention international trade as a factor affecting the species. Considering that international trade does not appear to be a significant factor affecting the species, and such trade is monitored because of the Appendix-III listing, the United States does not believe that the species warrants inclusion in Appendix II at this time and does not intend to submit such a proposal at COP11.

28. Horned curassow (*Pauxi unicornis*)

The horned curassow is a poorly known gallinaceous bird that inhabits dense forest in areas of heavy rainfall and rugged terrain in Bolivia and Peru. The Netherlands proposed this species for inclusion in Appendix II at COP10, but withdrew the proposal; neither the species nor any population is listed in any other Appendix. According to the Netherlands' proposal, threats to the species include habitat loss to development and hunting for food as well as for making handicrafts from the head and ''horn.'' The Amboró National Park, Bolivia, is an apparent stronghold for the species, and it is believed that improved enforcement of its protected status in the park has resulted in a population increase there, although threats to the park exist from timber extraction and other habitat losses, and funding shortages could reduce enforcement and result in a decline of the species. Published conservation assessments of this species do not mention international trade as a factor affecting the species. Considering that international trade does not appear to be a significant factor affecting the species, the United States does not believe that the species warrants inclusion in Appendix II at this time and does not intend to submit such a proposal at COP11.

29. Turacos (*Musophagidae spp.*)

Turaco species not currently included in any CITES Appendix include the Ruwenzori turaco (*Musophaga johnstoni* [=*Ruwenzorornis johnstoni*]), Ross' turaco (*Musophaga rossae*), the grey go-away bird (*Corythaixoides concolor*), the bare-faced go-away bird (*Corythaixoides personatus*), the white-bellied go-away bird (*Corythaixoides leucogaster*), and eastern grey plaintain-eater (*Crinifer zonurus*). The great blue turaco (*Corythaeola cristata*), the western grey plaintain-eater (*Crinifer piscator*), and the violet turaco (*Musophaga violacea*) are listed in Appendix III by Ghana. All other musophagid species are included in Appendix II. None of the unlisted species are considered threatened, and are described as frequent to locally common, common, or even abundant in the wild. Some species, such as the grey go-away bird, are considered agricultural pests. All of them have extensive multi-national distributions except for the Ruwenzori turaco, which is restricted to the Ruwenzori Mountains of eastern Democratic Republic of the Congo, southwestern Uganda, Rwanda, and Burundi, although this species is also considered common within its range. The proponents for this listing proposal provided information on trade in some of these species from Tanzania, but acknowledged that Tanzania has imposed species-specific export quotas on all indigenous birds. A review of trade data on similar listed species suggests that the numbers of wild-caught birds in international trade peaked in the early 1990s, but has declined to relatively low levels since (1990–1997 trade data from WCMC for great blue turaco, violet turaco, and western grey plaintain-eater). None of these species are listed by IUCN. Therefore, the United States does not consider that listing is warranted at this time and does not intend to submit such a proposal at COP11.

Mammals

30. All bears (Ursidae spp.)

The Animal Welfare Institute has recommended that the CITES listing for Appendix-II bear species be annotated to allow trade only in sport-hunted trophies, meat, hides, paws, and live animals to appropriate and acceptable destinations. We do not believe that such an annotation is appropriate at this time, especially given our concern over the use of annotations in the Appendices and our desire to focus on adoption of the draft resolution related to the use of annotations (see previous discussion in this Notice). Therefore, the United States does not intend to submit this proposal at COP11.

31. Walrus (*Odobenus rosmarus*)

Walruses occur primarily in coastal waters of the Arctic Ocean and adjoining seas. The species is presently listed in Appendix III of CITES (included by Canada) and receives extensive protection in the United States under the Marine Mammal Protection Act (MMPA). Friends of Animals has recommended that we propose to include the walrus in CITES Appendix II. The MMPA allows non-wasteful take of walruses by Alaskan Natives for subsistence purposes and for the creation of authentic native articles of handicrafts and clothing, but limits legal international trade of walrus products for the most part to handicraft items. Population surveys are conducted jointly with Russia at 5-year intervals. There is no evidence of dramatic change in walrus populations in recent years due to international trade, and the legal take has remained stable. A small number of unfortunate poaching incidents have resulted in mortality that, while locally dramatic in some cases, does not represent a significant impact on the walrus population of Alaska. Although there is a possibility that some poached ivory finds its way into illegal international trade, there is no evidence to suggest that the volume warrants additional CITES controls. Thus, both on biological and trade

grounds, the walrus in the United States does not meet the criteria for inclusion in CITES Appendix II. Therefore, the United States does not intend to submit a proposal for walrus at COP11.

32. African elephant (*Loxodonta africana*)

We received a recommendation from Friends of Animals and the International Wildlife Coalition to transfer the Appendix-II populations of the African elephant to Appendix I, in part due to alleged irregularities in the annotations. The African elephant populations of Botswana, Namibia, and Zimbabwe were transferred from CITES Appendix I to II at COP10, with annotations that allow for trade in certain parts and products only. All other populations of African elephants (and all Asian elephants) remain in Appendix I. The annotation authorizes the non-commercial exports of hunting trophies, and commercial exports of live animals to ''approved destinations,'' and (from Zimbabwe only) hides, worked leather goods, and worked ivory; it also allows for resumption of a limited trade in stockpiled ivory if, and only if, certain conditions are met and approved by the CITES Standing Committee. The Standing Committee has since agreed that those conditions have been met, and the sales of ivory stockpiles from Botswana, Namibia, and Zimbabwe to Japan have taken place. The CITES Secretariat and CITES Parties (through the Standing Committee) must now monitor the implementation and enforcement ramifications of that sale, and any impact on elephant populations.

The United States was unable to support the proposed transfer of these three populations from Appendix I to II, and the limited sale of stockpiles, because of concerns that poaching and illegal ivory trade could increase in other range countries, and more specific concerns over the lack of agreed procedures among the Parties about the adoption and implementation of annotations. However, the United States respects the decision of the Parties and is working constructively with all interested Parties to see Decision 10.1 and Resolution Conf. 10.10 implemented properly. The United States considers that effective implementation of this decision is critical to the future of African and Asian elephant conservation and vital to the continued effective implementation of CITES.

The United States agrees with many of the concerns expressed by these commenters and others about the annotated African elephant downlisting. The United States believes that the generic problem of procedures for developing and implementing annotations to the Appendices is of the highest priority for the next meeting of the Conference of the Parties. We agree that the annotations and associated decisions for the African elephant are confusing and difficult to implement in some cases. The highest priority should be placed on refining the process of using annotations when transferring species or populations from Appendix I to II, including implementation and interpretation of such annotations and related decisions. The United States prefers to work through the resolution process at the COP, however, rather than submit a proposal to rescind the current African elephant annotation.

33. Pigtailed macaque (Macaca nemestrina)

The pigtailed macaque occurs in Southeast Asia (Burma/Myanmar, Cambodia, southern China, India, Indonesia, Laos, Malaysia, Thailand, and Vietnam). The species is currently listed in CITES Appendix II. The International Wildlife Coalition has recommended that the pigtailed macaque be transferred to Appendix I. This species is in international trade, apparently as a result of its use in biomedical research. However, available information on the biological status of the species and on the levels and effects of international trade is inadequate to fulfill the CITES listing criteria for transfer to Appendix I. Therefore, the United States does not intend to submit a listing proposal for the pigtailed macaque at COP11.

E. On which additional species proposals does the United States seek additional information and consultations?

The United States seeks additional information and consultations on the following proposals. We welcome your comments, especially any biological and trade information on these species. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below.

Fish

1. Southern bluefin tuna (Thunnus maccoyii)

A proposal to list this species in Appendix II is reportedly being considered by one or more Party countries. The United States is seeking additional information about the conservation status of this species and whether it qualifies for listing in the CITES Appendices, as a means of developing additional information on the species prior to COP11.

Southern bluefin tuna are large, highly migratory, pelagic fish that inhabit portions of the Pacific, Atlantic, and Indian Oceans in the Southern Hemisphere. Their only known spawning ground is located south of Java, Indonesia, and northwest of Australia. After metamorphosis, juveniles leave the spawning and nursery area and migrate along the west coast of Australia, inhabiting coastal waters of southwest, south, and southeast Australia. As fish reach maturity, they extend their ranges to the circumpolar regions.

Some researchers have estimated that the total Southern bluefin tuna population declined by 50% between 1960 and 1966, and then 30–57% between 1966 and 1991. By 1994, estimated adult population size had fallen 80–94% below 1966 levels. Some recent assessments indicate that numbers of adults may have increased between 1991 and 1994. Further analyses of all these estimates and assessments are warranted. The World Conservation Union (IUCN) classified the Southern bluefin tuna as ''critically endangered'' in its 1996 IUCN Red List of Threatened Animals. According to the IUCN criteria, a species is considered to be critically endangered when it is facing an extremely high risk of extinction in the wild in the immediate future.

Southern bluefin tuna are very valuable and are exploited for the Japanese high-grade sashimi market. Japanese auction prices were $29–$75 per pound in 1998, and markets have developed recently in Taiwan and the Republic of Korea. Principal harvesting nations are Australia, Japan, and New Zealand, with exploitation by Australia and New Zealand in their coastal waters and by Japan on the high seas. The fishery has been active since the 1950s, but the United States does not participate. Illegal fisheries have been documented in Australia's Exclusive Economic Zone (EEZ).

In 1979, Australia declared Southern bluefin tuna fully exploited in the global fishery. Subsequently, an informal trilateral agreement was instituted in 1982 between Australia, New Zealand, and Japan. Management measures from this agreement included voluntary restrictions on catch until management was formalized between the three nations under the Convention for the Conservation of Southern Bluefin Tuna (CCSBT) in May 1994. Commercial landings declined precipitously during the early 1980s, and have remained low because of global total allowable catch

(TAC) levels set by CCSBT. Through 1998, CCSBT set annual quotas well below historic high harvest levels. However, quota effectiveness is undermined by rising catches of non-CCSBT fishing fleets. In addition, there has been no agreement among CCSBT members on quotas since 1998, and Japan has instituted experimental fisheries in areas not previously fished that have raised concerns from Australia and New Zealand. Japan claims that these fisheries show evidence of higher stock abundance.

Request for Information and Comments

We invite any information and comments concerning any of the possible COP11 species proposals, resolutions, and agenda items discussed above. You must submit your information and comments to us no later than September 7, 1999, to be ensured of consideration.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, proposed resolutions, and agenda items that the United States is considering submitting for consideration at COP11. The public meeting will be held on July 28, 1999, from 1:30 P.M. to 4:30 P.M. in the Large Buffet Room of the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. You can obtain directions to the building by contacting the Office of Management Authority or the Office of Scientific Authority (see **ADDRESSES**, above). The room is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority or the Office of Scientific Authority as soon as possible.

Observers

Article XI, paragraph 7 of CITES states the following:

''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.''

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP11 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP11 must receive prior approval of our Office of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP11 to participate in COP11 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP11. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past five years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP11 as an observer. These requests should be sent to the Office of Management Authority (see **ADDRESSES,** above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP11 will be added to our CITES Mailing List if it is not already included, and will receive copies of all future **Federal Register** notices and other information pertaining to COP11. A list of organizations approved for observer status at COP11 will be available upon request from the Office of Management Authority just prior to the start of COP11. The deadline for registration of an organization as an observer at COP11 is one month prior to the opening of the COP.

Future Actions

We expect the CITES Secretariat to provide us with a provisional agenda for COP11 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also provide it through our Website.

The United States must submit any species proposals, proposed resolutions, and agenda items for consideration at COP11, to the CITES Secretariat 150 days prior to the start of the meeting (i.e., by November 12, 1999). We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, and agenda items warrant submission by the United States for consideration of the Parties. Those we decide to submit for consideration at COP11 will be submitted to the CITES Secretariat by November 12, 1999.

We will publish a **Federal Register** notice approximately four months prior to COP11 announcing those species proposals, proposed resolutions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP11, and providing a basis for those decisions.

Through a series of additional notices in advance of COP11, we will inform you about preliminary and final (to the extent that we can anticipate the proceedings of the COP) U.S. negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP11. We will also publish an announcement of a public meeting we expect to hold approximately two months prior to COP11, to receive public input on our positions regarding COP11 issues.

Author

The primary authors of this notice are Mark Albert, Office of Management Authority; and Dr. Susan Lieberman and Dr. Kurt Johnson, Office of Scientific Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 2, 1999.

John G. Rogers,

Director.

[FR Doc. 99–17292 Filed 7–2–99; 11:41 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of 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 maximize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

Current OMB approval number: 1028–0048.

Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting on landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication ''United States Earthquakes''.

Bureau form number: 9–3013.

Frequency: After each earthquake.

Description of respondents: State and local employees; and, the general public.

Estimated completion time: 0.1 hours.

Annual responses: 3,500.

Annual burden hours: 350 hours.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: June 30, 1999.

John R. Filson,

Earthquake Hazards Program Coordinator.

[FR Doc. 99–17241 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Adult Vocational Training and Employment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) This notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. The information collection, Application for Training or Employment Assistance, is cleared under OMB Control Number 1076–0062 through November 30, 1999. We are seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted on or before September 7, 1999.

ADDRESSES: Written comments should be sent to Deano Poleahla, Office of Economic Development, Bureau of Indian Affairs, 1849 C Street, NW, MS–4640–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the form, contact Deano Poleahla, (202) 208–2671 (this is not a toll-free number). You may also send requests by facsimile to (202) 208–3664.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pub. L. 84–959 and Pub. L. 88–230 authorize the Department of the Interior, Bureau of Indian Affairs (BIA), to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment. The information collection documents provide information necessary to administer the program for Employment Assistance or Vocational Training. The Department is authorized to undertake a program of vocational training that provides vocational counseling, guidance, and training in any recognized vocation, apprenticeship, trade, or on-the-job training. The program is available to Indians who are not less than 18 years old and not more than 35 years old who reside on or near Indian reservation. The Act authorizes the BIA to enter into contracts or agreements with Federal, State, local government agencies or associations with apprenticeship programs or on-the-job training that leads to skilled employment. The same application form is used for both 25 CFR parts 26 and 27.

II. Request for Comments

The Department of the Interior invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(2) The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

III. Data

(1) *Title of the Information Collection:* The Adult Vocational Training and Employment Assistance Program application form, OMB No. 1076–0062, Expiration date: 12/31/92.

(2) *Type of Review:* Reinstatement of an expired information collection form.

(3) *Summary of Collection of Information:* The collection of information provides pertinent data concerning the individual's training and employment background to determine eligibility for program services.

(4) *Affected Entities:* Individual tribal members residing on or near

reservations seeking training and employment assistance services.

(5) *Frequency of Response:* Annually.

(6) *Estimated Number of Annual Responses:* 4,900.

(7) *Estimated Time per Application:* one-half hour.

(8) *Estimated Total Annual Burden Hours:* 2,450.

Dated: June 19, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–17399 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–99–1020–24–1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council-Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be Silver Saddle Ranch management plan, including a lunch and field visit at the ranch; mine closures, an update on Standards and Guides, a presentation on the completed Black Rock/Quinn River Population segments of the Lahontan Cutthroat Trout plan, the Black Rock Desert plan, and alternatives for the Fallon Navy environmental impact statement, and riparian assessment and restoration.

All meetings are open to the public. During the Thursday noon visit to the Silver Saddle Ranch, public visitors are invited to bring a picnic lunch, and to join the visit. The public may present written comments to the council. Each formal council meeting will have a time allocated for public comments. The public comment period for the council meeting is listed below. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6000.

DATE, TIME: The council will meet on Thursday, July 29, 1999 from 10:00 a.m. to 5:00 p.m. and Friday, July 30, 1999, from 8 a.m. to 3 p.m., at the Bureau of Land Management Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV, in the main conference room. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be the Nevada State Office, 1340 Financial Blvd, Reno. NV. The dates and times will remain the same. Public comment will be received at the close of each discussion unit, with a general public comment period on Friday, July 30, 1999 at 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, Carson City Field Office, telephone (702) 885–6000.

Dated: June 24, 1999.

John Singlaub,

Field Office Manager.

[FR Doc. 99–17375 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1220–00]

Off-Road Vehicle Designation Change; King Range National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation change.

SUMMARY: Notice is hereby given related to the use of off-road vehicles in accordance with regulations contained in 43 CFR 8341.1(c) and 43 CFR 8342.3. Approximately 3.5 miles of the King Range National Conservation Area (KRNCA) beach area from Telegraph Creek Sec.4, T.5S., R.1E.) to Gitchell Creek (Sec.29, T.4S., R.1E.) are designated ''CLOSED'' to off-road vehicles. The purpose of this closure is to protect the unique resources and recreational opportunities of the KRNCA coastline and to provide a consistent management approach to the entire west slope of the KRNCA. The entire King Range beach and west slope from the Mattole Campground to Black Sands Beach are now managed for non-motorized, primitive recreation activities. Employees and agents of the BLM may be exempt from these restrictions for administrative or emergency situations as determined by the Field Manager.

EFFECTIVE DATE: July 3, 1999.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) and Plan Amendment was prepared on October 1, 1997 which focused, discussed and analyzed issues and concerns associated with off-road vehicle use within the beach corridor and the efforts of BLM to provide opportunities for both motorized and non-motorized user groups. A Decision Record on the EA and Plan Amendment was signed on September 30, 1998. The BLM received 15 protest letters which were subsequently dismissed by the Director of the BLM on June 17, 1999. The decision of the Director is the final decision of the Department of the Interior.

FOR FURTHER INFORMATON CONTACT: Lynda J. Roush, Arcata Field Manager, 1695 Heindon Road, Arcata, CA 95521, phone (707) 825–2300.

Daniel E. Averill,

Acting Arcata Field Manager.

[FR Doc. 99–17278 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Northstar Oil and Gas Development Project, Beaufort Sea

AGENCY: Minerals Management Service (MMS).

ACTION: Notice of Adoption of a Final Environmental Impact Statement (FEIS).

SUMMARY: The Northstar development project involves a joint Federal and State managed reservoir in the Beaufort Sea offshore the Alaskan arctic coast. The production facilities and pipeline would be located on State of Alaska submerged lands. Up to six development wells (and a Class II disposal well) could be drilled from a surface location on State submerged lands into the Federal Outer Continental Shelf (OCS). Drilling these wells requires approval of an OCS Development and Production Plan (DPP). The MMS determined in October 1996, that approval of a DPP for the Northstar development project would be a major Federal action warranting preparation of an EIS. The MMS entered into an agreement with the U. S. Corps of Engineers as a cooperating agency for the Northstar EIS. The FEIS, Beaufort Sea Oil and Gas Development/Northstar Project was published on February 5, 1999.

The MMS has determined that the Northstar FEIS is adequate to meet MMS's National Environmental Policy Act needs for the DPP. The FEIS provides a complete and thorough analysis of reasonable alternatives and impacts. The MMS hereby adopts the Northstar FEIS for use in its decision to

approve, disapprove, or require modification of the proposed DPP. The regulations at 40 CFR 1506.3 contain provisions for a cooperating agency to adopt the environmental impact statement of a lead agency.

ADDRESSES: You may obtain single copies of the FEIS from the Regional Director, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Affairs Office. You may request copies by telephone at (907) 271–6070; 1–800–764–2627; or via e-mail at akwebmaster@mms.gov.

Note: This FEIS is identical to that listed in the Corps of Engineers FR Notice, Vol. 64, No. 24, February 5, 1999, page 5789.

Copies of the FEIS are also available for inspection in the following public libraries:

Tuzzy Consortium Library, Barrow, Alaska
North Slope Borough Office, Barrow, Alaska
Barrow City Office, Barrow, Alaska
Alaska Eskimo Whaling Commission Office, Barrow, Alaska
Nuiqsut City Office, Nuiqsut, Alaska
Kaktovik City Office, Kaktovik, Alaska
Noel Wien Public Library, 1215 Cowels Street, Fairbanks, Alaska
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska
Juneau Public Library, 292 Marine Way, Juneau, Alaska
U.S. Army Corps of Engineers Office, Elmendorf AFB, Alaska
Z.J. Loussac Library, 3600 Denali Street, Anchorage, Alaska
Alaska Resources Library and Information Services, 3150 C Street, Suite 100, Anchorage, Alaska
Minerals Management Service, Resource Center, Room 330, 949 East 36th Avenue, Anchorage, Alaska

Adoption of this FEIS constitutes the MMS Notice on the release and availability of an EIS for MMS's action to approve, disapprove, or require modification of a DPP for the Northstar development project. The MMS will take no action on the DPP for 30 days following the date of this notice. Under 30 CFR 250.204, MMS must approve, disapprove, or require modification of the DPP no later than 60 days after release of the FEIS.

ACTION: Availability of the Environmental Assessment (EA) and finding of no significant impact (FONSI) for the State-approved Oil Discharge Prevention and Contingency Plan.

SUMMARY: The Alaska OCS Region has also written an EA on the Oil Spill Response Plan for the Northstar Development Project on Beaufort Sea Leases OCS Y–0179 and –0181. We have reviewed the Northstar Development and Production Plan (DPP), the FEIS, and the Draft and State-approved versions of the Oil Discharge Prevention and Contingency Plans (Response Plans). Our summary finding is based on the analysis and conclusion of the corresponding EA No. AK 99–01. Based on this assessment, we have concluded that the State-approved Response Plan would mitigate the significant oil-spill impacts listed in the FEIS and would not introduce new significant impacts requiring preparation of an EIS. Therefore, approval of the State-approved Response Plan as part of the DPP would not significantly (40 CFR 1508.27) affect the quality of the human environment.

Individual copies of EA No. AK 99–01 and FONSI can be obtained by contacting the Alaska OCS Region at the same address as indicated earlier in this notice, under **ADDRESSES**, for obtaining copies of the FEIS. A copy of EA No. AK 99–01 is available for inspection at the Minerals Management Service, Resource Center, Room 330, 949 East 36th Avenue, Anchorage, Alaska.

FOR MORE INFORMATION CONTACT: Mr. Paul Stang, Regional Supervisor, Leasing and Environment Division, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, (907) 271–6045.

Dated: July 1, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–17266 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Lincoln County, MT in the Possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Lincoln County, MT in the possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY.

A detailed assessment of the human remains was made by the Human Osteology Repository professional staff in consultation with representatives of the Confederated Salish & Kootenai Tribes of the Flathead Reservation.

During the mid-1970s, human remains representing a minimum of six individuals were removed from private lands adjacent to the U.S.-Canadian border on the eastern banks of the Kootenai River, Lincoln County, MT by Mr. and Mrs. Ronald C. Morgan and Donald Morgan. During the mid-to-late 1970s, these human remains were donated by an unknown anthropology student to the Anthropology Department of the University of Wyoming. In 1994 and 1995, these six individuals were confirmed to be in the collections of the Human Osteology Repository. No known individuals were identified. The four associated funerary objects include a small historic glass button with four holes, an historic white glazed ceramic sherd, a soil sample, and a fragment of a white paste ceramic pipe stem.

Based on skeletal morphology and reported burial associations, these individuals have been identified as Native American. Based on the types of associated funerary objects, these burials are estimated to date to the mid to late-19th century. Cultural affiliation is assessed based on the location of the original interments within historically-defined Kootenai territory. The area of original interment is also located with in the judicially established Indian Lands Claims area of the Kootenai.

Based on the above mentioned information, officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have also determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the

Confederated Salish & Kootenai Tribes of the Flathead Reservation.

This notice has been sent to officials of the Confederated Salish & Kootenai Tribes of the Flathead Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Rick L. Weathermon, NAGPRA Contact, University of Wyoming Department of Anthropology Human Osteology Repository, University of Wyoming, P.O. Box 3431, Laramie, WY 82071-3431; telephone: (307) 766–5136, before August 9, 1999. Repatriation of the human remains and associated funerary objects to the Confederated Salish & Kootenai Tribes of the Flathead Reservation may begin after that date if no additional claimants come forward.

Dated: June 29, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–17365 Filed 7–7–99: 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

[A7619 (2430)]

Availability of Draft Director's Order and Draft Reference Manual Concerning Risk Management/ Occupational Safety and Health Management Activities in the National Park Service

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #50B contains Risk Management Program requirements, policies and responsibilities, and Draft Reference Manual #50B provides additional detailed guidance to NPS personnel engaged in Risk Management/ Occupational Safety and Health management activities.

DATES: Written comments will be accepted through August 1, 1999.

ADDRESSES: Draft Director's Order #50B/ Draft Reference Manual #50B are available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Shirley Rowley, National Park Service, Risk Management Program Office, 14795 W. Alameda Parkway, Denver, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Shirley Rowley at (303) 969–2197.

Dated: June 24, 1999.

Richard C. Powell,

Program Manager, WASO Risk Management Program.

[FR Doc. 99–17257 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigations Nos. 701–TA–397–400 (Preliminary) and antidumping investigations Nos. 731–TA–842–845 (Preliminary) under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iraq, Mexico, Saudi Arabia, and Venezuela of crude petroleum oils and oils obtained from bituminous minerals above or below 25 degrees A.P.I., as provided for in subheadings 2709.00.10 and 2709.00.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Iraq, Mexico, Saudi Arabia, and Venezuela and to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days, or in this case by August 13, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 20, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 29, 1999, by an incorporated consortium of independent domestic crude petroleum oil producers.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the

investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 20, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than July 16, to arrange for their appearance. Parties in support of the imposition of countervailing duties and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 23, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17376 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–111 (Review)]

Roller Chain from Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on roller chain from Japan would not 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 July 6, 1998 (63 FR 36440), and determined on October 8, 1998, that it would conduct a full review (63 FR 56048, October 20, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 25, 1998 (63 F.R. 65221). Since all requests by interested parties to appear at the hearing were withdrawn before its scheduled date, no hearing was held in this review.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 1, 1999. The views of the Commission are contained in USITC Publication 3203 (July 1999), entitled Roller Chain from Japan: Investigation No. AA1921–111 (Review).

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17378 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–846 through 850 (Preliminary)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–846 through 850 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Czech Republic, Japan, Mexico, Romania and South Africa of certain seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe and tube (including redraw hollows), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to §§ 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in these cases by August 16, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 23, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 30, 1999, by Koppel Steel Corp, Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–205–3184) not later than July 16, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17379 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Preliminary)]

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–851 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of synthetic indigo, known commercially as Vat Blue 1, and preparations based thereon, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 16, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 23, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on June 30, 1999, by Buffalo Color Corp., Parsippany, NJ, and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the investigation and public service list.—Persons (other than

petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 22, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jozlyn Kalchthaler (202–205–3457) not later than July 20, 1999 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1999 a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17377 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Public Hearing

This document is a notice of public hearing to be held by the Department of Labor to gather information regarding products that might have been mined, produced, or manufactured by forced or indentured child labor, for the purpose of implementing Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor''). This Executive Order was published in the **Federal Register** on June 16, 1999 (64 FR 32383–32385).

The hearing will be held on Tuesday, August 10, 1999, in Room N–3437 at the Department of Labor, 200 Constitution Avenue, NW, Washington, DC, beginning at 9:00 a.m. The hearing will be open to the public. This notice is a general solicitation of comments from the public.

The Department of Labor is now accepting requests from all interested parties to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those preparing written submissions. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Parties interested in testifying at the child labor hearing should call Cortney Oren of the International Child Labor Program, (202) 208–4843 ext. 112, to be put on the roster.

Pursuant to Section 2 of Executive Order No. 13126, and in consultation and cooperation with the Department of the Treasury and the Department of State, the Department of Labor is now taking steps to enable it to ''publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.'' In compliance with the Executive Order, such a list will be published within 120 days of the date of publishing of the Executive Order or no later than October 10, 1999.

The Executive Order provides that ''[t]he Department of Labor may conduct hearings to assist in the identification of'' products to be included on the list required by the Executive Order. Information provided at the hearing will be considered by the Department of Labor in preparing the list.

Testimony at the hearing should be relevant to the topic of products ''mined, produced or manufactured wholly or in part by forced or indentured child labor.'' With respect to industries where forced or indentured child labor may occur, but where programs have been implemented to eliminate child labor, the Department is also seeking testimony regarding the effectiveness of such programs.

Under section 6(c) of the Executive Order, ''forced or indentured child labor'' is defined as:

> all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

This definition is consistent with the Tariff Act of 1930, 19 U.S.C. 1307.

Among the products and countries that may be examined by the Department are those mentioned in the following Department of Labor reports on child labor: By the Sweat and Toil of Children (Volume I): The Use of Child Labor in U.S. Manufactured and Mined Imports, and By the Sweat and Toil of Children (Volume II): The Use of Child Labor in U.S. Agricultural Imports and Forced and Bonded Child Labor. These reports can be accessed on the

Internet at *http://www.dol.gov/dol/ilab/public/media/reports/childnew.htm* or can be obtained from the International Child Labor Program. The Department of Labor will examine other recent developments, including additional products and countries where forced and indentured child labor has been identified as a problem.

DATES: The hearing is scheduled for Tuesday, August 10, 1999. The deadline for being placed on the roster for oral testimony is 5 p.m. on August 3, 1999. Presenters will be required to submit five (5) written copies of their oral testimony to the International Child Labor Program by 5 p.m., August 3, 1999. The record will be kept open for additional written testimony until 5 p.m., August 17, 1999.

ADDRESSES: Written testimony should be addressed to the International Child Labor Program, Bureau of International Labor Affairs, Room S–5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, fax: (202) 219–4923.

FOR FURTHER INFORMATION CONTACT: Cortney Oren, International Child Labor Program, Bureau of International Labor Affairs, Room S–5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 208–4843; fax (202) 219–4923. Persons with disabilities who need special accommodations should contact Cortney Oren by August 3, 1999.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC, this 30th day of June, 1999.

Andrew J. Samet,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. 99–17239 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 7th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/07/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,340	Beartrack Mine (Co.)	Salmon, ID	05/20/1999	Dore Metal.
36,341	Nortel (Wkrs)	Res. Triangle Pk, NC	05/04/1999	Wireless Products.
36,342	Kern Manufacturing (Co.)	Albion, IL	05/11/1999	Bras.
36,343	California Webbing (Wkrs)	Los Angeles, CA	05/04/1999	Safety belts.
36,344	Crysteco, Inc. (Co.)	Wilmington, OH	05/25/1999	Silicon wafers.
36,345	Thomas and Betts (Co.)	Vidalia, GA	05/22/1999	Safety Switches.
36,346	Green River Steel (USWA)	Owensboro, KY	05/03/1999	Steel.
36,347	Great River Insurance (Wkrs)	Meridian, MS	05/19/1999	Insurance Underwriters.
36,348	Burlington Industries (Wkrs)	Greensboro, NC	05/22/1999	Textured Polyester.
36,349	Alliance Leather (UNITE)	Johnstown, NY	05/21/1999	Leather.
36,350	Hewlett Packard (Co.)	Roseville, CA	05/21/1999	Personal Computers.
36,351	National Wood Products (Co.)	Glasgow, KY	05/17/1999	Wooden Brush Blocks.
36,352	Bain Industries (Co.)	Ft. Worth, TX	05/18/1999	Shaped Charge Cases.
36,353	Gdynia America Line (Co.)	Elizabeth, NJ	05/19/1999	Stream Ship Line.
36,354	Rama Group of Co. (Co.)	Cheektowaga, NY	05/20/1999	Printing, Publishing & Distribution.
36,355	Cresthill Industries (Co.)	Yonkers, NY	05/20/1999	Buttons.
36,356	Chippen Hook (Wkrs)	McAllen, TX	05/05/1999	Jewelry Boxes.
36,357	Golden Sunlight Mines (Co.)	Whitehall, MT	05/24/1999	Precious Metals.
36,358	New England Audio (NEAR) (Co.)	Lewiston, ME	05/26/1999	Indoor and Outdoor Speakers.
36,359	Motorola (Wkrs)	Austin, TX	05/24/1999	Semiconductor (chips).
36,360	Super Steel Schenectady (Wkrs)	Glenville, NY	05/10/1999	Locomotives.
36,361	Alta Gold Griffon Mine (Wkrs)	Ely, NV	05/06/1999	Gold.
36,362	AMP, Inc. (Wkrs)	Middletown, PA	05/22/1999	Electronic Connectors.
36,363	ABB Daimler Benz (Co.)	Elmira Heights, NY	05/24/1999	Mass Transit Rail Vehicles.
36,364	SWACO—Drilling Fluids (Comp)	Houston, TX	03/24/1999	Drilling Fluids.

[FR Doc. 99–17289 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,399 TA–W–35,399A, TA–W–35,399B, TA–W–35,399C, TA–W–35,399D, TA–W–35,399E and TA–W–35,399F]

The Boeing Company, Seattle, WA, in the following locations: Puget Sound Region, WA, Wichita, KS, Philadelphia, PA, Tulsa, OK, Mcalester, OK, Oak Ridge, TN; Negative Determination Regarding Application for Reconsideration

By application dated May 12, 1999, the International Association of Machinists & Aerospace Workers (IAM&AW), District Lodge 751, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of the subject firm was signed on March 23, 1999, and published in the **Federal Register** on May 21, 1999 (64 FR 27810).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition was filed on behalf of workers of the subject firm in Seattle, Washington, Puget Sound Region, Washington, Wichita, Kansas, Philadelphia, Pennsylvania, Tulsa, Oklahoma, Mcalester, Oklahoma and Oak Ridge, Tennessee, engaged in employment related to the production of commercial aircraft at The Boeing Company. Investigation resulted in a negative determination based on the finding that the ''contributed importantly'' test of the group eligibility requirement of Section 222(3) the Trade Act of 1974, as amended, was not met for the workers engaged in the production of commercial aircraft. The investigation revealed that the predominate cause for layoffs at the subject firm was reduced anticipated orders, resulting from reduced demand for commercial aircraft, including significant lost export sales. Domestic customers of The Boeing Company did not increase their import purchases of commercial aircraft while decreasing orders from the subject firm to such a degree as to represent an important contributing factor. Overall, the subject firm experienced increasing sales in 1998 which was forecast to continue in 1999.

The District Lodge 751 assert that members and workers at The Boeing Company are impacted by completion from Airbus in addition to the subcontracting to foreign suppliers for components. The application contained information addressing the commercial aircraft industry and included charts comparing Boeing and Airbus orders and expected deliveries. The petitioner asserts that despite a record number of deliveries by Boeing in 1999, Airbus continues to gain market share. The petitioner adds that Boeing is beginning the downsizing process in anticipation of decline in market share. Loss of global market share as emphasized by the petitioners is not a basis for worker group certification under the Trade Act of 1974. The materials submitted by the IAM&AW did not contain information that was not previously considered in the petition investigation.

As to the impact of sourcing foreign parts, the Department found no evidence that foreign sourcing was a relevant factor in the separation of workers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–17286 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,135, 135F & 135G]

Computalog Wireline Services; Hays, Kansas and Operating at Various Locations in the Following States; Montana and Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 14, 1998, applicable to workers of Computalog Wireline Services located in Hays, Kansas. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71166).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that additional worker separations occurred at Computalog Wireline Services operating at various locations in Montana. The company also reports that worker separations will occur at its various locations in Arkansas. Workers at these locations provide services related to the exploration and production of crude oil and natural gas.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. Accordingly, the Department is amending the certification to expand coverage to workers of Computalog Wireline Services in Montana and Arkansas.

The amended notice application to TA–W–35,135 is hereby issued as follows:

All workers of Computalog Wireline Services, Hays, Kansas (TA–W–35,135) and operating at various locations in Montana (TA–W–35,135F), and Arkansas (TA–W–35,135G) who became totally or partially separated from employment on or after October 9, 1997 through December 14, 2000, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17282 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,255]

KCS Resources, Inc. D/B/A/ KCS Mountain Resources, Inc. Worland, Wyoming; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on May 24, 1999, applicable to workers of KCS Resources, Inc., d/b/a KCS Mountain Resources, Inc., Worland, Wyoming. The notice will be published soon in the **Federal Register**.

The Department, on its own motion, reviewed the worker certification. Workers are engaged in employment related to the exploration and production of crude oil and natural gas. On April 6, 1999, the Department issued a certification of eligibility applicable to all workers of KCS Mountain Resources, Inc., Worland, Wyoming, TA–W–35,790. Workers separated from employment with the subject firm on or after February 12, 1998 through April 6, 2001 are eligible to apply for worker adjustment assistance program benefits.

Based on this new information, the Department is terminating the certification for petition number TA–W–36,255. Further coverage for workers under this certification would serve no purpose and the certification has been terminated.

Signed at Washington, DC, this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17283 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,982]

Logistix, Medical Division, Fremont, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 5, 1999 in response to a worker petition which was filed on behalf of workers at Logistix, Fremont, California.

The petitioners were not employed at the subject firm location sited, therefore, the petition is not valid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17285 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,320 and TA–W–35,320A]

Lucky Star Industries, Baldwyn and Nettleton, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 23, 1999, applicable to all workers of Lucky Star Industries, Baldwyn, Mississippi. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations occurred at the Nettleton, Mississippi facility of Lucky Star Industries in April and May, 1999. The workers are engaged in employment related to the production of jeans. Accordingly, the Department is amending the certification to cover workers of Lucky Star Industries, Nettleton, Mississippi.

The intent of the Department's certification is to include all workers of Lucky Star Industries adversely affected by increased imports.

The amended notice applicable to TA–W–35,320 is hereby issued as follows:

All workers of Lucky Star Industries, Baldwyn, Mississippi (TA–W–35,320) and Nettleton, Mississippi (TA–W–35,320A) who became totally or partially separated from employment on or after November 24, 1997 through March 23, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–17281 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,086]

North Star Steel Texas, Inc. Including Workers of International Mill Service Beaumont, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 4, 1998, applicable to all workers of north Star Steel Texas, Inc., located in Beaumont, Texas. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that employees of International Mill Service, Beaumont, Texas worked at North Star Steel Texas, Inc. to provide slag reclamation from the blast furnaces and other services for steel processing at the Beaumont, Texas facility. Worker separations occurred at International Mill Services as a result of workers separations at North Star Steel Texas, Inc.

Based on these findings, the Department is amending the certification to include workers of International Mill Service, Beaumont, Texas at North Star Steel Texas, Inc., Beaumont, Texas.

The intent of the Department's certification is to include all workers of North Star Steel Texas, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,086 is hereby issued as follows:

All workers of North Star Steel Texas, Inc., Beaumont, Texas and workers of International Mill Service, Beaumont, Texas engaged in employment related to providing slag reclamation from the blast furnaces and other services for steel processing at North Star Steel Texas, Inc., Beaumont, Texas who became totally or partially separated from employment on or after September 29, 1997 through November 4, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17284 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,212]

Weatherford International, Inc. Longview, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999, in response to a worker petition which was filed on behalf of workers at Weatherford International, Incorporated, Longview, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17288 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03180]

Federal-Mogul Friction Products Division, Manila, AR; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 18, 1999 in response to a petition filed on behalf of workers at Federal-Mogul, Friction Productions Division, located in Manila, Arkansas (NAFTA–3180).

The petitioning group of workers is subject to a certification signed on June 16, 1999 (NAFTA–3206) and that will remain in effect for two years from that date.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17287 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03129]

Lee Textile, Incorporated, Ewing, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 28, 1999 in response to a petition filed on behalf of workers at Lee Textile, Incorporated, located in Ewing, Virginia (NAFTA–03129).

The petitioner has requested that the petition be withdrawn, Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17280 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–5]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for current paperwork requirements of 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents and 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employers). The Agency is in the process of revising these recordkeeping requirements and expects to implement a revised injury and illness recordkeeping system next year. However, if the Agency is unable to attain this goal, it will need to continue the current injury and illness recordkeeping system. For this reason, OSHA will request OMB reauthorization of the existing part 1904 under the PRA, and is asking for public comment on burden estimates, practical utility, and other paperwork issues concerning OSHA's existing recordkeeping requirements.

DATES: Written comments must be submitted on or before September 7, 1999.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–99–5, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210,

telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Barbara Bielaski at (202) 693–2444. For electronic copies, contact OSHA's Web Page on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The OSHA Act and 29 CFR Part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provides information to employers and employees of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employers who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR part 1904. That approval will expire on December 31, 1999, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents (OMB control number 1218–0007) and 29 CFR 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employees (OMB control number 1218–0214) are each under separate Information Collection Request (ICR) packages.

II. Current Actions

This notice requests public comment on an extension of the current OMB approval of the paperwork requirements in 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Agency Number: ICR–99–5.

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Farms; Not-for-profit institutions; State and Local Government.

Cite/Reference/Form/etc: 29 CFR part 1904; OSHA No. 200; OSHA No. 101.

Number of Respondents: 1,086,264.

Estimated Time Per Respondent: 1.6 hours.

Total Burden Hours: 1,739,157 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: June 29, 1999.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 99–17240 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL INSTITUTE FOR LITERACY

Application for Equipped for the Future (EFF) Center for Training, Technical Assistance, and Materials Development

AGENCY: The National Institute for Literacy.

ACTION: Notice.

SUMMARY: The National Institute for Literacy invites applications for a cooperative agreement grant to support integration of EFF standards into existing systems for the delivery of adult education and training. These systems include: adult literacy and basic education programs; Even Start, Head Start, and other family literacy programs; programs offered through LEAs; community-based organizations; community colleges; unions and employee associations; and public and private employers and associations of employers that are helping adults qualify for entry-level employment or meet skill standards developed through voluntary partnerships under the aegis of the Skills Standards Board.

Eligible Applicants: Individual public and private nonprofit organizations and agencies, or consortia of such organizations. While such consortia may include local and for-profit organizations, no grant will be made to either a local or for-profit organization.

Deadline for Transmittal of Applications: 4:30 PM, August 18, 1999.

Available Funds: This award is for a Center that will operate for two to four years, given adequate appropriations and satisfactory performance. Up to $500,000 is available for Year 1, with a comparable amount anticipated for Year 2.

Estimated Number of Awards: One.

Estimated Amount of Award: $500,000 for Year 1. Two years, with an option to renew for up to two additional project periods after completion of first year. Funds are provided under this solicitation for the first year only.

Note to Applicants: This notice is part of a complete application package that also includes: the NIFL Equipped for the Future Orientation Package, the statute authorizing the program, and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR). Taken together, these materials contain all the information, application forms, regulations, and instructions needed to apply for a grant under this competition. The Application and EFF Orientation Package are available on request from Sharyn Abbott, NIFL, EFF information, this grant announcement, and required forms can also be found on NIFL's web site (www.nifl.gov). Required forms are also available on-line at http.//www.nifl.gov/activities/.

Grant Administration and Applicable Regulations: The administration of the grant is governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR Parts 74; 75.100–102, 104, 112, 117–118, 127–129, 190–192, 201, 217, 231–36, 250–51, 253, 261, 525, 531, 562, 591, 620–21, 700–707; 77; 79; 80; 81; 82; 85; and 86 (36/6/1997 and EDGAR Expanded

Authorities, 1/27/98), set forth administrative and other requirements. This document is available through your public library, the National Institute for Literacy, and at the following web site (http://www.ed.gov/). It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants Officer will request certain organizational, management, and financial information. Grant administration questions regarding General Requirements, Prior Approval Requirements, Transfer of Project Director, and Suspension or Termination of Award, should be referred to the Grants Officer.

FOR FURTHER INFORMATION CONTACT: Sondra Stein, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 TEL: 202–233–2041; FAX 202–233–2050, EMAIL sstein@nifl.gov.

For Applications Only Contact: Sharyn Abbott, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 TEL: 202–233–2026; FAX 202–233–2050, EMAIL sabbott@nifl.gov.

SUPPLEMENTARY INFORMATION: For purposes of this notice, the following definitions apply:

''Literacy'' means an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the Workforce Investment Act of 1998).

''Adult Literacy System'' means all individuals, programs, and organizations that are involved, directly and indirectly, in the delivery of literacy and basic skill services to adults. This includes, but is not limited to, people and groups involved in literacy policymaking, research and development, technical assistance, and instructions service delivery.

''Adult Roles'' means the following three major arenas of adult life, and the obligations that pertain to each:

- Parent/family member
- Citizen/community member
- Worker

''Constituencies'' mean national, state, or local organizations in the public, nonprofit, and private sectors that have a stake in developing standards for particular adult roles because the quality of role performance has an impact on their organization's achievement of its mission and goals.

''Consensus-building'' means the explicit, ongoing effort to develop a convincing public argument for the use of ''Equipped for the Future'' standards by key constituencies, to expand the number of individuals from key constituencies involved in standards development use, marketing, and dissemination, and to enlist key segments of the workforce development system in using the standards at the national, state, and local levels.

''Content Standards'' mean specific descriptions of what adults need to know and be able to do to perform the key activities identified in the EFF standards framework. EFF has identified 16 content standards that are critical to adult success.

''Generative skills'' mean skills and knowledge that are core to the performance of a wide range of tasks found in multiple roles and that are durable over time in the face of changes in technology, work processes, and occupational demand.

''National Policy Group'' means the body of nationally-recognized leaders in literacy and workforce development that provides policy guidance and consensus-building support to the EFF initiative.

''Performance Indicators'' mean descriptions of how achievement of the content standards will be demonstrated, and reflect the consensus of key stakeholders for the particular adult role being addressed.

''Purposes for Literacy'' mean the following four general purposes, based on NIFL's survey of adult learners, that literacy serves in helping adults fulfill their roles:

- Providing access to information so adults can orient themselves in the world.
- Enabling adults to give voice to their ideas and have an impact on the world around them.
- Enabling adults to make decisions and act independently, without needing to rely on others.
- Building a bridge to the future by laying a foundation for continued learning, so adults can keep up with the world as it changes.

''EFF Standards Framework'' means the conceptual system that includes the following: ''role maps'' that identify the broad areas of responsibility and key activities for each of the primary adult roles—parent/family member, citizen/community member, and worker; ''common activities'' that are derived from looking at what is common across all three roles; and content standards that define what adults need to know and be able to do to achieve the four purposes and carry out these activities. The EFF standards framework: (1) Is based on a coherent theory of adult learning; (2) communicates what customers, investors, and partners can expect from the adult literacy system; and (3) is explicitly linked to other standards development and implementation efforts.

''Validation'' means the demonstration of the degree to which the standards are representative of the important aspects of role performance.

''Workforce Development System'' means the sum of public and private programs that share a focus on building the skills and knowledge of youth and adults. These programs include: adult and family literacy programs, welfare-to-work programs, vocational education and training programs, school-to-work programs, industry-based skill standards programs, K–12 education programs, post secondary education programs, Workforce Investment Act programs, community college/post secondary education programs, union and employer-sponsored training programs, apprenticeship programs, one-stop career centers, dislocated worker programs, and related programs in the public, private, and nonprofit sectors.

Background

The National Institute for Literacy (NIFL), was created by the National Literacy Act of 1991 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. NIFL is authorized to carry out a wide range of activities that will improve and expand the system for delivery of adult literacy services nationwide.

Equipped for the Future (EFF) is the National Institute for Literacy's long-term, standards-based, collaborative initiative to reform the adult education system in the United States. EFF's goal is to help adult learning programs achieve results that really matter—to policymakers, educators, employers, and adult learners themselves.

EFF starts with a new definition of results that merges policymakers' goals of a responsible citizenry and a productive workforce with adult learner's vision of how education can help them succeed in their daily lives as workers, parents, citizens, and community members. To enable adults to get more of what they need to be successful, the EFF framework for adult learning shifts the focus in two ways. Instead of presenting education as remedial, making up for something adults didn't get in the past, EFF focuses adult learning on preparation for new, unanticipated responsibilities in the

present. Instead of building a curriculum around *acquiring* the same body of knowledge and skills students are expected to learn in K–12 education, EFF focuses teaching and assessment on adults actually *using* a new set of basics in carrying out important life tasks. EFF addresses a major educational problem that has far-reaching implications for the social and economic well-being of the nation. Up to 90 million adults in the U.S.—nearly half the adult population—lack the skills necessary to respond and adapt to the changing demands of their lives at work, at home, and in their communities. Nearly 25 percent of adult with an average of 10 years of formal schooling have no more than *fourth* grade literacy skills. As a prominent literacy researcher put it, ''* * * low-literate Americans may now be seen as a chronic feature of the American educational landscape.'' Their lack of skills contributes to every other serious social and economic problem the nation faces—children's failure in school, lower worker productivity, crime and welfare.

The current adult education system lacks the capacity to serve these adults. Beyond problems of funding and staffing, programs have trouble clarifying their goals for students, and assessing and demonstrating results. These were the findings of a 1995 General Accounting Office report, which linked these problems to the lack of a consistent vision of what is important to teach. Over 50 percent of students drop out before completing sufficient hours of instruction to develop skills that enhance performance of real life tasks. Meanwhile, welfare time limits, combined with a low unemployment rate, increase national pressure for programs to produce better results faster.

Adult educators in America clearly need a new way of doing business—a new sense of mission, a new approach to delivering services, and a new way of assessing program effectiveness. As a customer-driven, standards-based reform movement, EFF provides all three. Based on a customer-defined vision of what adults need to be effective, EFF enables teachers to link curriculum and instruction to real-world outcomes. As a result, students see the connection between their studies and their lives, and get immediate, practical results from their learning. As more and more programs use the EFF Standards to assess progress and report results, policymakers and funders will be able to base their decisions about education on well-documented resulted that matter. And taxpayers will have accountability for the billions of federal dollars being spent on literacy and lifelong learning programs.

History

In the first phase of this initiative, the NIFL developed a common framework of four fundamental purposes for literacy that emerge from the writings of 1,500 adults in literacy programs nationwide. As detailed in the NIFL report, Equipped for the Future: A Customer Driven Vision for Adult Literacy and Lifelong Learning, these four purposes are to—

- Gain access to information so adults can orient themselves in the world.
- Give voice to ideas, so that they will be heard and can have an impact on the world around them.
- Make decision and act independently.
- Build a bridge to the future, by learning how to learn in order to keep up with the world as it changes.

In October 1995, the NIFL awarded eight one-year planning grants as the second phase of this multiyear initiative to assure that adults are ''equipped for the future.'' These planning grants resulted in a draft definition of a standards framework that identifies what adults need to know and be able to do to be effective in their roles as parent/family members, worker, and citizen. The grantees, working with NIFL and its National Policy Group, also developed a common definition of the system reform to be achieved the EFF initiative.

In October 1996, the NIFL awarded three-year grants to three consortia, resulting in further development and refinement of the EFF standards framework, including:

- Development and validation of ''role maps'' that identify the primary responsibilities and key activities all adults perform in their roles as workers, parents and family members, and citizens and community members, and performance indicators for each activity that enabled us to identify the knowledge and skills required to carry out those activities well.
- Development and validation of content standards that support effective performance across the Three primary adult roles.
- Pilot implementation of the standards in adult education delivery systems.
- Development of a coherent, theory-based framework for assessing competence and defining levels in using the skills defined by the standards in carrying out key roles.
- Building the support of key constituencies for the standards and their use.

This solicitation of grant applications addresses the fourth and final project phase: Implementation of EFF standards as a tool for system reform.

Description of Program

For the past four years, NIFL has been working with a range of partners in states across the country to develop a customer-driven, standards-based, collaborative approach to adult literacy system reform. The EFF content standards developed through this effort define the critical skills and knowledge that enable adults to effectively carry out their responsibilities as workers, parents and family members, and citizens and community members. The standards have been developed and refined with the assistance of a broad cross section of literacy and basic skills programs as well as the advice and guidance of key stakeholders in the nation's workforce development, family literacy, and civic participation movements.

Investment in EFF has been developed through strategic partnerships with states and other systems. These partners now see EFF as providing the framework and tools for system reform that will lead to improvements in practice and produce results that matter. Recognizing the promise of the EFF framework, many EFF partners have begun the process of ''bringing EFF on line.'' They hope to integrate EFF into program improvement strategies now so that, once the levels for standards are defined, assessments are identified, and MIS systems put in place, teachers and programs will be ready to use these tools to measure progress and report results.

By Fall 1999, the NIFL will have completed the major development work on the standards and will publish a Users' Guide, designed to introduce key partners and stakeholders to the standards and how they can be used for teaching and learning, program improvement, accountability, and system reform.

The EFF Center for Training, Technical Assistance, and Materials Development established under this grant program will have primary responsibility for reaching out and establishing strong linkages with these key partners, including adult education, family literacy, welfare-to-work, skill standards voluntary partnerships, and other workforce development systems, and assuring that these partners have the support needed to integrate EFF as part of their effort to prepare their systems to deliver the desired results. The work of this Center will be

complemented by an EFF Center for Research and Evaluation, based at the University of Tennessee's Center for Literacy Studies (CLS), and a Center for Assessment, currently operated through a contract with the Center for Workforce Development, Institute for Educational Leadership (IEL).

A detailed elaboration of goals and activities to be initiated and/or carried out by the grantee during the period October 1, 1999 to September 30, 2001 follows.

Goals

The primary goal of the Center is to assist NIFL in the effective integration of EFF into 4 key systems:

1. State adult basic education and literacy systems with responsibility for administering state and federal programs for adult education and family literacy and for preparing to meet new performance indicators under TANF and the Workforce Investment Act;

2. State and national literacy volunteer programs that coordinate the delivery of adult literacy and ESOL services through a network of volunteer literacy programs in communities across the country;

3. Federal, regional and state Even Start, Family Literacy, and Head Start programs that are putting in place new performance and quality indicators in response to new state legislation and changing federal legislation; and

4. National and state skill standards partnerships that are in the process of defining the knowledge and skills needed to qualify for entry-level positions in each of the 15 occupational/industrial sectors defined by the NSSB.

NIFL assumes that effective integration into a system starts with the needs of the customer as defined by the customer. It is based on close, ongoing collaboration with the customer, and includes but is not limited to the following:

1. Assistance to policymakers and administrators in developing a plan for how to integrate EFF into their ongoing efforts.

2. Assistance in introducing EFF to a leadership group in the system.

3. Assistance in developing and implementing a training and technical assistance plan for integrating EFF into the system [includes developing marketing materials, training a core of trainers, helping trainers plan and conduct training institutes, providing upgrades as new tools become available, and providing ongoing troubleshooting and technical assistance].

4. Provision of materials and tools that can be used (customized) to implement EFF.

5. Opportunities to share information and experiences with other states and systems integrating EFF.

6. Opportunities for policymakers and practitioners to learn more about EFF (on-line seminars, special institutes, conferences).

In order to achieve this goal, the Center will carry out the following activities:

1. Establish and manage a geographically distributed network of diverse, highly qualified trainers and practitioner-trainers who have expertise to the full range of programs and populations in the adult education system, and who can provide a range of training experiences (one-time workshops, ongoing staff development, mentoring, coaching) critical to integrating EFF into policy and into service delivery, training, and accountability systems. Right now there are approximately 10 part-time trainers and more than 100 practitioners with varying levels of experience in using EFF. The center should build on this base in developing a distributed training network that has the capacity to offer assistance to states nationwide.

2. Establish a system for building and maintaining such a network, including provisions for (a) building the capacity of practitioners to serve as trainers; (b) certifying trainers and training centers; and (c) providing credit for training.

3. Drawing on the experience of programs and systems already using EFF, develop a range of materials and resources that facilitate adoption and use of EFF. Such materials should include: (a) Materials that make explicit the links between EFF and approaches to instruction, assessment, credentialing, and accountability currently in use by key customers; (b) compilations of curriculum and assessment resources for use with EFF; (c) training guides; and (d) templates and other resources that enable programs to create useful, reliable tools for assessing performance of EFF standards.

4. Working with the four key system customers enumerated above, identify needs and develop, actively market, and deliver customized training and technical assistance packages that meet identified needs.

5. Working with practitioners currently using EFF, develop and deliver customized training and technical assistance packages that meet the need for ongoing capacity-building among direct-service programs and local initiatives that have been using EFF. Packages should be designed to address the needs of program administrators as well as teaching staff, and should include materials and training to assist programs in using EFF to identify learner goals; design instruction and assessment, and organize support services to facilitate achievement of these goals; and report and evaluate results.

6. Identifying and supporting high-quality EFF programs that can serve as demonstration sites.

7. Establishing and managing a system for collecting, reviewing, and evaluating materials that have been developed for use in EFF programs, and for packaging and broadly disseminating materials and tools judged to be high-quality. Such a system should: (a) Involve practitioners in design and decision-making; (b) have clear, user-friendly quality guidelines to enable practitioners to judge the quality of their own work; (c) be cost-effective; and (d) use multiple dissemination vehicles (hard copy, video, CD–ROM, on-line) in order to get materials out to as many people as possible, effectively and quickly.

8. Developing and maintaining a system for ongoing evaluation of the Center, including a database that tracks Center activities and their impact on the quality and outcomes of teaching and learning.

9. Working with NIFL to assure that all templates, modules, materials, and tools are designed to be delivered online through NIFL's web-based Literacy Information and Communications System (LINCS), as well as published in hard copy or CD–ROM formats.

10. Assuring that all training, technical assistance, and materials development maximizes the use of individuals, programs, and systems currently using EFF, in accordance with EFF's combined bottom-up/top-down approach to consensus-building and system reform.

11. Working in close collaboration with NIFL and its partners in EFF, the Center for Literacy Studies, the National Center for the Study of Adult Learning and Literacy (NCSALL), and the IEL, to integrate findings from research and practice into Center materials and dissemination work, and to assure a cohesive and integrated approach to system reform.

12. In consultation with NIFL, establishing a national advisory group that includes representatives of the key customers to be served by the Center, key technical expert(s), and key EFF partners. The Center advisory group should meet no less than two times per year and be comprised of individuals

who legitimately represent key constituencies and customers whose buy-in is critical to widespread use of Center products.

13. Developing and maintaining partnerships with other training centers and institutions of higher education, publishers and test makers, and developers of distance learning to help them integrate EFF into their work.

14. Participating in quarterly EFF Management meetings in Washington, DC in November 1999, January 2000, March 2000, and July 2000, and on dates to be arranged the following year.

15. Participating in monthly management conference calls of two hours' duration.

16. Maintaining regular e-mail and other contact with other EFF Partners throughout the grant period, in order to maximize sharing of information and assure an integrated approach to system reform.

Project Narrative

The applicant's project narrative should address the above goals, purposes and activities. The narrative should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. It must be organized and contain the information as described in the following sections:

1. Approach

This section should describe the applicant's view of (a) what the goals of EFF are; (b) how the EFF initiative can best achieve these goals; (c) the various roles a center can play in achieving these goals; and (d) the extent to which the applicant's plan includes sound methods for achieving measurable goals.

2. Center Design

This section should describe the applicant's goals and objectives for the Center as an integral part of the EFF system reform initiative, and describe the applicant's vision of how the center can work most effectively to carry out the 16 key activities identified above within a two to three year time span.

This section should also demonstrate that the design is built on technical expertise relevant to the key tasks, as well as knowledge and experience in working with the four key customer systems. It should include detailed descriptions of how the applicant intends to approach key tasks, and what kinds of materials and other resources the applicant would produce for key customers.

3. Plan of Operation

This section includes the project work plan and timeline and project management plan. It describes clear, measurable goals and objectives for the project, and details the project tasks, timeline, staffing, and organization for their accomplishment.

The plan of operation should clearly describe the specific activities the applicant will undertake to implement the design described above, as well as proposed dates for their initiation and completion. The plan also should describe how the applicant will work with NIFL and the EFF Centers for Research and Evaluation and Assessment to assure an integrated approach to system reform, how the applicant will assure the investment of key constituencies in its work, and how constituents will be involved in key project development, implementation, marketing/dissemination, and validation tasks.

The plan of operation should detail the project's staffing and organization, clearly identifying the performance objectives of key staff, the scope and nature of their responsibilities, and the level of effort each staff person will devote to this project.

4. Organizational Capability

This section should demonstrate the ability and experience of the applicant to perform the tasks required in this project, including the applicant's skills, technical expertise, and experience in providing training and technical assistance and developing materials and resources appropriate to the needs of diverse constituencies at the national, state, and local levels. In the case of a consortium, this section should also describe how the various organizations that comprise the applicant's consortium will work together, their respective roles and responsibilities, and the plan for effective management across organizations.

5. Quality of Key Personnel

This section should include the qualifications of each staff person for the project position to which s/he has been assigned, identifying his/her employing organization, and providing an overview of his/her experience, knowledge, and capability to perform the work described as demonstrated by the conduct of similar work in related settings. A project organization chart should be provided.

6. Evaluation Plan

The applicant should describe the process for documenting and monitoring the project processes and results, including how the applicant will create a database of project activities for internal Center management purposes, for documenting and reporting to NIFL and other EFF Centers on project activities and achievements, and for use by the EFF Research and Evaluation Center for EFF research and evaluation activities.

7. Budget and Cost Effectiveness

The application must contain a detailed budget for support requested for years one and two of the project. The budget should include all applicants' costs and should identify contributed costs and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a consortium formed for purposes of the application should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost sharing is proposed for each budget item. Please note that overhead for this project is restricted as per EDGAR CPR 75–562.

Selection Criteria

In evaluating applications for a grant under this competition, the Director uses the following selection criteria (Total 105 points):

(1) Approach (15 points)

The Director reviews each application to determine the extent to which the applicant's description of approach demonstrates: (a) Understanding of the goals and purposes of EFF as a customer-driven, standards-based, collaborative system reform initiative; (b) knowledge of the work and products to date, including theoretical underpinnings of the approach to standards development; (c) philosophical and practical commitment to customer focus; (d) philosophical and practical commitment to collaborative development; (e) understanding of how a center can contribute to the system reform process; and (f) the relative importance of aspects of system reform in the adult literacy and lifelong learning system.

(2) Center Design (20 points)

The Director reviews each application to determine the extent to which the applicant's design for the Center: (a) Demonstrates commitment to building capacity of the system nationwide, rather than the capacity of the Center; (b) demonstrates an appropriate balance of services and products across constituencies; (c) demonstrates a commitment to working in close collaboration and consultation with

appropriate partners; (d) demonstrates a commitment to draw on resources of NIFL and its partners in EFF, including local field development partners; and (e) demonstrates creativity and technical competence in dealing with key tasks and addressing needs of key customers.

(3) Plan of Operation (30 points)

The Director reviews each application to determine the quality of the plan of operation, including the extent to which the applicant: (a) States clear and measurable project goals and objectives that are clearly related to the intended purposes of the EFF, as outlined in this request for applications; (b) provides a fully detailed plan and timeline for achieving those goals, and assures that the plan addresses all the key project activities identified above, and is feasible, technically sound, and responsive to issues of balance; (c) proposes a plan for maintaining effective working relationships with NIFL and other EFF Centers and Partners, as required for effective development of the project; (d) proposes a management plan that is effective and ensures proper and efficient administration of the project; (e) demonstrates the quality of the applicant's plan to use its resources and personnel to achieve each project objective; and (f) demonstrates that staff assigned to key positions include appropriate qualifications, in terms of knowledge, experience and proven capability to perform the work described.

(4) Organizational Capability (15 points)

The Director reviews each application to determine the capability of the applicant (together with members of its consortium) to achieve the goals of the project, including the extent to which the applicant provides a full description of each of the organizations that make up the consortium, including how each organization contributes to the applicant's experience and capability to: (a) Lead a broad-based, collaborative process for adult learning systems reform and improvement that is standards-driven; (b) manage a system for training, technical assistance and materials development that builds and certifies distributed capacity; (c) develop theoretically sound, practical, high quality, customer-focused materials, training and resources; (d) disseminate effectively and efficiently through a variety of vehicles; and (e) leverage the commitment and involvement of key partners at the national, state, and local levels.

(5) Quality of Key Personnel (10 points)

The Director reviews each application to determine the quality of key personnel for all project activities, including: (a) The qualifications of the project director and other key personnel; (b) the experience and training of key personnel in working collaboratively with key system customers in fields related to project objectives, and (c) the applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

(6) Evaluation Plan (10 points)

The Director reviews each application to determine the quality of the applicant's plan for documenting and monitoring the project processes and results, including: (a) The quality of methods and mechanisms to be used to document, evaluate, and report progress in relation to the project's mission and goals, including the creation of a database that can be used by NIFL and its EFF partners for EFF research and evaluations activities; (b) the extent to which the applicant's statement of measurable outcomes addresses all project goals; and (c) the quality of methods that will be used to document and evaluate the impact of the project on programs, practitioners, and adult learners.

(7) Budget of Cost Effectiveness (5 points)

The Director reviews each application to determine the extent to which: (a) The budget is adequate to support grant activities; (b) the costs are reasonable in relation to the objectives of the project; (c) the budgets for any subcontracts are detailed and appropriate; and (d) the budget details an resources, cash, or in-kind, that the applicant will provide or seek in order to supplement grant funds.

Other Application Requirements

The application shall include the following:

Project Summary

The proposal must contain a brief summary of the proposed project suitable for publication. It should not be an abstract of the application, but rather a self-contained description of the project's goals, approach and the activities proposed. The summary must include the following information: (a) Name of applicant organization; and (b) description of the project.

Budget Proposal

ED Form 524, Sections A and C, must be completed and submitted with each application. Section C should include a detailed explanation and amplification of each budget category, and a complete justification of costs in each category. If Section B is completed, include the nature and source of non-Federal funds. Instructions for completion of the budget is on the back side of Form 524.

Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all applicant's costs and should identify contributed costs and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a consortium formed for purposes of the application should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost sharing is proposed for each budget item. Please note that overhead for this project is restricted as per EDGAR CFR 75–562.

Disclosure of Prior Institute Support

If any subcontractor, partner, consortium member, or organization has received NIFL funding in the past 2 years, the following information on the prior awards is required: (1) NIFL award number, amount and period of support; (2) a summary of the results of the completed work; and (3) a brief description of available materials and other related research products not described elsewhere. If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the application.

Current and Pending Support

All current project support from whatever source (such as federal, state, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being

considered by or will be submitted soon to other sponsors.

Any fee proposed to be paid to a collaborating or ''partner'' for-profit entity should be indicated. The Grants Officer will negotiate fees. Any copyright, patent, or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall application and addressed in the narrative.

Acknowledgment of Support and Disclaimer

An acknowledgment of NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No. (Grantee should enter NIFL grant number).

Except for articles of papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Institute for Literacy.

Reporting

In addition to working closely with the Institute, the applicant will be required to submit: (1) Quarterly reports from the database of Center activities; (2) an annual report; and (3) a continuation application for project years 2 and 3.

Instructions for Transmittal of Applications

To apply for a grant, deliver the original and five (5) copies of the application on or before deadline date of August 18, 1999, to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: CFDA#84–257M. An application will not be considered for funding unless the applicant can show proof that the application was: (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:30 PM (Eastern Standard Time) on the deadline date. The applicant must indicate on the envelop and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Note: NIFL will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call NIFL at (202) 632–1500.

Application Forms

Applicants are required to submit the following forms, assurances and certifications:

(a) Application for Federal Education Assistance (ED 424[Rev. 1–12–99])

(b) Budget Information Non-Construction Programs (ED 524)

(c) Assurances—Non-Construction Programs (Standard Form 424B)

(d) Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free-Workplace Requirements (ED 80–0013)

(e) Certification Regarding Debarment, Suspension, Ineligibility and Volunteer Exclusion—Lower Tier Covered Transactions (ED 80–0014)

(f) Disclosure of Lobbying Activities (Standard Form LLL [Rev. 7–97])

(g) Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016)

An applicant may submit information on a photostat copy of the application and budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received. Required forms are available from NIFL and on-line at http://www.nifl.gov/activities/.

Information about NIFL's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the NIFL homepage—LINCS—on the World Wide Web (at http://novel.nifl.gov/Grants.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid control number for this information collection is 3430–0005, Expiration date June 30, 2002. The time required to complete this information is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 99–17305 Filed 7–7–99; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Opertaing Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–3 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio.

The proposed amendment would change the Technical Specifications to increase the spent fuel storage capacity by allowing the use of fuel storage racks in the cask pit, which is adjacent to the spent fuel pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No.

1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the activities performed in and around the spent fuel pool and cask pit will not be significantly changed due to the use of spent fuel racks installed in the cask pit area.

In the analysis of the safety issues concerning the expanded spent fuel storage capacity, the following previously postulated accident scenarios have been considered:

—Misloaded or Mislocated Fuel Assembly
—Seismic Event
—Fuel Handling Accident

In addition, spent fuel cask crane travel and the effects of a loss of spent fuel pool cooling have been evaluated.

The proposed Technical Specification (TS) changes have no bearing on the probability of a seismic event or the probability of a loss of spent fuel pool cooling.

The probability of a fuel handling accident is primarily a function of fuel handling equipment reliability and fuel handling procedures. The probability of inadvertent misloading or mislocation of a fuel assembly is primarily a function of fuel handling procedures. Since the methods and procedures for handling fuel assemblies will not be significantly changed under the proposed TS changes, there will be no significant increase in the probability of these events.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because evaluations for each postulated accident have shown that the consequences remain bounded by the consequences from the previously evaluated accidents.

In the analysis of the safety issues concerning the expanded spent fuel storage capacity, the following previously postulated accident scenarios have been considered:

—Misloaded or Mislocated Fuel Assembly
—Seismic Event
—Fuel Handling Accident

In addition, spent fuel cask crane travel and the effects of a loss of spent fuel pool cooling have been evaluated.

The criticality analyses for the spent fuel storage racks located in the cask pit require burnup/enrichment limitations similar to those currently in place for the spent fuel pool. These burnup/enrichment limitations are imposed by the proposed changes to TS 3/4.9.13, Refueling Operations—Spent Fuel Pool Fuel Assembly Storage. The criticality evaluation for the cask pit racks shows that if an unirradiated fuel assembly of the highest permissible enrichment is placed in an unauthorized storage cell or mislocated outside a storage rack, K_{eff} will be maintained ≤0.95, taking credit for soluble boron in the cask pit water. Therefore, there will be no radiological consequences.

The evaluation of a loss of spent fuel pool cooling shows that sufficient time will be available, before the onset of pool boiling, to restore cooling or to provide a source of makeup water. Therefore, the racks will remain submerged and fuel stored therein will remain sufficiently cooled, and there will be no adverse consequences due to the proposed changes.

The results of the seismic evaluation demonstrate that the cask pit racks will remain intact and that the structural capability of the pool and liner will not be exceeded. The Auxiliary Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks and pool water inventory, therefore, the rack geometry and cooling to the fuel will be maintained. Thus, there will be no adverse consequences due to the proposed changes.

The results of the fuel handling mechanical accident evaluation and criticality evaluation show that the minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained and cooling will remain adequate. In addition, the analyses show that the cask pit liner will not be pierced, and although the underlying concrete could experience local crushing, the cask pit structure will not suffer catastrophic damage. The radiological dose resulting from the release caused by a fuel handling accident will not be increased from that previously considered.

The spent fuel cask crane travel interlocking design features were evaluated. Modification of the interlocking device to further restrict crane travel from over the cask pit maintains the same restriction of movement of loads over stored fuel that currently exists for the spent fuel pool.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the function and parameters of the components and the associated activities necessary to support safe storage of fuel assemblies in the cask pit are similar to those presently in place. The methods and procedures for handling fuel assemblies would not be significantly changed. Therefore, the list of postulated accidents remains unchanged.

Any event which would modify parameters important to safe fuel storage sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The fuel storage configuration and the existence of the coolant are the parameters that are important to safe fuel storage. The proposed changes do not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents, nor do they affect the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Not involve a significant reduction in a margin of safety because for the proposed changes, appropriate evaluations have shown compliance with stipulated safety margins.

The objective of spent fuel storage is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as a seismic event or a fuel handling accident. The design of the spent fuel racks located in the cask pit meets all applicable requirements for safe fuel storage. The seismic and structural design of the racks preserves the proper margin of safety during normal and abnormal loads. The methodology used in the criticality analysis meets the applicable regulatory guidance. The thermal-hydraulic evaluation of the pool demonstrates that the cask pit will be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible malfunction scenarios and seismic events. Upon the unlikely event of a complete loss of spent fuel pool cooling, sufficient time will be available, before the onset of pool boiling, to restore cooling or to provide a source of makeup water. Therefore, the racks will remain submerged and fuel stored therein will remain sufficiently cooled. In addition, the results of the fuel handling accident evaluation show that the minimum subcriticality margin will be maintained, cooling will remain adequate, the cask pit structure will not suffer catastrophic damage, and the radiological dose resulting from the release caused by a fuel handling accident will not be increased from that previously considered.

Thus, it is concluded that 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 amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 5, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated May 21, 1999, 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 University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 29th day of June 1999.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17294 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the applications for licenses to export source material as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of items to be exported	Country of destination
U.S. Department of Energy, 06/04/99, 06/22/99, XSOU8767.	135 million kilograms of natural uranium for sale, storage, or blending with highly enriched uranium, consistent with the March 24, 1999 U.S.-Russia Agreements in this matter.	Russia.

Dated: This 1st day of July 1999 at Rockville, Maryland.

For The Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 99–17293 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 5, 12, 19, and 26, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 5

Wednesday, July 7

2:00 p.m.

Affirmation Session (Public Meeting)

a. International Uranium (USA) Corporation Envirocare's Appeals of LBP–99–5 and LBP–99–11 (Envirocare's Dismissal for Lack of Standing)

Week of July 12—Tentative

Tuesday, July 13

9:30 a.m.
Briefing on Treatment of Existing Programs for License Renewal (Public Meeting) (Contact: Sam Lee, 301–415–3109)

Thursday, July 15

10:00 a.m.
Briefing on Existing Event Response Procedures (including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist Activities) (Public Meeting) (Contact: Charlie Miller, 301–415–7482)
11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of July 19—Tentative

There are no meetings scheduled for the Week of July 19.

Week of July 26—Tentative

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)

Friday, July 30

9:30 a.m.
Briefing on Performance Assessment Progress in LLW, HLW, and SDMP (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 June 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Final Rule—Revisions to Requirements of 10 CFR Parts 50 and 72 Concerning Changes, Tests, and Experiments'' (PUBLIC MEETING) be held on June 22, and on less than one week's notice to the public.

By a vote of 4–0 on June 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Proposed License to Export High Enriched Uranium (HEU) for Production of Medical Isotopes at the Canadian Maple Reactors (XSNM–03060)'' (PUBLIC MEETING) be held on June 29, 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/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–17467 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212–0030; expires September 30, 1999). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurance for the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 7, 1999.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326-4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326-4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The survey is distributed by the American Council of Life Insurance and provides the PBGC with ''blind'' data (*i.e.*, is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them).

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance. The survey is conducted quarterly and will be sent to approximately 12 insurance companies. Based on experience under the current approval, the PBGC estimates that 8 insurance companies will complete and return the survey. The PBGC further estimates that the average annual

burden of this collection of information is 32 hours and $48.

The collection of information under the regulation has been approved by OMB under control number 1212–0030 through September 30, 1999. The PBGC intends to request that OMB extend its approval for another three years. 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 PBGC is soliciting public comments to—

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, D.C., this 1st day of July, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–17250 Filed 7–7–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41586; File No. SR–CHX–99–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

June 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 24, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. On June 25, 1999 the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby requests a seven month extension of the pilot program relating to the trading of Nasdaq/NM Securities on the Exchange that is currently due to expire on June 30, 1999. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through January 31, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[4] Among other things, these rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (''MAX system'').[5]

On January 3, 1997, the Commission approved,[6] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders in Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer (''NBBO'').[7] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months worth of trading data.[8] Due to programming issues, the pilot program was not implemented until April, 1997. Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[9] The Exchange submitted the report to the Commission on January 30, 1998 (''January 1998 Report''). Subsequently, the Exchange requested another three month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three month period, until June 30,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 the CHX requested that the Commission approve extension of the pilot program through January 31, 2000. *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to John C. Roeser, Attorney, Division of Market Regulation, Commission, dated June 25, 1999.

[4] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2). *See* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[5] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX, Art. XX, Rule 37(b). A MAX order that fits under the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST Rule does not apply, but MAX system handling rules do apply.

[6] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997) (''January 1997 Order'').

[7] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[8] In connection with approval of the CHX's current proposal, the Commission has requested supplemental trading data.

[9] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

1998.[10] On July 1, 1998 the Commission approved the pilot for an additional six month period, until December 31, 1998.[11] On December 31, 1998, the Commission approved the pilot for an additional six month period, until June 30, 1999.[12] The Exchange now requests another extension of the current pilot program, through January 31, 2000.

Under the pilot program, specialists must continue to accept agency [13] market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place.[14] Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they were quoting at the NBBO when the order was received.

The pilot program requires the specialist to set the MAX auto-execution threshold at 1000 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.[15]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay, provided that the auto-execution threshold is less than or equal to the NBBO.[16] If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). In particular, the proposal is consistent with the requirements of Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with Section 11A(a)(1)(D) and 11A(a)(1)(C) of the Act.

The CHX's proposal to not require automatic execution for Nasdaq/NM securities when the specialist is not quoting at the NBBO, and to allow the specialist to execute the order as agent, is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide an execution reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–07 and should be submitted by July 29, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specially, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) [17] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative practices,

[10] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[11] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[12] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[13] The term ''agency order'' means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. The Rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[14] The auto-acceptance threshold in place for Dually Traded securities (those issues that are traded on the CHX and are listed on either the New York Stock Exchange or American Stock Exchange) was recently increased from 2099 to 5099 shares.

[15] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) in issues that became subject to mandatory compliance with SEC Rule 11Ac1–4 on or prior to February 24, 1997, and for 1000 shares in other issues.

[16] The twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote.

[17] 15 U.S.C. 78(b)(5).

to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11A(a)(1)(C)[18] and 11A(a)(1)(D)[19] of the Act because the Exchange's proposal conforms CHX specialist obligations to those applicable to OTC market markers in Nasdaq/NM securities, while CHX provides a separate, competitive market for Nasdaq/NM securities.

The Commission notes, however, that while the Exchange has been working towards establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[20] In connection with this effort, the Commission requests an update on the information provided in the January 1998 Report, to supplement the available trading data and thus facilitate consideration of the underlying issues. The Commission's approval of the pilot extension is thus two fold: to allow the Exchange to operate without interruption, and to allow a period for compilation of the additional data.

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2)[21] of the Act that the proposed rule change (SR–CHX–99–07) be, and hereby is, approved through January 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17353 Filed 7–7–99; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78k–1(a)(1)(C).

[19] 15 U.S.C. 78k–1(a)(1)(D).

[20] *See* January 1997 Order, *supra* note 6.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41576; File No. SR–NYSE–99–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Examination Fee for the Front Line Specialist Clerk Qualification Examination (''Series 21'')

June 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a $200 fee for each candidate in connection with the new Front Line Specialist Clerk Qualification Examination (''Series 21'') to be given by the NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement a $200 per-exam administration fee for the new Front Line Specialist Clerk Qualification Examination (''Series 21''). The fee is consistent with other Exchange administered examination fees which range from $150 to $200. It will be used to offset the costs associated with the Examination's development, implementation, administration and maintenance.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Under recently proposed amendments to Rule 35,[3] Front Line Specialist Clerks (''FLS Clerks'') will have to be qualified by passing appropriate qualification examinations and by meeting appropriate training requirements.

The Exchange anticipates that administration of the Series 21 Examination will commence 90 days after its approval by the Commission.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act which permits the rules of the Exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.[5] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41514 (June 10, 1999), 64 FR 32912 (June 18, 1999) (SR–NYSE–99–19); and No. 41515 (June 10, 1999), 64 FR 32911 (June 18, 1999) (SR–NYSE–99–20).

[4] 15 U.S.C. 78s(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR–NYSE–99–27 and should be submitted by July 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 17354 Filed 7–7–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(C).

[7] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application for Widow's or Widower's Insurance Benefits-0960–0004. The Social Security Administration (SSA) uses the information collected on Form SSA–10-BK to determine whether the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for widow(er)'s benefits.

Number of Respondents: 288,850.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 72,213 hours.

2. Request for Waiver of Overpayment Recovery or Change in Repayment Notice-0960–0037. Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare, Black Lung or Supplemental Security Income overpayments.

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 120 minutes.
Estimated Annual Burden: 1,000,000 hours.

3. Voluntary Customer Surveys in Accordance with E.O. 12862 within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

FY 2000:
Number of Respondents: 1,328,264.
Frequency of Response: 1.
Estimated Annual Burden: 123,231 Hours.

FY 2001:
Number of Respondents: 1,325,760.
Frequency of Response: 1.
Estimated Annual Burden: 122,274 Hours.

FY 2002:
Number of Respondents: 1,327,400.
Frequency of Response: 1.
Estimated Annual Burden: 121,734 Hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Marriage Certification—0960–0009. Form SSA–3 is used by the Social Security Administration (SSA) to determine whether the claimant's spouse has the necessary relationship to the worker as required by section 216(h)(1) of the Social Security Act (the Act).

The respondents are applicants for Spouse's Benefits.

Number of Respondents: 180,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 15,000 hours.

2. Claimant's Work Background—0960–0300. The information collected on Form HA–4633 is used by SSA in cases in which claimants for disability benefits have requested a hearing, which is a statutory right granted to claimants under the Act, on the decision regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge better decide whether or not the claimant is disabled. The respondents are claimants who request a hearing on entitlement to disability benefits, under titles II and/or XVI of the Act.

Number of Respondents: 120,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 30,000 hours.

3. Report on Individual with Childhood Impairment—0960–0084.

Form SSA–1323 is used by SSA to determine the claimant's medical status prior to making disability determinations. The respondents are public and nonpublic schools and agencies who provide status reports on claimants applying for disability benefits.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 2,333 hours.

4. Medicare Buy-In Part B Screening Guide—0960–0601. Pub. L. 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits. The screening guide will be in use from March 1, 1999 through December 31, 1999.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 43,333 hours.

5. State Report of Incorrect Bendex Information—0960–0517. SSA uses the information collected on Form SSA–1086 to correct its master database and to facilitate the electronic exchange of data. The respondents are State agencies administering programs for Aid to Families with Dependent Children.

Number of Respondents: 123.

Frequency of Response: 2.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 41 hours.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: July 1, 1999.

Nicholas E. Tagliareni,

Director, Center for Publications Management, Social Security Administration.

[FR Doc. 99–17401 Filed 7–7–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3087]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the three (3) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: June 30, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–U

United States Department of State

Washington, D.C. 20520

JUN 8 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of twenty-four SPH-122 Self-Propelled Howitzers to Egypt for the Egyptian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 64-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

JUN 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of the Target Acquisition Designation System and Pilot Night Vision System for use in the United Kingdom AH-64 Apache Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 68-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

JUN 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of commercial communication satellite components in the United Kingdom for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 69-99

The Honorable
H. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99–17328 Filed 7–7–99; 8:45 am]
BILLING CODE 4710–25–C

DEPARTMENT OF STATE

[Public Notice 3086]

Revised Guidelines for the Implementation of Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

SUMMARY: Section 609 of Public Law 101–162 (''Section 609'') provides that shrimp harvested with technology that may adversely affect certain species of sea turtles may not be imported into the United States. This import prohibition does not apply if the Department of State certifies to Congress that the harvesting nation has a regulatory program and an incidental take rate comparable to that of the United States, or, alternatively, that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. On March 25, 1999, in response to recommendations of the Dispute Settlement Body of the World Trade Organization, the Department of State published a notice in the **Federal Register** (Public Notice 3013, 64 FR 14481) proposing several revisions to the guidelines issued by the Department on August 28, 1998 for use in making such certifications. In that **Federal Register** Notice, the Department also requested public comment on certain aspects of those proposals, in accordance with provisions of the Uruguay Round Trade Agreements Act, 16 U.S.C. 3533. This notice reviews and responds to the comments received and provides the current version of the guidelines, which include a number of modifications made pursuant to those comments.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington D.C., telephone number (202) 647–2335.

I. SUPPLEMENTARY INFORMATION:

A. Section 609

Section 609 provides that shrimp or products from shrimp harvested with commercial fishing technology that may adversely affect certain species of sea turtles protected under U.S. law and regulations may not be imported into the United States. This import prohibition does not apply if the President certifies to Congress by May 1, 1991, and annually thereafter, that:

a. The government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

b. The average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

c. The particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

The President has delegated to the Secretary of State the authority to make certifications pursuant to Section 609 (Memorandum of December 19, 1990; 56 FR 357; January 4, 1991).

The relevant species of sea turtles are: Loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*).

B. Summary of Comments Received and Responses to Those Comments

The Department of State received 11 sets of comments on the **Federal Register** notice issued March 25, 1999. The Department received 5 sets of comments from governments (or government agencies): Agriculture, Fisheries and Forestry Australia; India; Malaysia; Thailand; and the U.S. Fish and Wildlife Service. The Department also received 6 sets of comments from non-governmental organizations and individuals: A coalition of environmental organizations, including the Caribbean Conservation Corporation, Center for Marine Conservation, Consumers Choice Council, Defenders of Wildlife, Earthjustice Legal Defense Fund, Humane Society of the United States, National Wildlife Federation, Natural Resources Defense Council, Sea Turtle Restoration Project, Sierra Club, World Wildlife Fund; Australian Prawn Promotion Association; Center for Marine Conservation; National Fisheries Institute; Sea Turtle Restoration Project; and J. Frazier, D. PhIL.

The **Federal Register** notice issued March 25, 1999 presented a review of the WTO decision and the steps being proposed and/or taken by the United States to implement that decision. However, the notice sought public comments on those aspects of the WTO decision that were intended to be addressed through the proposed changes to the guidelines, as set forth in Sections II and III of that notice.

Section II of the notice proposed an amendment to the list of exemptions for methods of harvesting shrimp that do not pose a threat to sea turtles and are thus outside the scope of any embargo under the Section 609. Section II also described in more specific terms the types of information that foreign governments may provide and the manner in which the Department will review such information in making determinations under Section 609.

Section III of the notice proposed certain changes to the criteria that the Department will use in making certification decisions, with the intent of introducing greater flexibility in considering the comparability of foreign programs and the U.S. program. Section III also laid out an elaborated ''timetable and procedures'' for certification decisions, including an expedited timetable to apply in 1999 only. The intent of these proposed changes is to increase the transparency and predictability of the certification process and to afford foreign governments seeking certification a greater degree of due process.

The governments and organizations that submitted comments did not limit those comments to Sections II and III of the **Federal Register** notice. Instead, many of those comments responded to other parts of the notice, particularly to the current policy of permitting importation of shrimp harvested by vessels equipped with turtle excluder devices (''TEDs'') in uncertified nations, for which the Department proposed no change.

The following material summarizes, and responds to, all comments received.

(1) *General Comments:* A number of comments received were general in nature and did not relate to any particular proposal for revision of the guidelines. Several comments simply praised the effort of the Department of State to comply with the WTO ruling. Three comments, however, took the position that, in order to comply with the WTO decision, the United States must lift the import prohibition required by Section 609 immediately and that mere revisions in the implementation of Section 609 are insufficient.

Response. The WTO decision did not require a change to Section 609 itself or require that the import prohibitions set forth in Section 609 be otherwise lifted across-the-board. Rather, the WTO decision found that several aspects of the implementation of Section 609, in their cumulative effect, amounted to a violation of the obligations of the United States under the WTO Agreement. The modifications to the guidelines set forth in this notice, together with the other measures described in the **Federal Register** notice issued March 25, 1999, are intended to address the rulings and

recommendations set forth in the WTO decision.

(2) *Comments on Section II:* With respect to the proposed amendment to the list of exemptions for harvesting methods that do not harm sea turtles, one comment simply supported the new wording. Another comment suggested that the conditions and criteria upon which determinations will be made under the proposed amendment should be clearly identified and that there should be a definite time-frame regarding publication and notification of the results of such determinations.

Response. The proposed amendment is designed to cover situations not presently known to the Department of State in which shrimp may be harvested in ways that do not adversely affect sea turtle species. As such, it is difficult to specify the conditions and criteria upon which such determinations will be made. Instead, in keeping with the spirit of the WTO decision, the intent is to provide for the flexibility necessary to assess each situation on its own merits, taking into account differences that may exist in the shrimp harvesting conditions in different nations. For similar reasons, it is hard to specify a single time-frame that would be appropriate for all such determinations. Nevertheless, the section of the proposed guidelines entitled ''Review of Information'' provides that the Department of State will make such determinations within 120 days from the date on which a foreign government submits the necessary information.

A final comment suggested that the term ''incidental mortality'' should be used instead of ''incidental capture.''

Response. The proposed guidelines actually use the term ''incidental taking,'' which covers both incidental mortality and incidental capture. In the view of the Department of State, the term ''incidental taking'' is the most appropriate term since, in addition to being the term used in Section 609 itself, it is well-established in U.S. law and practice regarding the protection of endangered and threatened sea turtles.

Several comments supported the proposed changes regarding review of information, particularly the new language requiring ''empirical data supported by objective scientific studies'' and the proposed timeline for response. Once comment suggested the deletion of the phrase ''available biological and commercial data,'' on grounds that such data are not relevant to the determination of whether the fishing environment of a harvesting nation is likely to pose a threat to sea turtles.

Response. The term ''available biological and commercial data'' refers to two separate sets of information. ''Biological data'' refers, e.g., to data and information on the resources in question, both the shrimp that is being targeted by the fisheries and the sea turtles that might be caught incidental to those fisheries. ''Commercial data'' refers, in this case, to information relating to the operation of the fleet in a particular fishery (areas of operation, fishing depth, length of trawls, etc.). Both sets of information are relevant to determining of whether the fishing environment in a particular country or fishery is likely to pose a threat to sea turtles. To be clearer on this point, the final version of the guidelines replaces the term ''biological and commercial data'' with ''biological data regarding the resources in question and operational information relating to activities of the fishing fleet''.

(3) *Comments on Section III:* With respect to the proposed changes intended to introduce greater flexibility in the making of certification decisions, several comments supported the changes on grounds that they would encourage nations to adopt innovative methods for protecting sea turtles. Another comment emphasized that, because properly installed TEDs release 97 percent of sea turtles captured in shrimp trawl nets, other approaches to protecting sea turtles in the course of shrimp trawl fishing cannot be considered comparable unless they are 97 percent effective.

Response: As recognized in the WTO decision, Section 609 requires, as a condition for certification, that a foreign program for protecting sea turtles in the course of shrimp trawl fishing be comparable to the U.S. program. If a foreign nation adopts a program that seeks to protect sea turtles by modifications to the gear used for shrimp trawling, it may be appropriate to compare, in a numerical sense, the success of such gear modifications in protecting sea turtles to the success achieved through the mandatory use of TEDs. If, by contrast, a foreign nation seeks to protect sea turtles from the effects of shrimp trawl harvesting through other means, e.g., through time and area closures or other non-gear related measures, it may not be appropriate to make the comparison to the U.S. program on a strictly numerical basis.

A further comment argued that the criteria on which certifications are made should be more clearly identified. Certain elements should be more clearly defined, including ''comparably effective regulatory program'', ''sufficient duration'' and ''information from other sources''.

Response: The term ''comparably effective regulatory program'' derives its meaning from Section 609 itself; i.e., ''a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting that is comparable to that of the United States.'' By contrast, the term ''sufficient duration'' is difficult to specify precisely, due to the fact that the duration of a scientific study necessary to make a reliable determination may vary considerably, depending on the nature of the inquiry. As provided in the section of the guidelines entitled ''Review of Information,'' the United States will, upon request ''review and provide comments on a planned or existing study with respect to sample size, scientific methodology and other factors that affect whether such a study provides a sufficient basis for making a reliable determination.'' It is the intention of the Department of State to work cooperatively with foreign nations seeking certification in considering the scientific bases on which such determinations are to be made.

Finally, the section of the guidelines entitled ''Review of Information'' also makes clear that the term ''information from other sources'' includes, but is not limited to ''academic and scientific organizations, intergovernmental organizations and non-governmental organizations with recognized expertise in the subject matter.''

The same comment added that the proposed revisions have not sufficiently taken into account the issue of predictability.

Response: The Department of State is not certain what is meant by this comment. To the extent that the comment suggests the need for a foreign government seeking certification to anticipate the result of a determination before it is made, the section of the guidelines entitled ''Timetable and Procedures for Certification Decisions'' provides, inter alia, for the considerable information exchange that is intended to allow the foreign government to predict the likely result. In particular, the guidelines stipulate that, ''By March 15, the Department of State will notify in writing through diplomatic channels the government of each nation that, on the basis of available information * * * does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by April

15, any further information. If the government of the harvesting nation so requests, the Department of State will schedule face-to-face meetings between relevant U.S. officials and officials of the harvesting nation to discuss the situation.'' Through these procedures, the Department of State intends that the certification determinations will be both more predictable and transparent.

With one exception, all other comments that addressed the proposals for new timetables and procedures supported the proposals, on grounds that they would ensure transparency and equitableness and will improve predictability, due process and procedural fairness. However, one comment stated that the proposed date of September 1, 1999, by which foreign governments seeking certifications under the revised guidelines must submit information, is not acceptable due to such factors as the availability of resources, capacity, skills, technologies, etc.

Response: The Department of State recognizes that a government seeking certification on the basis of the revised guidelines may not, by September 1, 1999, be able to gather sufficient information necessary to support such a request. To meet this concern, and in accordance with its existing practice, the Department will accept requests for certification at any time in the year and will undertake to process them as expeditiously as possible. However, the Department can only commit to making a certification determination by December 6, 1999 if it has received the necessary information by September 1, 1999. Language to this effect has been added to the guidelines.

(3) *Comments on Other Issues.* Despite the fact that the **Federal Register** notice issued March 25, 1999 only sought comments on the issued discussed above, by far the most comments pertained to the policy of the Department of State relating to the importation of shrimp harvested by vessels equipped with TEDs in uncertified nations. The current policy was set forth in the guidelines issued by the Department of State on August 28, 1998, Public Notice 2876, 63 F.R. 167 (''the current policy'').

In general, some comments actively supported the current policy, while other comments strongly opposed it. Those comments in support of the current policy argued that imports of shrimp caught by vessels equipped with TEDs should not be excluded from the U.S. market, regardless of the certification status of the nation involved. Allowing such shrimp into the United States encourages foreign shrimpers to join sea turtle conservation efforts. Another comment in support of the current policy emphasized that, if shrimp is harvested by a vessel using a TED, it should be allowed to enter the U.S. market whether or not all vessels in the same nation are using TEDs.

Comments in opposition to the current policy argued that the policy was inconsistent with Section 609, insofar as Section 609 provides for certification of foreign nations, and does not allow for the authorization of individual shipments of shrimp entering the United States. Other comments also took the view that the current policy undermines the goal of sea turtle conservation by creating a disincentive for foreign nations that are maintaining, or may be considering, a nation-wide program to require TEDs use. Still other comments stated that the use of TEDs by only some vessels in a foreign nation does not protect sea turtles overall, in that sea turtles that escape from nets equipped with TEDs are subject to capture and drowning in nets of other vessels that are not using TEDs.

Response. The Department of State recognizes the strongly held views on all sides of this issue, and notes that the issue is also the subject of on-going litigation before the U.S. Court of International Trade. In light of these circumstances, the Department has determined that it will make no change to the current policy at this time.

Several comments supported U.S. efforts, described in the **Federal Register** notice issued March 25, 1999, to pursue negotiations toward a comprehensive sea turtle agreement for the Indian Ocean region. One comment, however, noted such an agreement ''should not include a WTO escape clause, because this will negate the chance of any pro-environment aspect of the treaty to survive if ever challenged.''

Response. The Department of State is not certain what is meant by the term ''WTO escape clause.'' The Department would simply note that the agreement we envision would deal with the protection of sea turtles and would not deal with international trade issues except to reinforce existing restrictions on international trade in sea turtles and sea turtle parts.

Several comments addressed issues concerning the provision of assistance by the United States Government to other governments to promote TEDs use. One comment urged the United States Government to offer assistance to other governments in developing effective monitoring and enforcement programs. Another comment suggested that the United States Government should give TEDs away for free or on a subsidized basis, and that U.S. shrimp fishermen could take part in training shrimp fishermen in other nations.

Response. The United States Government, primarily through the NMFS, has offered assistance to other governments in the area of monitoring and enforcing fishing rules, and shrimp fishing rules in particular. We envision that, under the auspices of the Inter-American Sea Turtle Convention and a comparable agreement that would cover the Indian Ocean region, such assistance could also be made available from a variety of sources.

Experience has shown that foreign governments can easily acquire TEDs on the open market or by constructing TEDs themselves from materials that are readily available. The costs of purchasing or constructing a TED is modest when compared with other costs associated with the operation of a commercial shrimp trawl vessel, such as fuel, gear, etc. In our judgment, the resources of the United States Government are better devoted to training foreign government officials and shrimp fishermen in the proper design, construction, installation and use of TEDs.

The Department of State would support initiatives by U.S. fishermen familiar with TEDs to assist their foreign counterparts in acquiring and using this technology.

Several comments addressed other exemptions pertaining to shrimp harvested in ways not harmful to sea turtles. One comment noted that the ecological effects of shrimp farming or aquaculture ultimately harm sea turtles as they do other marine life. Another comment characterized as ''meaningless and arbitrary'' the 30-day minimum that shrimp must spend in an aquaculture pond before being harvested in order to qualify for the aquaculture exemption. A final comment suggested a more precise definition for the term ''mechanical devices'' with respect to the exemption relating to artisanal means of shrimp harvesting.

Response. While the Department of State is aware of significant ecological concerns with respect to the harvesting of shrimp by aquaculture, those concerns do not relate to sea turtles specifically. As such, the Department is of the view that Congress did not intend to include the harvesting of shrimp by aquaculture within the meaning of the term ''commercial fishing technology that may adversely affect'' sea turtle species. Regarding the 30-day minimum period, the Department instituted this requirement to ensure that shrimp categorized as qualifying for the

aquaculture exemption were not actually harvested in the wild and merely placed in an aquaculture facility for a brief moment before being processed for export. With respect to the term ''mechanical devices,'' the Department has modified the language of the guidelines to add specificity.

Another comment suggested that the DSP–121 forms be made available for public inspection.

Response. The Department of State does not believe that this suggestion is feasible, or that its adoption is necessary to achieve an adequate system for monitoring imports of shrimp.

The guidelines contain numerous safeguards to ensure the proper completion of the DSP–121 and to protect against fraud.

A final comment suggested that, to achieve effective sea turtle conservation, the guidelines should cover all species of sea turtles, despite the fact that Section 609 applies only to ''those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987.''

Response. The purpose of the guidelines is to assist in the implementation of Section 609, which, as a technical matter, pertains only to those species of sea turtles covered by the June 29, 1987 regulations promulgated by the Secretary of Commerce. However, the Department of State notes that, as a practical matter, the requirements relating to shrimp imports set in place by Section 609 and the guidelines have the effect of extending protection to all endangered and threatened species of sea turtles. There are few, if any, places in the world where endangered or threatened sea turtle species falling outside the technical scope of Section occur and that sea turtle species covered by Section 609 do not.

Revised Guidelines

For the sake of clarity, the August 28, 1998 guidelines are restated below as modified to reflect the changes proposed in the **Federal Register** notice issued March 25, 1999, and the comments received on those proposed changes.

I. Introductory Material

A. The U.S. Program

Since certification decisions under Section 609(b)(2)(A) and (B) are based on comparability with the U.S. program governing the incidental taking of sea turtles in the course of shrimp harvesting, an explanation of the components of that program follows. The U.S. program requires that commercial shrimp trawl vessels use TEDs approved in accordance with standards established by the U.S. National Marine Fisheries Service (NMFS), in areas and at times when there is a likelihood of intercepting sea turtles. The goal of this program is to protect sea turtle populations from further decline by reducing the incidental mortality of sea turtles in commercial shrimp trawl operations.

The commercial shrimp trawl fisheries in the United States in which there is a likelihood of intercepting sea turtles occur in the temperate waters of the Gulf of Mexico and the Atlantic Ocean from North Carolina to Texas. With very limited exceptions, all U.S. commercial shrimp trawl vessels operating in these waters must use approved TEDs at all times and in all areas. The only exceptions to this requirement are as follows:

a. Vessels equipped exclusively with wing nets, skimmer trawls, and pusher-head trawls when used in conjunction with certain restricted tow times are not required to use TEDs because their operations do not pose a threat to sea turtles. Vessels equipped with barred beam trawls and/or barred roller trawls are not required to use TEDs. Single try nets (with less than a twelve foot headrope and fifteen foot rope) are not required to use TEDs.

b. Vessels whose nets are retrieved exclusively by manual rather than mechanical means are not required to use TEDs because the lack of a mechanical retrieval system necessarily limits tow times to a short duration so as not to pose a threat of the incidental drowning of sea turtles. This exemption applies only to vessels that have no power or mechanical-advantage trawl retrieval system.

c. In exceptional circumstances, where NMFS determines that the use of TEDs would be impracticable because of special environmental conditions such as the presence of algae, seaweed, or debris, or that TEDs would be ineffective in protecting sea turtles in particular areas, vessels are permitted to restrict tow times instead of using TEDs. Such exceptions are generally limited to two periods of 30 days each. In practice, NMFS has permitted such exceptions only rarely.

With these limited exceptions, all other commercial shrimp trawl vessels operating in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles must use TEDs at all times. For more information on the U.S. program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting, see 50 CFR 227.17 and 50 CFR 227.72(e).

B. Shrimp Harvested in a Manner Not Harmful to Sea Turtles

The Department of State has determined that the import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtle species:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in pond prior to being harvested.

b. Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices, such as winches, pulleys, power blocks or other devices providing mechanical advantage, or by vessels using gear that, in accordance with the U.S. program described above, would not require TEDs.

d. Shrimp harvested in any other manner or under any other circumstances that the Department of State may determine, following consultation with the NMFS, does not pose a threat of the incidental taking of sea turtles. The Department of State shall publish any such determinations in the **Federal Register** and shall notify affected foreign governments and other interested parties directly.

C. Shrimp Exporter's/Importer's Declaration

The requirement that all shipments of shrimp and products of shrimp imported into the United States must be accompanied by a declaration (DSP–121, revised) became effective as of May 1, 1996 and remains effective. The DSP–121 attests that the shrimp accompanying the declaration was harvested either under conditions that do not adversely affect sea turtles (as defined above) or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609. All declarations must be signed by the exporter. The declaration must accompany the shipment through all stages of the export process, including any transformation of the original product and any shipment through any intermediary nation. As before, the Department of State will make copies of the declaration readily available. Local reproduction of the declarations is fully acceptable.

The requirement that a government official of the harvesting nation not

currently certified pursuant to Section 609 must also sign the DSP–121 asserting that the accompanying shrimp was harvested under conditions that do not adversely affect sea turtles species remains effective. In order to protect against fraud, the Department will continue to conduct periodic reviews of the systems that such foreign governments have put in place to verify the statements made on the DSP–121 form.

Date of Export. Import prohibitions shall not apply to shipments of shrimp and products of shrimp with a date of export falling at a time in which the harvesting nation is currently certified pursuant to Section 609.

Country of Origin. For purposes of implementing Section 609, the country of origin shall be deemed to be the nation in whose waters the shrimp is harvested, whether or not the harvesting vessel is flying the flag of another nation.

E. Review of Information

The government of any harvesting nation may request that the Department of State review any information regarding the particular shrimp fishing environment and conditions in that nation, or within a distinct geographic region of that nation, in making decisions pursuant to Section 609. Such information may be presented to demonstrate, inter alia:

(1) That some portion of the shrimp intended to be exported from that nation to the United States is harvested under one of the conditions identified above as not adversely affecting species of sea turtles;

(2) That the government of that nation has adopted a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl fishing that is comparable to the U.S. program and, therefore, that the nation is eligible for certification under Section 609(b)(2)(A) and (B); or

(3) That the fishing environment in that nation does not pose a threat of the incidental taking of sea turtles and, therefore, that the nation is eligible for certification under Section 609(b)(2)(C).

Such information should be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In addition, information submitted to support a request for any such determination should include available biological data regarding the resources in question and operational information relating to the activities of the fishing fleet that are relevant to determining whether or not the fishing environment of the harvesting nation is likely to pose a threat to sea turtles. Studies intended to show the rate of incidental taking of sea turtles in a given shrimp fishery should, at a minimum, contain data for an entire fishing season. Upon request, the United States will review and provide comments on a planned or existing study with respect to sample size, scientific methodology and other factors that affect whether such a study provides a sufficient basis for making a reliable determination.

The Department will fully review and take into consideration all such information and, in consultation with the NMFS, respond in writing to the government of the harvesting nation within 120 days from the date on which the information is received.

The Department, in consultation with the NMFS, will also take into consideration information on the same subjects that may be available from other sources, including but not limited to academic and scientific organizations, intergovernmental organizations and non-governmental organizations with recognized expertise in the subject matter.

II. Guidelines for Making Certification Decisions

A. Certification Pursuant to Section 609(b)(2)(C)

Section 609(b)(2)(C) authorizes the Department of State to certify a harvesting nation if the particular fishing environment of the harvesting nation does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting. Accordingly, the Department shall certify any harvesting nation meeting the following criteria without the need for action on the part of the government of the harvesting nation:

a. Any harvesting nation without any of the relevant species of sea turtles occurring in waters subject to its jurisdiction;

b. Any harvesting nation that harvests shrimp exclusively by means that do not pose a threat to sea turtles, e.g., any nation that harvests shrimp exclusively by artisanal means;

c. Any nation whose commercial shrimp trawling operations take place exclusively in waters subject to its jurisdiction in which sea turtles do not occur.

B. Certification Pursuant to Section 609(b)(2)(A) and (B)

Under Section 609(b)(2), the Department of State shall certify any other harvesting nation by May 1st of each year if ''the government of (that) nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States'' and if ''the average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting.''

a. *Regulatory Program.* The Department of State shall assess regulatory programs, as described in any documentary evidence provided by the governments of harvesting nations, for comparability with the U.S. program.

Where standard otter trawl nets are used in shrimp fisheries in waters where sea turtles are present, sea turtles will inevitably be captured and drowned. The Department of State is presently aware of no measure or series of measures that can minimize the capture and drowning of sea turtles in such nets that is comparable in effectiveness to the required use of TEDs.

1. If the government of the harvesting nation seeks certification on the basis of having adopted a TEDs program, certification shall be made if a program includes the following:

(i) *Required Use of TEDs*—a requirement that all commercial shrimp trawl vessels operating in waters in which there is a likelihood of intercepting sea turtles use TEDs at all times. TEDs must be comparable in effectiveness to those used in the United States. Any exceptions to this requirement must be comparable to those of the U.S. program described above; and

(ii) *Enforcement*—a credible enforcement effort that includes monitoring for compliance and appropriate sanctions.

2. If the government of a harvesting nation demonstrates that it has implemented and is enforcing a comparably effective regulatory program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs, that nation will also be eligible for certification. As described above, such a demonstration would need to be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In reviewing any such information, the Department of State will take fully into account any demonstrated differences between the shrimp fishing conditions in the United States and those in other nations, as well as information available from other sources.

b. *Incidental Take.* Average incidental take rates will be deemed comparable if the harvesting nation requires the use of TEDs in a manner comparable to that of the U.S. program or, as described above, otherwise demonstrates that it has implemented a comparably effective program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs.

c. *Additional Considerations.* 1. *Form*—A regulatory program may be in the form of regulations promulgated by the government of the harvesting nation and having the force of law. If the legal system and industry structure of the harvesting nation permit voluntary arrangements between government and the fishing industry, such an arrangement may be acceptable so long as there is a governmental mechanism to monitor compliance with the arrangement and to impose penalties for non-compliance, and reliable confirmation that the fishing industry is complying with the arrangement.

2. *Documentary Evidence*—Documentary evidence may be in the form of copies of the relevant laws, regulations or decrees. If the regulatory program is in the form of a government-industry arrangement, then a copy of the arrangement is required. Harvesting nations are encouraged to provide, to the extent practicable, information relating to the extent of shrimp harvested by means of aquaculture.

3. *Additional Sea Turtle Protection Measures*—The Department of State recognizes that sea turtles require protection throughout their life cycle, not only when they are threatened during the course of commercial shrimp trawl harvesting. In making certification determinations, the Department shall also take fully into account other measures the harvesting nation undertakes to protect sea turtles, including national programs to protect nesting beaches and other habitat, prohibitions on the directed take of sea turtles, national enforcement and compliance programs, and participation in any international agreement for the protection and conservation of sea turtles. In assessing any information provided by the governments of harvesting nations in this respect, the Department of State will rely on the technical expertise of NMFS and, where appropriate, the US Fish and Wildlife Service to evaluate threats to sea turtles and the effectiveness of sea turtle protection programs.

4. *Consultations*—The Department of State will engage in ongoing consultations with the governments of harvesting nations. The Department recognizes that, as sea turtle protection programs develop, additional information will be gained about the interaction between sea turtle populations and shrimp fisheries.

These Guidelines may be revised in the future to take into consideration that and other information, as well as to take into account changes in the U.S. program. These Guidelines may also be revised as a result of pending domestic litigation. In addition, the Department will continue to welcome public input on the best ways to implement both these Guidelines and Section 609 as a whole and may revise these guidelines in the future accordingly.

C. Timetable and Procedures for Certification Decisions

Each year the Department will consider for certification: (a) any nation that is currently certified, and (b) any other shrimp harvesting nation whose government requests such certification in a written communication to the Department of State through diplomatic channels prior to September 1 of the preceding year. Any such communication should include any information not previously provided that would support the request for certification, including the information specified above under Review of Information.

Between September 1 and March 1, U.S. officials will seek to visit those nations requesting certifications pursuant to Section 609(b)(2)(A) and (B). Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By March 15, the Department of State will notify in writing through diplomatic channels the government of each nation that, on the basis of available information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by April 15, any further information. If the government of the harvesting nation so requests, the Department of State will schedule face-to-face meetings between relevant U.S. officials and officials of the harvesting nation to discuss the situation.

Between March 15 and May 1, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By May 1 of each year the Department of State will make formal decisions on certification. The governments of all nations that have requested certification will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by May 1 may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

D. Special Timetable for 1999

The United States and the four nations that brought the WTO complaint have agreed that the United States would implement the recommendations and rulings of the DSB within 13 months of the adoption of the WTO Appellate Body report by the DSB, i.e., by December 6, 1999.

Accordingly, the Department of State hereby establishes the following timetable to apply in 1999 only:

After the date of publication of the revised guidelines, the government of any harvesting nation that was denied certification by May 1, 1999, may request to be certified in accordance with these guidelines in a written communication to the Department of State through diplomatic channels prior to September 1, 1999.

Not later than October 15, 1999, U.S. officials will seek to visit to those nations requesting such certifications. Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By November 1, 1999, the Department of State will notify in writing through diplomatic channels the government of any nation that, on the basis of available

information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by November 15, 1999, any further information.

Between November 15 and December 6, 1999, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By December 6, 1999, the Department of State will make formal decisions on certification. The governments of all nations that have requested certification under the special 1999 timetable will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by December 6, 1999, may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

The Department of State recognizes that a government seeking certification on the basis of the revised guidelines may not, by September 1, 1999, be able to gather sufficient information necessary to support such a request. To meet this concern, and in accordance with its existing practice, the Department will accept requests for certification at any time in 1999 and will process them as expeditiously as possible. However, the Department can only commit to making a certification determination by December 6, 1999 if it has received the necessary information by September 1, 1999.

E. Related Determinations

As noted above, any harvesting nation that is not certified on May 1 of any year may be certified prior to the following May 1 at such time as the harvesting nation meets the criteria necessary for certification. Conversely, any harvesting nation that is certified on May 1 of any year may have its certification revoked prior to the following May 1 at such time as the harvesting nation no longer meets those criteria.

As a matter relating to the foreign affairs function, these guidelines are exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedures Act. This action is exempt from Executive Order 12866, and is not subject to the requirements of the Regulatory Flexibility Act.

Dated: June 29, 1999.

Stuart E. Eizenstat,

Under Secretary of State for Economic, Business and Agriculture Affairs.

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BILLING CODE 4710–09–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee, Generalized System of Preferences (GSP); Notice of the Results of the 1998 Annual Review and 1999 De Minimis Waiver and Redesignation Reviews; Designation of Gabon and Mongolia as Beneficiary Developing Countries and the Reinstatement of Mauritania

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of GSP changes.

SUMMARY: This notice announces the disposition of the petitions accepted for review in the 1998 Annual Review of the GSP program, the results of the 1999 De Minimis Waiver and Redesignation Reviews, exclusions for products that exceeded the GSP competitive need limitations (CNLs), and the designation of Gabon and Mongolia as beneficiary developing countries and the reinstatement of Mauritania.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

The GSP is provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The President's decisions concerning the GSP changes addressed in this notice are contained in Proclamation No. 7206 of June 30, 1999. Unless otherwise specified, the changes in the GSP program addressed in this notice are intended to be effective with respect to goods entered on or after July 1, 1999, assuming an extension of the termination date in section 505 of the 1974 Act (19 U.S.C. 2465).

In the 1998 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee accepted for review one petition to withdraw GSP eligibility for a certain article and fifteen petitions for CNL waivers. The disposition of these petitions is indicated in Annex I of this notice.

In the 1999 De Minimis Waiver and Redesignation Reviews, the appraised import values during 1998 of each GSP-eligible article were reviewed to determine whether particular articles from particular GSP beneficiary developing countries exceeded the GSP CNLs. De Minimis waivers were granted to certain articles which exceeded the 50 percent import share CNL, but for which the aggregate value of the imports of that article was below the 1998 de minimis level of $14 million. Annex II to this notice contains a list of these articles.

Certain articles that had previously exceeded GSP CNLs but that had fallen below the CNLs in 1998 ($85 million and 50 percent of U.S. imports of the article) were redesignated for GSP eligibility. These articles are listed in Annex II to this notice.

Articles that exceeded GSP CNLs in 1998, and that are newly excluded from GSP eligibility, are listed in Annex IV to this notice.

The President has designated Gabon and Mongolia as beneficiary developing countries and reinstated Mauritania.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

Annex I. Decisions on Product Petitions of the 1998 GSP Annual Review

Case		Product		Decision
		A. Petition to Remove Product from GSP		
98-1	2934.20.05	TPPS		Denied
		B. Petitions to Waive Competitive Need Limits for [Country]		
98-2	2841.70.10	Ammonium Moydates	[Chile]	Granted
98-3	2916.31.15	Benzoic Acid	[Estonia]	Granted
98-4	4412.13.50	Plywood	[Indonesia]	Denied
98-5	4412.22.30	Plywood	[Indonesia]	Denied
98-6	7113.11.50	Jewelry	[Thailand]	Denied
98-7	7113.19.29	Gold necklaces	[India]	Denied
98-8	7403.13.00	Unwrought copper	[Chile]	Granted
98-9	7403.19.00	Unwrought copper	[Chile]	Granted
98-10	7418.19.20	Brass articles	[India]	Granted
98-11	8483.10.30	Crankshafts	[Brazil]	Granted
98-12	8527.39.00	Radios	[Indonesia]	Granted
98-13	8528.12.16	TV/VCR Combo	[Thailand]	Denied
98-14	8531.20.00	Indicator panels	[Philippines]	Granted
98-15	8708.39.50	Brakes	[Brazil]	Granted
98-16	9001.30.00	Contact lenses	[Indonesia]	Denied

ANNEX II: GSP COUNTRIES GRANTED de MINIMIS WAIVERS AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
0306.24.20	Venezuela.....	3,692,253	51.4%	Crabmeat, not frozen
0712.90.70	Egypt.....	330,193	83.6%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, s
0813.40.10	Thailand.....	1,164,169	91.3%	Papayas, dried
1102.30.00	Thailand.....	2,871,092	75.7%	Rice flour
1510.00.60	Morocco.....	1,366,831	53.4%	Edible oil including blends, and their fractions, nesi, not che
1601.00.40	Brazil.....	212,400	62.8%	Sausages and similar products of beef, beef offal or blood; foo
1604.15.00	Chile.....	7,449,389	62.6%	Prepared or preserved mackerel, whole or in pieces, but not min
1605.90.10	Thailand.....	3,713,864	66.9%	Boiled clams in immediate airtight containers, the contents of
1701.91.10	Philippines.....	63,765	58.0%	Cane/beet sugar & pure sucrose, refined, solid, w/added colorin
1702.90.35	Brazil.....	4,914,876	80.2%	Invert molasses
1703.10.30	Brazil.....	1,293,493	53.6%	Cane molasses imported for (a) the commercial extraction of sug
1703.90.30	Lebanon.....	17,509	56.8%	Molasses, other than cane, imported for (a) the commercial extr
1806.90.01	Croatia.....	94,416	58.3%	Cocoa preps, not in blocks/slabs/bars, subj. to gen. note 15 of
2008.99.35	Thailand.....	3,365,415	90.6%	Lychees and longans, otherwise prepared or preserved, nesi
2008.99.50	Thailand.....	1,942,988	50.0%	Papayas, other than pulp, otherwise prepared or preserved, nesi
2309.90.70	Hungary.....	174,420	89.8%	Other preps nes with a basis of vitamin B12, for supplementing
2619.00.30	Venezuela.....	1,096,625	65.2%	Ferrous scale
2819.10.00	Kazakhstan.....	6,181,518	78.2%	Chromium trioxide
2825.30.00	Republic of South Af	12,667,636	99.1%	Vanadium oxides and hydroxides
2825.70.00	Chile.....	8,725,498	92.8%	Molybdenum oxides and hydroxides
2841.70.10	Chile.....	5,657,545	64.2%	Ammonium molybdate
2841.90.10	Republic of South Af	1,022,074	72.3%	Vanadates
2902.90.40	Hungary.....	105,528	89.7%	Anthracene and 1,4-di-(2-methylstyryl)benzene
2903.51.00	Romania.....	2,878,046	52.1%	1,2,3,4,5,6-Hexachlorocyclohexane
2907.29.25	Republic of South Af	275,352	67.6%	tert-Butylhydroquinone
2909.50.40	Indonesia.....	3,827,445	58.4%	Odoriferous or flavoring compounds of ether-phenols, ether-alco
2914.22.10	Slovakia.....	625,490	76.3%	Cyclohexanone
2917.19.10	Hungary.....	1,612,642	72.1%	Ferrous fumarate
2918.21.50	Brazil.....	4,603,110	76.3%	Salicylic acid and its salts, not suitable for medicinal use
2922.12.00	Brazil.....	2,867,076	57.5%	Diethanolamine and its salts
2931.00.25	Brazil.....	3,703,959	92.5%	Pesticides of aromatic organo-inorganic (except organo-sulfur)
2933.40.08	Hungary.....	387,103	100.0%	4,7-Dichloroquinoline
3808.30.20	Brazil.....	457,176	50.2%	Herbicides, antisprouting products and plant-growth regulators,
4202.22.35	Philippines.....	447,457	94.4%	Handbags with or without shoulder strap or without handle, with
4412.13.25	Brazil.....	2,988,878	75.0%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face
4412.14.25	Brazil.....	6,571,666	94.9%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,
4412.19.10	Chile.....	1,515,019	68.7%	Plywood of wood sheets, n/o 6 mm thick each, with outer plies o
4412.29.15	Russia.....	2,789,475	62.0%	Plywood nesoi, at least one hardwood outer ply nesoi, no partic
4412.92.40	Brazil.....	2,168	100.0%	Plywood nesoi,softwood outer plies,least 1 ply trop. hardwood,n
4412.99.15	Brazil.....	258,072	98.9%	Plywood nesoi,softwood outer plies,no tropical hardwood ply,no
4412.99.45	Brazil.....	236,475	58.1%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no
4810.11.20	Indonesia.....	3,962,689	63.0%	Basic paper sensitized for photography use with not over 10% fi
5607.30.20	Philippines.....	4,410,057	79.7%	Twine, cordage, rope and cables of abaca or other hard (leaf) f
7113.20.30	Mauritius.....	739,793	52.6%	Base metal clad w/precious metal clasps and parts thereof
7202.21.10	Macedonia (Skopje)..	3,587,646	84.9%	Ferrosilicon containing by weight more than 55% but not more th
7202.80.00	Russia.....	2,004,248	51.5%	Ferrotungsten and ferrosilicon tungsten
7405.00.60	Russia.....	990,133	78.6%	Copper master alloys, not containing 5% or more but n/more than
7409.31.10	Poland.....	1,376,789	78.1%	Copper-tin base alloys (bronze), plates, sheets and strip, in c
7505.11.50	Zimbabwe (Rhodesia).	171,735	97.4%	Nickel (o/than alloy), profiles
7604.10.30	Slovenia.....	8,009,534	61.4%	Aluminum (o/than alloy), bar and rods, with a round cross secti
8112.19.00	Kazakhstan.....	771,529	86.8%	Beryllium, articles nesoi
8112.91.50	Chile.....	12,089,559	88.7%	Rhenium, unwrought; rhenium, powders
8410.13.00	Egypt.....	800,000	95.5%	Hydraulic turbines and water wheels of a power exceeding 10,000
8708.99.31	Bosnia-Hercegovina..	30,760	63.4%	Pts. & access. of tractors (o/than road tractors or for agricu
8802.60.90	Republic of South Af	328,399	85.2%	Spacecraft, including satellites (o/than communication satellit
9013.10.30	Ukraine.....	3,097,320	67.2%	Telescopic sights for rifles designed for use with infrared lig

9401.90.15	Czech Republic.....	1,426,171	60.6%	Parts of seats nesoi, for bent-wood seats
9403.50.60	Indonesia.....	4,212	60.0%	Furniture (o/than seats) of wood (o/than bentwood), of a kind u
9506.19.40	Czech Republic.....	1,240,347	63.1%	Cross country snow-ski equipment nesoi, and parts & accessories

ANNEX III: GSP ITEMS REDESIGNATED AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
3817.10.50	Indonesia.....	858,694	6.5%	Mixed alkylbenzenes, except linear
7403.13.00	Chile.....	235,480	1.9%	Refined copper, billets
7403.19.00	Chile.....	35,719,921	35.8%	Refined copper, unwrought articles nesoi
8531.20.00	Philippines.....	58,718,339	6.1%	Indicator panels incorporating liquid crystal devices (LCD's) or
8708.39.50	Brazil.....	81,418,402	4.5%	Pts. & access. of mtr. vehicles of 8701, nesoi, and 8702-8705, br

ANNEX IV: GSP COUNTRIES EXCEEDING COMPETITIVE NEED LIMITS
NEW EXCLUSIONS AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
1702.90.40	Brazil.....	26,679,351	78.1%	Other cane/beet syrups nesi
1703.90.50	Poland.....	10,394,832	55.0%	Molasses nesi
7114.19.00	Peru.....	46,532,063	75.9%	Precious metal (o/than silver) articles, nesoi, whether or not pl
7115.90.30	Colombia.....	56,195,764	92.6%	Gold (including metal clad with gold) articles (o/than jewellry o
7403.12.00	Russia.....	17,327,397	96.5%	Refined copper, wire bars
8517.19.80	Indonesia.....	88,240,789	9.0%	Telephone sets, nesoi
8517.90.24	Costa Rica.....	109,039,506	31.7%	Parts of electrical telephonic switching or terminal apparatus

[FR Doc. 99–17259 Filed 7–7–99; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Chandler Municipal Airport, Chandler, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of Chandler, Arizona, for Chandler Municipal Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's acceptance of the Noise Exposure Maps for Chandler Municipal Airport, Chandler, Arizona is June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Chandler Municipal Airport, Chandler, Arizona are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective June 24, 1999.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the city of Chandler. The specific maps under consideration are Exhibit 1, ''1998 Noise Exposure Map'' and Exhibit 2, ''2003 Noise Exposure Map'' in the submission. The FAA has determined that these maps for Chandler Municipal Airport are in compliance with applicable requirements. This determination is effective on June 24, 1999. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

Copies of the Noise exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261

Mr. Greg Chenoweth, Manager, Chandler Municipal Airport, 2380 South Stinson Way, Chandler, Arizona 85249–1728

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on June 24, 1999.

Ellsworth Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 99–17361 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Program Management Committee (PMC) meeting to be held July 29, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review/Approve Summary of previous PMC Meeting; (3) PMC Working Group Report: a. Weather Message Switching Center Replacement Working Group; (4) Publication Review and Approval: a. Final Draft, DO–181B, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment, RTCA Paper No. 098–99/PMC–048, prepared by SC–187; b. Final Draft, DO–218A, Minimum Operational Performance Standards for the Mode S Airborne Data Link Processor, RTCA Paper No. 099–99/PMC–049, prepared by SC–187; (5) Action Item Review: Cost-Benefit Considerations in RTCA Documents; (6) General Discussion: a. PMC Attendance Policy for members; b. Document Production and PMC Meeting Schedule; c. Recommendation to change Terms of Reference for SC–189, Air Traffic Services Safety & Interoperability Requirements and SC–194, Air Traffic Management Data Link Implementation; d. Recommendations for a Vice-

Chairman for Special Committee 159, Global Positioning System; e. Recommendation for additional co-chair for Special Committee 192, National Airspace Review; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 2, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–17362 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 99–5923]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

Control of Alcohol Misuse in Transit Operations.

DATES: Comments must be submitted before September 7, 1999.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Control of Alcohol Misuse in Transit Operations—Ms. Judy Meade, Office of Program Management, (202) 366–2896.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Control of Alcohol Misuse in Transit Operations (*OMB Number: 2132–0557*).

Background: The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, October 28, 1991, now codified in relevant part at 49 U.S.C. Section 5331) requires any recipient of Federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e)(4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR Part 654, ''Prevention of Alcohol Misuse in Transit Operations,'' effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' alcohol testing program, such as the number and type of tests given, number of positive test results, and the kinds of safety-sensitive functions the employees perform. FTA uses these data to ensure compliance with the rule, to assess the misuse of alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of alcohol among safety-sensitive transit employees and making transit safer for the public.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 20.1 hours for each of the 1,615 repondents.

Estimated Total Annual Burden: 32,480 hours.

Frequency: Annual.

Issued: July 1, 1999.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 99–17307 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5908]

Notice of Receipt of Petition for Decision That Nonconforming 1998–1999 BMW 5 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998–1999 BMW 5 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–1999 BMW 5 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States,

certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1998–1999 BMW 5 Series passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1998–1999 BMW 5 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–1999 BMW 5 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1998–1999 BMW 5 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–1999 BMW 5 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1998–1999 BMW 5 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. *208 Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1998–1999 BMW 5 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. NHTSA has previously decided that a number of individual models within the 1998–1999 BMW 5 Series are eligible for importation and has assigned separate eligibility numbers to each of these models. If the agency ultimately decides to grant this petition, these eligibility numbers will be replaced by a single eligibility number that applies to all 1998–1999 BMW 5 Series passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17308 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5909]

Notice of Receipt of Petition for Decision that Nonconforming 1995–1999 Triumph Thunderbird Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Triumph Thunderbird motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Triumph Thunderbird motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania

(''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 Triumph Thunderbird motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17309 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5910]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1999 BMW 7 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 BMW 7 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 BMW 7 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. Docket hours are from 9 am to 5 pm.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995–1999 BMW 7 Series passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 BMW 7 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 BMW 7 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 BMW 7 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 BMW 7 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1995–1999 BMW 7 Series passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that non-U.S. certified 1995–1999 BMW 7 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR part 541.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. NHTSA has previously decided that a number of individual models within the 1995–1999 BMW 7 Series are eligible for importation and has assigned separate eligibility numbers to each of these models. If the agency ultimately decides to grant this petition, these eligibility numbers will be replaced by a single eligibility number that applies to all 1995–1999 BMW 7 Series passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17310 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5911]

Notice of Receipt of Petition for Decision That Nonconforming 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. *106 Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17311 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on Exemption Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in JANUARY–APRIL 1999. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail Freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on June 3, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Modification Exemptions		
7708–M	DOT–E 7708	Pacific Scientific, (HTL/KIN-Tech Division) Durate, CA.	49 CFR 173.302(a), 173.3, 178.44.	To modify the exemption to allow for a design change and an increase in service pressure to 6300 psig of a non-specification high-pressure cylinder for shipment of a Division 2.2 material.
8009–M	DOT–E 8009	CP Industries, Inc., McKeesport, PA.	49 CFR 173.301(d) (2), 173.302 (a) (3), 178.37–5.	To modify the exemption to authorize increased ultrasonic scanning speeds on DOT–3AAX cylinders (trailer tubes) made of 4130X steel, for CNG service, at the time of manufacturing.
8602–M	DOT–E 8602	MVE, Inc., New Prague, MN.	49 CFR 173.320	To modify the exemption to provide for alternative testing criteria to be consistent with cryogenic MC–338 cargo tanks.
9162–M	DOT–E 9162	Sun Pipe Line Company, Tulsa, OK.	49 CFR 173.119, 173.304, 173.315.	To modify the exemption to increase the capacity of a trailer equipped with a mechanical displacement meter prover to 153.50 gallons for the transportation of Class 3 or Division 2.1 materials.
9275–M	DOT–E 9275	Estee Lauder Company, Melville, NY.	49 CFR Parts 100–199	To modify the exemption to include flammable deodorant sticks reclassed as a consumer commodity which contain 78–78% ethyl alcohol authorized to be transported as essentially unregulated.
9421–M	DOT–E 9421	Taylor-Wharton Co., Harrisburgh, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a) (1), 175.3, 178.37.	To modify the exemption to authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinders for use in transporting certain Division 2.1, 2.2 gases and Division 6.1 materials.
9706–M	DOT–E 9706	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34 (a) (1), 175.3, 178.37.	To modify the exemption to authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinders for use in transporting certain Division 2.1, 2.2 gases and Division 6.1 materials.
9819–M	DOT–E 9819	Halliburton Energy Services, Inc., Duncan, OK.	49 CFR 173.119, 178.253, Part 173, Subpart F.	To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting Class 3 liquids and Class 8 liquids in non-DOT specification stainless steel portable tanks.
10047–M	DOT–E 10047	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.301(h), 173.302(a), 173.304, 173.34 (a) (1), 175.3, 178.37.	To modify the exemption to provide for ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinder used for transporting certain hazardous materials.
10066–M	DOT–E 10066	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.304, 178.36	To modify the exemption to authorize the inflator assembly (P/N 1812–161–01) to be shipped as a separate item; use of a different description/classification for the inflator assembly.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10407–M	DOT–E 10407	TN Technologies, Inc., Round Rock, TX.	49 CFR 173.302, 175.3 ...	To modify the exemption to increase the water capacity of the non-DOT specification, stainless steel, radiation detection device, filled with a Division 2.2, nontoxic gas, from 30 cubic inches to 1000 cubic inches.
10458–M	DOT–E 10458	Marsulex, Inc., Sudbury, Ontario, CN.	49 CFR 174.67(j), Part 107, Appendix B, Subpart B.	To modify the exemption to provide for Sulfur dioxide, Division 2.2 as an additional class of material for transportation in DOT Specification 111A100W2 tank cars.
11054–M	DOT–E 11054	Welker Engineering Company, Sugar Land, TX.	49 CFR 178.36, Subpart C.	To modify the exemption to waive the requirement for inspection by an independent inspection agency by authorizing use of a competent manufacturer's inspector.
11270–M	DOT–E 11270	The Specialty Chemicals Div. of B.F. Goodrich Co., Cleveland, OH.	49 CFR 174.67 (i) & (j)	To modify the exemption to provide for unloading valves to remain open when rail cars are standing with unloading connections attached.
11380–M	DOT–E 11380	Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX.	49 CFR 173.34(d), 178.37–13, 178.37–15, 178.37–5.	To modify the exemption to allow for several design changes of the non-DOT specification cylinder for the transportation of certain compressed hydrocarbon gases.
11447–M	DOT–E 11447	SAES Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the exemption to include several design changes for the transportation of certain Division 4.1 & 4.2 materials in non-DOT specification packaging that exceed the maximum net quantity allowed per package.
11447–M	DOT–E 11447	SAES Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the exemption to allow for a design change of the stainless steel pressure vessel; an increase of catalyst material not to exceed 8,000 pounds; increase of nickel content within the ctalyst not to exceed 5,200 pounds.
11686–M	DOT–E 11686	Bridgeview, Inc., Morgantown, PA.	49 CFR 171.8, 172.101(8.c), 173.197.	To modify the exemption to provide for several modifications to existing plastic bags.
11856–M	DOT–E 11856	Olin Corp/Motorola Corp ..	49 CFR 173.304(a)(2), 173.34(d), 175.3.	To modify the exemption to increase the satellite fuel tank capacity from 33 gallons to 35 gallons and to authorize rail freight as an additional mode of transportation for certain Division 2.3 and Class 8 materials.
11859–M	DOT–E 11859	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 178.65	To modify the exemption to authorize changes to the testing procedures and an additional configuration of the glass bottle system consisting of two cylindrical/spherical halves fabricated from stainless steel for use in transporting Division 1.4S material.
11916–M	DOT–E 11916	CP Industries, Inc., McKeesport, PA.	49 CFR 173.302(e) (2), (4) and (5), 173.34 (e) (1), (3) (4).	To modify the exemption to alter the Rejection Criteria for isolated pits and line corrosion for DOT–3AX and DOT–3AAX cylinders for the transportation in commerce of 2.1, 2.2 and 2.3 compressed gases.
12022–M	DOT–E 12022	Taylor-Wharton, Harrisburg, PA.	49 CFR 173.302(c) (2), (c)(3), (c)(4), (c)(5), 173.34(e) (1), (e)(1), (e)(3), (e)(4), (e)(8), 173.34(e) (14), (e)(15)(vi).	To modify the exemption to provide for alternative testing criteria of 3AA cylinders for use in transporting Division 2.1, 2.2 and 2.3 hazardous materials.
12162–M	DOT–E 12162	U.S. Department of Defense, Falls Church, VA.	49 CFR 178.35, 178.36(e)(j).	To reissue the exemption originally issued on an emergency basis to use non-DOT specification containers for certain compressed gases.
12178–M	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301(e)(f), 173.304 (a) (1) and (a)(3).	To reissue the exemption originally issued on an emergency basis to use a non-DOT specification container for liquefied gas, flammable, n.o.s.
12200–M	DOT–E 12200	Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.28(b) (4)	To reissue the exemption originally issued as an emergency for the use of UN 1A2 steel drums that do not meet the minimum thickness requirements for drums with a maximum capacity of less than 20 liters for the transportation of certain Division 1.3C materials.
12211–M	DOT–E 12211	BJ Coiltech division of BJ Services Company USA, Lafayette, LA.	49 CFR 173.320(a)	To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of liquid nitrogen, cryogenic liquid by cargo vessel in non-DOT specification insulated portable tanks manufactured before 2/1/99, used in support of the offshore oil and gas exploration and production in the Gulf of Mexico.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12212–M	DOT–E 12212	Daniel P. Dupuis, Windsor Locks, CT.	49 CFR 171.8	To reissue the exemption originally issued on an emergency basis to authorize the holder of this exemption to perform the function of a registered inspector for cargo tanks without meeting the requirements in 49 CFR 171.8.
12214–M	DOT–E 12214	Energetic Solutions Inc., Englewood, CO.	49 CFR 172.400, 172.407, 172.411.	To reissue the exemption originally issued on an emergency basis authorizing the use of UN 4G fiberboard boxes inadvertently marked with the wrong proper shipping name.
			New Exemptions	
11883–N	DOT–E 11883	Brownie Tank Mfg., Co., Minneapolis, MN.	49 CFR 172.200, 173.242(b), 173.243(b).	To authorize the transportation in commerce of meter provers in assorted sizes with residual amounts of Class 3 hazardous materials. (mode 1).
11947–N	DOT–E 11947	Patts Fabrication & Services, Odessa, TX.	49 CFR 178.253	To authorize the manufacture, mark and sale of non-specification 60 gallon portable metal tanks designed and constructed in accordance with DOT-Specification 57, with certain exceptions, for use in transporting Flammable liquids, n.o.s., Class 3. (mode 1).
12022–N	DOT–E 12022	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.302 (c) (2), (c) (3), (c) (4), (c) (5), 173.34(e) (1), (e) (3), (e) (4), (e) (8), 173.34(e) (14), (e) (15) (vi).	To authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of 3AA cylinders for use in transporting hazardous materials classed as Division 2.1, 2.2 and 2.3 (modes 1, 2, 3, 4, 5).
12063–N	DOT–E 12063	The Hydrocarbon Flow Specialist, Inc. Morgan City, LA.	49 CFR 172.102, SP T–18.	To authorize the transportation in commerce of Hydrofluoric Acid solutions, Class 8, in IM 101 tanks equipped with valve to allow for bottom discharge. (modes 1, 3).
12073–N	DOT–E 12073	Patriotic Fireworks, North East, MD.	49 CFR 173.56(j)	To authorize to transpodtation in commerce fo certain approved Division 1.3G fireworks Devices in specially designed packagings to be offered for transportation as Division 1.4G firworks. (modes 1, 2).
12097–N	DOT–E 12097	Qual–X Inc. Powell, OH ...	49 CFR 173.140, 173.412	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of gas, Division 2.2 contained in Type A package used as part of a leak detector console. (mode 1.)
12098–N	DOT–E 12098	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 178.65	To authorize the transportation in commerce of certain compressed gases, Division 2.2, in non-DOT specification pressure vessels. (modes 1, 2, 4).
12102–N	DOT–E 12102	AETS/CWM, Flanders, NJ	49 CFR 173.56(i)	To authorize the transportation of certain Division 1.1D, unstable waste laboratory mixtures that have been densitized to remove their explosive characteristics, as Division 4.1 flammable solids. (mode 1).
12104–N	DOT–E 12104	Hoechst Celanese, Spartanburg, SC.	49 CFR 174.67(i)	To authorize rail cars to remain connected throughout the unloading of Class 9 material without the physical presence of an unloader. (mode 2).
12105–N	DOT–E 12105	Becton Dickinson Microbiology Systems, Sparks, MD.	49 CFR 172.504, 174.81, 177.848.	To authorize the transportation in commerce of specially-designed combination packaging for use in transporting Division 4.3 and Class 8 material be exempt from segregation and placarding requirements. (modes 1, 2).
12116–N	DOT–E 12116	Proserv (North Sea) Ltd., Aberdeen, UK.	49 CFR 178.36	To authorize the transportation in commerce of certain flammable gases, Division 2.1, in non-DOT specification cylinder used for oil well sampling. (modes 1, 2, 3, 4).
12120–N	DOT–E 12120	The Sherwin-Williams Co., Cleveland, OH.	49 CFR 172, Subpart C, D, E, F.	To authorize the transportation in commerce of Class 3 and Division 4.1 hazardous materials in DOT-specification and non-DOT specification drums for intra-plant shipments as essentially unregulated. (mode 1).
12121–N	DOT–E 12121	Lufthansa Cargo, D–60546 Frankfurt/Main, GR.	49 CFR 175.75(a)(2)(i)	To authorize the transportation in commerce of hazardous materials classed in Division 2.2 in quantities that exceed the weight limitation permitted aboard passenger-carrying aircraft. (mode 5).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12129–N	DOT–E 12129	Kenyon International Emergency Services, Houston, TX.	49 CFR 175.75(a)(1)(2)	To authorize the transportation in commerce of small quantities of various hazardous materials that exceed the specified quantity limitation. (mode 5).
12131–N	DOT–E 12131	Gamma Laboratories, Ltd., Houston, TX.	49 CFR 173.302, 173.306(b)(4), 175.3.	To authorize the manufacture, mark and sale of non-DOT specification packagings, used as radiation detectors, for shipments of certain non-flammable compressed gases. (modes 1, 2, 3, 4, 5).
12132–N	DOT–E 12132	Carleton Technologies, Inc., Orchard, NY.	49 CFR 178.65	To authorize the transportation in commerce of a specifically designed device consisting of a hermetically sealed high pressure gas cylinder, containing argon gas, Division 1.4S. (modes 1, 2, 3, 4).
12134–N	DOT–E 12134	Institute of Shortening and Edible Oils (ISEO), Washington, DC.	49 CFR Parts 100–180	To authorize the transportation in commerce of sift-proof dump or hopper-type vehicles and sift-proof roll-on/roll-off bulk with tarpaulins, metal covers or equivalent covers for use in transporting Division 4.2 material. (mode 1).
12149–N	DOT–E 12149	CP Industries, Inc., McKeesport, PA.	49 CFR 178.45(h)	To provide for ultrasonically scanning of DOT 3T cylinders at time of manufacturing for use in transporting Division 2.1, 2.2 and 2.3 gases. (modes 1, 2, 3, 4).
12155–N	DOT–E 12155	S&C Electric Co., Chicago, IL.	49 CFR 172.301(c), 173.304.	To authorize the transportation in commerce of a specially designed non-DOT specification packaging containing compressed sulfur hexafluoride, Division 2.2. (modes 1, 2, 3, 4).
12157–N	DOT–E 12157	Raytheon Systems Co., Fort Wayne, IN.	49 CFR 173.306	To authorize the transportation in commerce of a specially designed packaging consisting of a gas cylinder containing limited quantities of hazardous materials to be transported as essentially unregulated by air. (mode 4).
12177–N	DOT–E 12177	Just In Time Certified Packaging Inc, St. Louis, MO.	49 CFR Part 172, Subpart E&F.	To authorize the manufacture, marking and sale of a specifically designed packaging for use in transporting various classes of hazardous materials without required labels and placards. (modes 1, 2, 3, 4).
12190–N	DOT–E 12190	Indiana Michigan Power Co., Buchanan, MI.	49 CFR 173.403	To authorize the transportation in commerce of steam generators which contain small quantities of Class 7 radioactive material. (modes 1, 2).
12195–N	DOT–E 12195	Custom Metalcraft, Inc., Springfield, MO.	49 CFR 172.203(a), 172.302(c), 173.240–243, 178.705(c)(iv)(A).	To authorize the manufacturer, mark and sale, of metal intermediate bulk containers meeting design type UN31A, except for minimum thickness requirements and marking requirements for use in the transportation of certain hazardous materials. (modes 1, 2, 3).
12196–N	DOT–E 12196	HR Textron Inc., Pacoima, CA.	49 CFR 173.302(a), 178.35, 178.37.	To authorize the manufacture, mark and sale of non-DOT specification stainless steel alloy cylinders to be used for the transportation in commerce of nitrogen or nitrogen or nitrogen mixtures classed as Division 2.2 materials. (modes 1, 2, 3, 5).
12199–N	DOT–E 12199	Flight International Newport News, VA.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Division 1 explosives that are not permitted for shipment by air or are in quantities greater than those prescribed. (mode 4).
12202–N	DOT–E 12202	Vicksburg Chemical Co., Vicksburg, MS.	49 CFR 172.302(c), 173.24b(d)(2).	Request for an emergency exemption to transport two overloaded hopper cars containing a Division 5.1 material. (mode 2).
12222–N	DOT–E 12222	iSi GmbH, Vienna, AU	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of DOT 39 Specification cylinders, containing a Division 2.2 gas, with a filling density which exceeds those presently authorized. (modes 1, 2, 3, 4).
Emergency Exemptions				
EE 12178–N	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301 (e) (f), 173.304(a)(1) and (a)(3).	Request for an emergency exemption to use a non-DOT specification container for liquefied gas, flammable, n.o.s. (modes 1, 4).
EE 12200–N	DOT–E 12200	Autoliv, Ogden, UT	49 CFR 173.28(b)(4)	Request the use of UN 1A2 steel drums that do not meet the minimum thickness requirements for drums with a maximum capacity of less than 20 liters. (mode 1).
EE 12201–N	DOT–E 12201	Wills Trucking, Richfield, OH.	49 CFR 173.24b(d)(2)	To authorize the transport of two overloaded gondola railcars containing a Class 9 material. (mode 2).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12211–N	DOT–E 12211	B.J. Coil Tech, Inc., Lafayette, LA.	49 CFR 173.320(a)	To authorize the use of non-DOT specification portable tanks containing liquid nitrogen, cryogenic liquid. (modes 1, 3).
EE 12212–N	DOT–E 12212	Daniel Dupuis, Rocky Hill, CT.	49 CFR 171.8	Request for an emergency exemption to perform the function of a registered inspector for cargo tanks without meeting the requirements in 171.8. (mode 1).
EE 12214–N	DOT–E 12214	Energetic Solutions, Englewood, Co.	49 CFR 172.400, 172.407, 172.411.	Request for an emergency exemption to authorize the use of boxes that were inadvertently marked with the wrong proper shipping names. (modes 1, 3).
EE 12218–N	DOT–E 12218	Air Liquide Electronics, Dallas, TX.	49 CFR 178.801(c)(1), 178.810, 178.811, 178.812, 178.815.	Request for an emergency exemption to authorize modifications to closures on IBCs. (modes 1, 2, 3, 4, 5).
EE 12219–N	DOT–E 12219	TRW Applied Technology, Redondo Beach, CA.	49 CFR 173.302, 173.305, 173.306, 173.307.	Application for an emergency exemption to transport compressed gas in a non-DOT specification container. (modes 1, 4, 5).
EE 12223–N	DOT–E 12223	Micro-Med Industries, Inc., Jacksonville, FL.	49 CFR 172.101(8)(b)(c), 173.197.	To authorize the transportation in commerce of roll-off containers, containing regulated medical waste. (mode 1).
EE 12224–N	DOT–E 12224	BioCor, Inc., Jacksonville, FL.	49 CFR 172.202(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated medical waste in roll-off bins. (mode 1).
EE 12225–N	DOT–E 12225	Safety Disposal System, Inc., Norfolk, VA.	49 CFR 172.101(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated in medical waste roll-off bins. (mode 1).
EE 12226–N	DOT–E 12226	American Environmental Group, Inc., Norfolk, VA.	49 CFR 172.101(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated medical waste in roll-off bins. (mode 1).
EE 12227–N	DOT–E 12227	American Waste Industries, Inc., Norfolk, VA.	49 CFR 172.101(8)(b) & (c), 173.197.	To authorize the emergency transportation in commerce of regulated medicalwaste in roll-off bins. (mode 1).
EE 12229–N	DOT–E 12229	Gulf South Systems, Port Allen, LA.	49 CFR 173.24b (d)(2)	Request for an emergency exemption to authorize the transport of an overloaded tank car containing a Class 9 material. (mode 2).
EE 12231–N	DOT–E 12231	EQ—The Environmental Quality Co., Wayne, MI.	49 CFR 173.24b(d)(2), 173.26.	Request for an emergency exemption to transport hazardous waste, Class 9, in 8 overloaded gondola rail cars. (mode 2).
EE 12232–N	DOT–E 12232	Bell Helicopter, Hurst, TX	49 CFR 173.62	To authorize the emergency transportation in commerce of a Division 1.3C explosive device in non-DOT specification packaging. (mode 1).
EE 12233–N	DOT–E 12233	EM Industries, Hawthorne, NY.	49 CFR 173.227	Request for an emergency exemption to ship phosphorus oxychloride in packagings not authorized in the HMR. (mode 1).
EE 12235–N	DOT–E 12235	Thatcher Co., Salt Lake City, UT.	49 CFR 173.24(c)	Request for an emergency exemption to transport a leaking ton container that is fitted with a chlorine institute ''B'' kit. (mode 1.)
EE 12244–N	DOT–E 12244	Lone Star Industries, New Orleans, LA.	49 CFR 173.24b(a)(iii), 173.24b(d)(ii), 173.26, 173.31(a).	Request for an emergency exemption to authorize the transportation of a rail car that is overloaded with a 5.1 material. (mode 2).
EE 12255–N	DOT–E 12255	Raytheon Systems Co., Lewisville, TX.	49 CFR 173.306	Request for an emergency exemption to transport a cylinder containing helium in a alternative container. In addition, the applicant requests an exemption from the hazard communication requirements in 49 CFR Part 172. (modes 1, 4).
EE 12257–N	DOT–E 12257	D/K Environmental, Vernon, CA.	49 CFR 173.24b(a)(iii)	Request for an emergency exemption to transport hazardous material in a gondola rail car that exceeds the maximum gross weight by 7,500 lbs. (mode 2).
EE 12265–N	DOT–E 12265	Blu-Gas Co., Inc., Gastonia, NC.	49 CFR 173.302(c), 173.33(a)(3), 180.407(c).	To authorize the emergency transportation in commerce of Propane in certain MC–331 cargo tanks that were not retested and inspected by an authorized registered inspector. (mode 1).

DENIALS

2787–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the shipment of certain Division 2.2 materials in non-DOT specification pressure vessels equipped with regulating valve denied as incomplete March 12, 1999.

DENIALS—Continued

3121–X	Request by U.S. Department of Denfense Fall Church, VA to renew exemption to authorize the transportation of certain poisonous material classed as Division 2.3, in DOT Specification MC 338 cargo tanks denied as incomplete March 12, 1999.
3128–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the use of a non-DOT specification cylinder for transportation of Division 1.4 explosive and Division 2.2 gas denied as incomplete March 12, 1999.
4242–X	Request by U.S. Department of Defense falls Church, VA to renew exemption to authorize the use of a non-DOT specification aluminum pressure vessel for transportation of pyroforic mixture denied as incomplete March 12, 1999.
6232–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the shipment of Division 1.1 and 1.2 gases and a Division 4.1 solid in the same outside package denied as incomplete March 12, 1999.
6250–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the transport of partially dis-assembled aircraft with Division 1 materials components (ejection seat and canopy related devices) remaining installed denied as incomplete March 12, 1999.
6250–X	Request by the U.S. Department of Defense, Falls Church, VA. to renew exemption to authorize the transport of partially dis-assembled aircraft with Division 1 materials components (ejection seat and canopy related devices) remaining installed denied as incomplete March 12, 1999.
6557–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize deviation from the requirements of the inspector's report for DOT specification 3A, 3AA, and 4B cylinders of shipment of certain Division 2.2 materials denied as incomplete March 12, 1999.
6658–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the use of a non-DOT specification open-head steel drum for transportation of a certain Division 1.1 and 1.2 material denied as incomplete February 23, 1999.
7255–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize simultaneous loading of two holds within the same hatch when handling military explosives denies as incomplete March 12, 1999.
7887–M	Request by Kosdon Enterprises Ventura, CA to modify the exemption to provide for rocket motors and reloadable kits which are classified as Division 1.3G that exceed the 25 gram limitation to be excepted from labeling requirements denied March 15, 1999.
11938–N	Request by Steel Shipping Container Institute Washington, DC to authorize the transportation in commerce of non-bulk container with alternative markings for use in transporting various classes of hazardous materials denied January 26, 1999.
12052–N	Request by Engineered Carbons, Inc. Borger, TX to authorized rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied January 6, 1999.
12215–N	Request by Bio-Tek Industries Atlanta, GA to authorize rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied April 6, 1999.
12218–N	Request by Air Liquide Electronics Dallas, TX to authorize rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied March 31, 1999.

[FR Doc. 99–17400 Filed 7–7–99; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33768]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Consolidated Rail Corporation [1]

Consolidated Rail Corporation (Conrail) has agreed to grant limited, non-exclusive overhead trackage rights to Grand Trunk Western Railroad Incorporated (GTW), over segments of Conrail's lines as follows: (1) On Conrail's North Yard Branch between MP 6.7 (at Canadian National Railway Company's (CN) Milwaukee Junction, the proposed connection point between CN and Conrail) and MP 2.9 (the connection point between Conrail's North Yard Branch and Conrail's Detroit Line); and (2) on Conrail's Detroit Line between MP 2.9 and MP 18.9 (the proposed CN/Conrail connection near Gibraltar which is CN's Denby Station), for a total distance of approximately 20 miles.[2] The purpose of the trackage rights is to enable GTW to improve its service and expedite its trains through the congested Detroit, MI terminal area. The transaction was scheduled to be consummated on or after June 25, 1999, the effective date of the exemption (7 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease & Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33768, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert P. vom Eigen or Jamie P. Rennert, HOPKINS & SUTTER, 888 16th Street, NW, Washington, DC 20006.

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[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See 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, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. See 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, Decision No. 127 (STB served May 20, 1999).

[2] A redacted version of the draft trackage rights agreement between Conrail and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order, which will be addressed in a separate decision.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 1, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17388 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33771]

Delaware and Hudson Railway Company, Inc.—Trackage Rights Exemption—CSX Transportation, Inc. and New York Central Lines LLC

CSX Transportation, Inc. (CSXT) and New York Central Lines LLC (NYC) have agreed to grant overhead trackage rights to Delaware and Hudson Railway Company, Inc. (D&H), over lines generally between Schenectady, NY, and Fresh Pond Junction, NY. The lines are owned by NYC and leased to CSXT.[1] The scope of these rights and their terms were established 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, Decision Nos. 89, 109, and 123 (STB served July 23, 1998, December 18, 1998, and May 20, 1999, respectively).[2]

The transaction was scheduled to be consummated on or after June 25, 1999, the effective date of the exemption.

The purpose of the trackage rights is to enhance rail competition for movements of traffic on the east side of the Hudson River.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33771, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric von Salzen, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: June 30, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17215 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] CSXT, by letter filed June 21, 1999, and Samuel J. Nasca, for and on behalf of United Transportation Union-New York State Legislative Board, by comments filed June 24, 1999, express support for imposition of appropriate employee protective conditions. As indicated subsequently in this notice, the transaction is subject to employee protective conditions. The CSXT letter also makes reference to the requirement that D&H submit a final executed agreement within 10 days of the date the agreement is executed.

[2] The responsive application filed jointly by the State of New York, acting by and through its Department of Transportation, and the New York City Economic Development Corporation, acting on behalf of the City of New York, in connection with the railroad control application in STB Finance Docket No. 33388, was docketed as STB Finance Docket No. 33388 (Sub-No. 69).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 137X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Ada County, ID

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon an 18.2-mile line of railroad on the Boise Subdivision, ''Boise Cutoff'' from milepost 424.80 near Orchard to milepost 443.0 near Hillcrest, in Ada County, ID. The line traverses United States Postal Service Zip Code 83707.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on Augusut 7, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 19, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 28, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 13, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by July 8, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 1, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17389 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, July 23, 1999 at 9:30 a.m. in the Secretary's large conference room, Room 3327, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

Agenda

At the July 23, 1999 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

1. Reports on Subcommittee progress:
   (a) Study of Merchandise Processing Fee
   (b) Study of Resources for the Office of Rulings and Regulations
   (c) Study of Compliance Assessment Team (CAT) methodology
2. A review of HTS simplification and the benefits to Customs including automation, compliance and general administration
3. Brief report on status of Automated Commercial System (ACS) maintenance
4. Discussion of Export Compliance and Customs evolving role

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than July 15, 1990.

Dated: July 1, 1999.

John P. Simpson,

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

[FR Doc. 99–17249 Filed 7–7–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Fees for Customs Services at User Fee Airports

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged user fee airports by Customs for providing Customs services at these designated facilities. These fees are based on actual costs incurred by Customs in purchasing equipment and providing training and one Customs inspector on a full-time basis, and, thus, merely represent reimbursement to Customs for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport, and the annual fee thereafter charged user fee airports.

EFFECTIVE DATE: The new fees will be effective on October 1, 1999, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Office of Finance (202–927–9181).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the Secretary of the Treasury to make Customs services available and charge a fee for the use of such services at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to specified criteria. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15.)) The fee that is charged is an amount equal to the expenses incurred by the Secretary in providing the Customs services at the designated facility, which includes purchasing equipment and providing training and inspectional services, i.e., the salary and expenses of individuals employed by the Secretary to provide the Customs services. The fees being raised are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport (set at $105,000 in Fiscal Year 1997), and the annual fee, thereafter, charged user fee airports (set at $78,500 in Fiscal Year 1997).

These user fees for user fee airports are typically set forth in Memorandum of Agreements between a user fee facility and Customs. While the amount of these fees are agreed to be at flat rates, they are adjustable, as costs and circumstances change.

The last notice concerning fees charged user fee airports was published on October 28, 1997, in the **Federal Register** (62 FR 55846).

Adjustment of User Fee Airport Fees

As of April 30, 1999, Customs has determined that in order for the charged user fee to actually reimburse Customs for services provided, the initial fee is increased from $ 105,000 to $111,500, and that the recurring annual fee subsequently charged is increased from $ 78,500 to $80,000. The new fees will be effective October 1, 1999, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: July 2, 1999.

Wayne Hamilton,

Assistant Commissioner, Office of Finance.

[FR Doc. 99–17398 Filed 7–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 210

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Labels.

DATES: Written comments should be received on or before September 7, 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 Notice 210 should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Labels.

OMB Number: 1545–0295.

Form Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify items needed so that the media can be processed by the Internal Revenue Service.

Current Actions: There are no changes being made to Notice 210 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 12,765.

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: July 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17368 Filed 7–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Marketing Strategy Survey.

DATES: Written comments should be received on or before September 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Marketing Survey.

Abstract: The survey will focus on savings bond and Treasury Direct marketing issues.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 170.

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.

Dated: July 1, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–17279 Filed 7–7–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Educational Advising Program for International Students From Hong Kong/China; Notice: Request for Proposals

SUMMARY: The Advising and Student Services Branch/Advising, Teaching and Specialized Programs Division of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to operate an educational advising center in Hong Kong/China. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to facilitate international educational exchange through overseas educational advising, orientation, and information services for international students and scholars seeking information on opportunities in U.S. higher education. On October 1, 1999, the U.S. Information Agency will become part of the United States Department of State without affecting the content of this announcement or the nature of the program described.

Program Information

Overview: An ideal program would provide a state-of-the-art advising center dedicated to providing information, orientation, and advice to international students in Hong Kong interested in studying in the U.S. We also expect the Hong Kong center to serve as an information resource to the other 48 U.S. affiliated advising centers in the People's Republic of China on advising and other educational issues. The centers are located at United States Information Service posts, universities, language institutes, libraries and at Chinese Service Centers for Scholarly Exchange. The proposal should address the applicant's ability to do the following:

—Produce and disseminate advising information packets and materials both on paper and electronically to advising centers in China.
—Recommend appropriate level of educational advising resource materials supplied by the Advising and Student Services Branch (E/ASA) to advising centers in China.
—Develop and maintain a database of centers in China.
—Provide feedback to E/ASA on site visits, consultations, training activities, and advising needs/concerns after each site visit and upon request from E/ASA.
—Encourage communication and networking among EICs within China.

The center should work with the Regional Educational Advising Coordinator (REAC) to provide in-country and regional workshops and seminars, site visits, needs assessments and consultations training for U.S. affiliated advising center personnel in China as requested. The REAC is responsible for conducting training workshops and needs assessment visits to U.S. affiliated advising centers in the region.

Guidelines: We anticipate that the grant will begin October 1, 1999 and end on September 30, 2000. However a final award cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures. The proposal should be presented in three parts.

I. Applicant's Background and Overview

The first part should contain an overview of the applicant's history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars should be included. The overview should indicate the total amount of funding requested with a justification as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephone numbers of the executive officer(s) and of the person(s) ultimately responsible for the project, must be included in the proposal. Resumes or vitae of key personnel must be provided. USIA also recommends the inclusion of brochures and general information concerning the applicant, e.g., organizational charts, job descriptions, the names of board members (or similar groups), the number of employees, etc.

II. Advising Center Operation and Services

The second part of the proposal should contain details on the advising center's proposed location and hours of operations, proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), budget, and advising services to be provided. A resume or brief narrative explaining the qualifications of the person or persons who will have primary responsibility for conducting advising and/or providing oversight of the advising center staff should be included. The proposal should demonstrate the center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields of study, specialized training, etc.;
2. Information and research on short-term institutional training in technical and professional fields;
3. Information on English language training programs in the U.S.; and
4. Group and individual advising sessions, pre-departure orientation and reentry programs, as appropriate. The applicant should be willing to assist USIS Beijing and support educational outreach activities by developing a network of contacts with the local offices of the Ministry of Education, universities, U.S. government affiliated advising centers and other appropriate institutions.

III. Provision of Resource Materials, Equipment and Training

The third part of the proposal should address the extent to which the U.S. headquarters office will support its advising center abroad through the provision of educational advising resource materials and professional development activities and training.

Student access to a comprehensive university catalog collection, in print and/or computer software programs, and an extensive collection of current references on U.S. educational institutions and programs, through print or computer networks, is an integral component of an educational advising center and the applicant's ability to provide such should be made clear in this section.

Office equipment that facilitates the processing of inquiries, such as electronic mail, internet and facsimile machines would be regarded as an asset to the advising function and mention of such equipment should be made in the proposal. The Agency expects the advising center to be equipped with audio visual aids for students' use. Videos/CD–ROMS on U.S. study and life should complement the presentation and materials offered at group and individual advising sessions.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $85,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program

component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) Salary and benefits;
(2) Budget for travel and per diem;
(3) Office supplies and expenses;
(4) Rent and utilities;
(5) Outreach and publicity; and
(6) Indirect costs.

The center must agree to provide accurate, free and objective information about all accredited U.S. higher education institutions. The center may charge for services beyond the basic level (to be determined in consultation with the Advising and Student Services Branch) and for the sale/rental of educational advising materials. The proposal should provide details of cost-sharing and fundraising strategies to supplement cost of advising services. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number E/ASA–00–04.

FOR FURTHER INFORMATION CONTRACT: The Advising and Student Services Branch, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: 202–619–5434, fax: 202–401–1433, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please Specify USIA Program Officer Dorothy Mora on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss thins competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Soliciation Package Via Fax On Demand: The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on August 6, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASA–00–04*, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East Asian and Pacific Affairs and the USIA posts overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of diversity:* Proposals should demonstrate substantive support

of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's record ability:* Proposals should demonstrate an institutional record of successful educational advising programs, including demonstrating responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. Proposals should demonstrate an ability to maintain effective relationships with USIS posts, advising centers, and the Agency's Advising and Student Services Branch. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute and award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 1, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–17366 Filed 7–7–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if a student is eligible for work-study benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 7, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0209'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Work-Study Allowance, VA Form 22–8691.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, Selected Reservists, and other beneficiaries use this form to apply for work-study allowance under 38 U.S.C. chapters 30, 31, 32 and 35, Section 903 of Public Law 96–342, and 10 U.S.C. chapter 1606. The information is used to determine if a student is eligible for work-study benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28,000.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–17247 Filed 7–7–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0251]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the status of a loan account gone into default.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 7, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0251'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Lender for Status of Loan Account-LCS, VA Form 26–8778.

OMB Control Number: 2900–0251.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional office having responsibility for the loan. Upon receipt of the form, VBA takes whatever action is necessary to properly service the loan.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–17248 Filed 7–7–99; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register

Vol. 64, No. 130

Thursday, July 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

Correction

In notice document 99–16356, beginning on page 35245, in the issue of Wednesday, June 30, 1999, make the following correction:

On page 35245, in the first column, in the **DATES:** section, in the third line, ''August'' should read ''July''.

[FR Doc. C9–16356 Filed 7–7–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
July 8, 1999

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 250 and 251

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform); Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584–AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the proposals contained in this rule would address various changes required by the repeal of Section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions are also proposed in order to provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also proposes changes in the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule proposes to broaden the allowable uses of TEFAP administrative funds at the State and local levels, and provide greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort requirement. Finally, in order to reduce the paperwork burden and afford State agencies greater flexibility, this rule proposes discretionary changes in TEFAP recordkeeping, monitoring, and reporting requirements.

DATES: To be assured of consideration, comments must be postmarked on or before September 7, 1999.

ADDRESSES: Comments should be sent to: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at 4501 Ford Avenue, Room 612, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FNS regional offices, and the State distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Unfunded Mandate Reform Act

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568 and 10.569 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FNS is submitting for public comment the changes in the information collection burden that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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; and (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. To be assured of

consideration, comments must be postmarked on or before September 7, 1999. Comments may be sent to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone 703–305–2662.

Title: Food Distribution Regulations and Forms.

OMB Number: 0584–0293.

Expiration Date: 1/31/01.

Type of Request: Revision of a currently approved collection.

Abstract: State plans of operation, household participation reports, monitoring reviews, and review reports. The rule proposes to: (1) require State agencies to submit the TEFAP plan of operation to FNS only once every four years instead of the present annual requirement, with amendments made as necessary; (2) eliminate the requirement that State agencies report semiannually the number of households served through TEFAP; (3) reduce the number of TEFAP agencies required to be reviewed each year by State agencies from one-third or 50, whichever is fewer, to one-tenth or 20, whichever is fewer; and (4) require State agencies to submit review reports to TEFAP agencies they review only if a review discloses deficiencies.

Plans of Operation

Section 202A(a) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note (EFAA), as amended by Section 871(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (Welfare Reform), mandates that each State agency submit certain information to FNS in a TEFAP State plan of operation once every four years. Present regulations specify an annual submission of the State plan. Changes made by Welfare Reform in the required contents of the plan and implemented by this rule are discussed below. It is expected that changes in the amount of time required to prepare the plan will be negligible. Thus, for the purposes of the calculations below, response times are unaltered. The proposed decrease in burden hours reflects only the decreased frequency of response.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for the States to submit plans would be every four years, or at a frequency of 0.25 per year.

Household Participation Reports

Present regulations require State agencies to report household participation figures on the FNS–155, Inventory Management Report, semiannually. This rule proposes to eliminate this requirement, thus reducing the time required for completion of the FNS–155.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for State agencies to submit the FNS–155 remains 2 per year, but household participation reports would no longer be included, reducing this component of the FNS–155 burden to zero.

Review Reports Submitted to Emergency Feeding Organizations

This rule proposes no changes in the present regulatory requirement that State agencies annually review 25 percent of all emergency feeding organizations, and review all such organizations no less frequently than once every four years. Such organizations are, however, renamed ''eligible recipient agencies which have signed an agreement with the State.'' This rule proposes to require State agencies to conduct an annual review of one-tenth or 20, whichever is fewer, of eligible recipient agencies which have signed an agreement with another eligible recipient agency, rather than the current one-third or 50, whichever is fewer, of ''distribution sites.'' In addition, this rule proposes to require State agencies to submit review reports to those organizations reviewed only if the review discloses deficiencies, rather than the current requirement that a report be submitted for each review conducted. Current specific content requirements for the report would be eliminated. These changes are expected to reduce the number of reviews State agencies conduct each year, and the number of those reviews which will require reports.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for the States to submit reviews to emergency feeding organizations would be 1 per year.

	Respndnts.	Freq.	Hrs./Resp.	Total hrs.
TEFAP State Plan:				
Present	56	1	19	1064
Proposed	56	0.25	19	266
Submission of TEFAP Household Participation Data on Inventory Reports (FNS–155):				
Present	56	2	0.25	28
Proposed	56	2	0.00	0
TEFAP Review Reports Submitted to Eligible Recipient Agencies:				
Present	56	7	2	784
Proposed	56	1	2	112

Estimated Total Annual Burden on Respondents: The total annual burden under OMB Control Number 0584–0293 would be reduced from 1,190,971 hours to 1,189,473 hours: a difference of 1,498 hours.

Background

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, (hereinafter ''Welfare Reform''). Welfare Reform amended legislation authorizing Department of Agriculture (hereinafter ''USDA'' or ''Department'') food distribution programs operated by FNS. It consolidated the Soup Kitchens/Food Banks Program (SK/FB) and TEFAP under the EFAA and repealed previous authorization for SK/FB under Section 110 of the Hunger Prevention Act of 1988, Pub. L. 100–435, (HPA), (7 U.S.C. 612c note). It also amended the definitions regarding organizational eligibility in TEFAP, as contained in Section 201A(3) of the EFAA, to ensure that organizations formerly served by SK/FB would be eligible to participate in TEFAP. Welfare Reform also made changes in the following areas: (1) allowable uses of TEFAP administrative funds; (2) content and frequency of submission of the TEFAP State plan of operation; (3) the annual date by which TEFAP commodities must be delivered to States; (4) the TEFAP maintenance-of-effort requirement; and (5) the distribution of commodities to aliens.

To assist State agencies in implementing the provisions contained in Welfare Reform, the Department issued a policy memorandum on January 14, 1997, which was sent to all FNS Regional Offices for dissemination to their respective State agencies. The guidance contained in the memorandum generated questions from several State agencies concerning the eligibility of certain types of organizations to receive TEFAP commodities. In response to these questions, the Department once again reviewed the legislative provisions and issued additional supplementary guidance through a policy memorandum dated July 23, 1997.

This proposed rule would incorporate Welfare Reform's legislative mandates into the appropriate regulations. Changes are also proposed as part of the Department's effort to clarify the regulations and reduce the burden associated with the administration of TEFAP. With the latter goal in mind, this rule proposes changes in TEFAP recordkeeping, monitoring, and reporting requirements. Welfare Reform also amended the National School Lunch Act to eliminate the requirement that State education agencies maintain advisory councils for the purpose of advising FNS on schools' needs relative to the selection and distribution of commodities, and to instead require that distributing agencies consult with representatives of schools on this subject. The substance of this provision is being addressed in a separate rulemaking, but this rulemaking removes references to the advisory councils in Food Distribution Program regulations. Provisions contained in Welfare Reform relative to the distribution of commodities to aliens which require a change in current regulations will be addressed under a separate rulemaking. The specific changes proposed in this rule are discussed in detail below.

Absorption of SK/FB into TEFAP

Repeal of Section 110 of the Hunger Prevention Act of 1988

The major change in Food Distribution Programs brought about by Welfare Reform was consolidation of TEFAP and SK/FB. This consolidation was accomplished by Section 873(1) of Welfare Reform, repealing Section 110 of the HPA, which authorized funds specifically for the purchase of commodities for SK/FB. Its authorizing legislation repealed, SK/FB ceased to exist. This rule proposes to amend current Food Distribution Program regulations (7 CFR part 250) by removing Section 250.52, which contained the requirements of Section 110 of the HPA, as well as all other references to Section 110, wherever they appear, in 7 CFR parts 250 and 251.

Definitions

This rule proposes to add definitions of several terms not currently found in Section 251.3 and to change the definitions of some currently existing terms. The accompanying chart graphically represents the existing and proposed definitions in a side-by-side format to assist readers in understanding the changes. A detailed explanation of the changes follows. It should be noted, however, that neither the chart nor the following detailed explanation contain the definitions of ''formula,'' ''state agency,'' and ''value of commodities distributed.'' These definitions are set forth in the proposed regulatory text at the end of this rule. Although definitions of these terms are contained in the current Section 251.3 and are not proposed to be changed, it is easier, given the extensive surrounding additions and changes, to set forth the revised text of the section in its entirety.

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DEFINITIONS CURRENTLY FOUND IN SECTION 251.3 WHICH ARE PROPOSED TO BE AMENDED	PROPOSED DEFINITIONS
(a) The terms used in this part that are defined in part 250 of this chapter shall have the meanings ascribed to them therein.	(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.
No current definition. (A substantially different definition of Charitable Institutions is found in Section 250.3)	(b) Charitable institution (which is defined differently in this part than in part 250 of this chapter) means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to §251.5(a)(3); and (3) is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and (4) provides food assistance to needy persons.
(b) Distribution site means the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.	(c) Distribution site means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.
No current definition.	(d) Eligible recipient agency means an organization which— (1) is public, or (2) is private, possessing tax exempt status pursuant to §251.5(a)(3); and (3) is not a penal institution; and (4) provides food assistance— (i) exclusively to needy persons for household consumption, pursuant to a means test established in accordance with §251.5 (b), or (ii) predominantly to needy persons in the form of prepared meals pursuant to §251.5(a)(2); and (5) has entered into an agreement with the designated State agency pursuant to §251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to §251.2(c); and (6) falls into one of the following categories: (i) emergency feeding organizations (including food banks, food pantries and soup kitchens); (ii) charitable institutions (including hospitals and retirement homes); (iii) summer camps for children, or child nutrition programs providing food service; (iv) nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and (v) disaster relief programs.

(c) Emergency feeding organization means any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to §251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.	(e) Emergency feeding organization means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities, pursuant to §251.4(h).
No current definition. (A substantially similar definition of Food bank is found in Section 250.3)	(f) Food bank means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.
No current definition.	(g) Food pantry means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.
No current definition. (A substantially similar definition of Soup kitchen is found in Section 250.3)	(i) Soup kitchen means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

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Eligible recipient agency. Accompanying the repeal of Section 110 of the HPA, Section 871(a) of Welfare Reform slightly altered the definition of ''eligible recipient agency'' (ERA) contained in Section 201A of the EFAA. The alteration emphasizes that organizations formerly receiving commodities under SK/FB are eligible to receive TEFAP commodities. Soup kitchens and food banks had always been listed as eligible recipient agencies under Section 201A of the EFAA and in TEFAP regulations, but were not specifically defined, as they were in Section 110 of the HPA. Most States served soup kitchens exclusively under SK/FB. In addition to amending the definition of ERA itself, Welfare Reform incorporated into Section 201A specific definitions for ''food banks'' and ''soup kitchens'' similar to those found in the former Section 110 of the HPA. The term ''food pantry'' had never been listed or defined in the EFAA; Welfare Reform both added food pantries as a type of ERA and added to the EFAA the definition for this term formerly found in section 110 of the HPA. The net result of these changes is that more detailed and specific authority now exists in the EFAA for the distribution of TEFAP commodities to food banks, food pantries, and soup kitchens. Therefore, no organization formerly receiving commodities under SK/FB lost eligibility for food due to this program consolidation.

Section 871(a) of Welfare Reform amended Section 201A of the EFAA to explicitly prohibit the participation of penal institutions in TEFAP. It also removed school lunch programs and Commodity Supplemental Food Program (CSFP) sites from the list of eligible recipient agencies, while not categorically prohibiting their participation. All other types of organizations may participate as long as they meet the organizational eligibility criteria. While mention of school lunch programs as a specific category was removed, child nutrition programs as a category remains, and thus school lunch programs remain eligible. And while the removal of the reference to CSFP sites means that such sites may not receive TEFAP commodities for the sole purpose of serving CSFP participants, CSFP sites may receive TEFAP commodities if they meet the organizational eligibility criteria described below. The result of these changes is that penal institutions are the *only* type of organization which can be termed categorically ineligible for TEFAP. Since TEFAP commodities have never, in fact, been provided to penal institutions, school lunch programs or CSFP sites, this change has had no practical effect.

Although the changes wrought by Welfare Reform in the definition of ERA were minor, the January 14, 1997 guidance memorandum, discussed above, generated questions from several State agencies regarding the eligibility of certain types of organizations to receive TEFAP commodities. Based on an analysis of these questions, it appears that much of the need for clarification can be attributed to the fact that current TEFAP regulations (7 CFR part 251) do not contain a definition of ERA, instead employing the term ''emergency feeding organization'' (EFO). Thus, current regulations do not address the distribution of commodities to all of the various types of organizations specifically encompassed by the definition of ERA as set forth in the EFAA. These organizations include summer camps for children, child nutrition programs providing food service, nutrition projects operating under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*), and disaster relief programs. These organizations have always been eligible to receive commodities under the EFAA. However, 7 CFR part 251 does not currently address the distribution of TEFAP commodities to such organizations because they have traditionally received assistance through other commodity programs.

Another source of misunderstanding appears to be associated with the eligibility of certain adult correctional institutions. As discussed above, Welfare Reform explicitly prohibits penal institutions from receiving TEFAP commodities. Similarly, penal institutions are ineligible to receive commodities as charitable institutions under 7 CFR part 250. However, certain adult correctional institutions are eligible to receive commodities that are made available to States for distribution to charitable institutions under other donation authorities if they meet the requirements for rehabilitation programs set forth in Section 250.41(a)(2).

Therefore, to clarify the types of organizations eligible to receive TEFAP commodities, this rule proposes to amend Section 251.3 to add the following definition of ERA, which specifically includes all the various types of organizations eligible to receive TEFAP commodities that are included under the definition of ERA set forth in the EFAA: ''eligible recipient agency means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to § 251.5(a)(3); and (3) is not a penal institution; and (4) provides food assistance—(i) exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5(b), or (ii) predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and (5) has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and (6) falls into one of the following categories: (i) emergency feeding organizations (including food banks, food pantries and soup kitchens); (ii) charitable institutions (including hospitals and retirement homes); (iii) summer camps for children, or child nutrition programs providing food service; (iv) nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and (v) disaster relief programs.''

The only material differences between this definition of ERA and that contained in the EFAA are intended to render the definition more useful to State and local agencies making day-to-day organizational eligibility determinations. Language regarding the execution of agreements between the State and eligible recipient agencies has been added. The term ''needy persons'' and related language have also been included, since the EFAA limits the distribution of commodities to organizations that provide food assistance to the needy. In addition, the proposed rule's ERA definition lists all of the types of EFOs for which Welfare Reform provides a specific, separate definition, i.e., food banks, food pantries, and soup kitchens. The proposed definition of ERA does not, however, limit EFOs to these organizational types, because, as discussed below, any type of ERA may qualify as an EFO, as long as it meets the criteria.

Emergency feeding organization. As discussed above, current regulations contain no definition of ERA. Instead, the regulations use the term ''emergency feeding organization'' and in Section 251.3 define it to mean ''any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the

provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to § 251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.''

The program consolidation and the need for greater clarity require that the regulatory definition of EFO be revised to further sharpen the legislative distinction between ERAs which are also EFOs on one hand, and on the other, ERAs which are not also EFOs. This distinction is crucial under the consolidated TEFAP, because it forms the basis of the priority system discussed below, which State agencies must employ in allocating TEFAP commodities. It also affects the requirement that State agencies pass down at least 40 percent of their administrative grants. This requirement, too, is discussed in detail below. Welfare Reform stresses this distinction in Section 201A(1) of the EFAA by removing the definition of EFO from within the definition of ERA, and providing a separate definition of EFO in Section 201A(4). The proposed regulatory definition of EFO removes the present language regarding agreements, which is neither included in the EFAA's definition of EFO nor necessary to distinguish EFOs from other ERAs. Instead agreements are addressed in the definition of ERA, as discussed above. The proposed definition of EFO also removes references to types of organizations which may or may not qualify as EFOs, likewise confining these to the definition of ERA, which is structured to more appropriately contain them. This change shifts the emphasis from types of organizations to criteria which ERAs must meet to be considered EFOs. Under this proposed rule at Section 251.3(e), an EFO would mean ''an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).'' Examples of EFOs are food banks, food pantries, soup kitchens, and organizations such as Community Action Programs that distribute TEFAP commodities occasionally, e.g., monthly or quarterly.

Charitable institution. Section 201A of the EFAA authorizes the distribution of TEFAP commodities to charitable institutions. However, Section 251.3 does not currently contain a definition of this term. While Section 250.3 contains such a definition, it is needlessly complex given the limited application the term will have in TEFAP. Therefore, this rule proposes to include a definition of ''charitable institution'' in Section 251.3 which more accurately describes the types of organizations that would be considered eligible to participate in TEFAP and alerts the reader to the fact that the definition differs from that found in Section 250.3. The following definition of ''charitable institution'' would be included in this proposed rule: ''charitable institution (which is defined differently in this part than in part 250 of this chapter) means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to § 251.5(a)(3); and (3) is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and (4) provides food assistance to needy persons.''

Distribution site. Section 251.3(b) of the current regulations defines ''distribution site'' as ''the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.'' To reflect the consolidation of SK/FB into TEFAP, this rule proposes to revise the definition of ''distribution site'' to organizations which prepare meals using TEFAP commodities as well as the traditional distribution of commodities to households for home use. Also, the proposed definition employs the term ERA, rather than EFO, as discussed above, even though in practice, most distribution sites are, and will most likely continue to be, operated by organizations qualifying as EFOs. Under this proposed rule, ''distribution site'' means ''a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.''

Food bank, Food pantry, Soup kitchen. Provisions regarding the distribution of Section 110 commodities as set forth in HPA, including the definitions of food banks and soup kitchens, are currently contained in 7 CFR part 250. Since Welfare Reform consolidated SK/FB into TEFAP, this rule proposes to include the definitions of these terms, as slightly revised by Welfare Reform, in Section 251.3 and to remove the corresponding definitions from Section 250.3. While the term ''food pantry'' was also defined in the HPA, the definition was never included in either 7 CFR part 250 or 7 CFR part 251. This rule also proposes to include in Section 251.3 the definition of ''food pantry'' as set forth in Welfare Reform. The changes made by Welfare Reform in the definitions of these terms are in all cases non-material. The proposed rule sets forth these definitions in Sections 251.3(f), 251.3(g), and 251.3(j) as follows: ''Food bank'' means ''a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.'' ''Food pantry'' means ''a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.'' ''Soup kitchen'' means ''a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.''

Eligible Recipient Agency Eligibility Criteria

While Section 201A of the EFAA, in its definition of ERA, lists a broad array of organizations as eligible to participate in TEFAP, Section 202A(b)(4)(A) of the EFAA continues to require that TEFAP commodities be used to provide food assistance to those in need. Organizations applying to participate in TEFAP which distribute foods to households for home consumption meet this criterion by requiring that households applying for assistance pass a ''means test,'' i.e., the household must meet the TEFAP income eligibility criteria established by the State agency. Eligibility cannot be established merely on the basis of a household residing within a specific area. Organizations which provide food assistance through the preparation of meals do not employ a means test because such testing would not be cost-effective, and because people who attend soup kitchens can reasonably be assumed to be needy. Accordingly, this proposed rule would require such organizations to demonstrate that they serve predominantly needy people. The State agency can determine if the organization meets this criterion by considering the socioeconomic data (e.g., poverty, unemployment, vagrancy and welfare

program usage rates) on the area in which the organization is located, or from which it draws its clientele. In the case of most traditional soup kitchens, this minimal standard will no doubt be easily and clearly satisfied. Application of this criterion will, however, render some organizations of a particular type eligible and others of the same type ineligible. For example, a hospital which is located in, or draws its patients from, an economically distressed area could be considered eligible to participate in TEFAP, whereas a hospital located in an area with more positive economic characteristics would not qualify. State agencies remain free to set a higher standard than ''predominantly,'' should they wish to target resources to only their neediest citizens. This rule proposes to amend Section 251.5(a) to include these criteria.

Section 201A(3) of the EFAA continues to require that eligible recipient agencies be public or nonprofit organizations, thus continuing to exclude for-profit organizations. In order to clarify this legislative mandate, this rule also proposes to incorporate within part 251 requirements associated with tax-exempt status. Such requirements are currently contained in Section 250.52(b) which, as discussed above, is removed under this proposed rule as a result of Section 110 of the HPA being repealed by Welfare Reform. Under Section 250.52(b), all organizations receiving Section 110 commodities for distribution under the former SK/FB were required to have obtained tax-exempt status under the Internal Revenue Code (26 U.S.C. 501) (IRC) or to have made application for such status. However, under Section 501(c)(3) of the current IRC, organizations are automatically tax-exempt if they are ''organized or operated exclusively for religious * * * purposes. * * *'' Such organizations are not precluded from seeking Internal Revenue Service (IRS) recognition of their tax-exempt status, but they are not required to do so. Therefore, the Department does not intend to require organizations that are ''organized or operated exclusively for religious * * * purposes. * * *'' to obtain tax-exempt status in order to participate in TEFAP.

These tax exempt status requirements of current Section 250.52(b) also contain a ''moving toward'' exemption that allows an organization which has applied for, but has yet to obtain, IRS recognition of its tax-exempt status to receive Section 110 commodities for 12 months from the date of its approval for participation in TEFAP, and for an indefinite period thereafter, if the organization ''documents to the distributing agency's satisfaction that it has made good faith efforts to obtain recognition of its tax-exempt status and that such recognition has not been provided due to no fault of the organization.'' The Department has learned through experience that this requirement is not strict enough to be consonant with program accountability, and recent legislation has set forth a higher standard. Section 107(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336, amended Section 17(d)(1) of the National School Lunch Act (42 U.S.C. 1766(d)(1)) (NSLA) to limit the ''moving toward'' exemption for the Child and Adult Care Food Program to ''not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax-exempt status within the 180-day period is due to circumstances beyond the control of the institution.'' This rule proposes to amend Section 251.5(a)(3) to add tax-exempt requirements consistent with the above discussion. Prior to shipping TEFAP commodities, the State agency or ERA would be required to ensure that a recipient agency (1) possesses documentation from the IRS recognizing tax-exempt status under the IRC, or (2) if not in possession of such documentation, is automatically tax-exempt as ''organized or operated exclusively for religious purposes'' under the IRC, or if required to file an application under the IRC to obtain tax-exempt status, has made application for recognition of such status and is moving toward compliance with the requirements for recognition of tax-exempt status, or (3) is currently operating another Federal program requiring such tax-exempt status. In instances in which an organization's application for tax-exempt status is denied or has not been obtained within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or ERA must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained. However the State agency or ERA may grant a single extension of not to exceed 90 days if the organization can demonstrate, to the State agency's or ERA's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control.

In sum, to be eligible to receive TEFAP commodities, organizations must be public or nonprofit organizations providing food assistance to needy persons. If they distribute commodities for household consumption, they must administer a means test to ensure that only needy persons receive TEFAP commodities. If they serve prepared meals, they must demonstrate that they serve predominantly needy persons. State agencies cannot require organizations to conduct a means test of individuals receiving prepared meals. Section 871(b) of Welfare Reform amended the EFAA to require that State agencies set forth the standards of eligibility for ERAs in the State plan. As discussed in detail below, this rule proposes to amend Section 251.6(b) to include this requirement.

This rule also proposes to revise Section 251.5 to address those instances in which the State agency chooses to delegate authority to one or more ERAs to determine which organizations they, in turn, will supply with TEFAP commodities. Section 251.5(a) currently requires State agencies to determine the eligibility of organizations and enter into agreements with such organizations prior to making TEFAP commodities available to them. However, in many instances, State agencies use ERAs to distribute commodities to other ERAs (e.g., a central food bank distributing commodities to one or more food pantries) and depend on those organizations to: (1) Determine the eligibility of organizations requesting TEFAP commodities from them; and (2) to make decisions regarding which organizations will receive TEFAP commodities and the amount of commodities to be provided when quantities are insufficient to support all requests. This rule proposes to revise Section 251.5 to clarify a State agency's authority to delegate such responsibilities to ERAs. If a State chooses to do this, it must require that such ERAs make decisions regarding an organization's eligibility to participate in TEFAP in accordance with the provisions contained in 7 CFR part 251 and the State Plan. However, responsibility for establishing eligibility criteria for recipient agencies may not be delegated to an ERA.

Priority System

While the explicit priority system outlined in Section 110 of the HPA no longer exists, Section 203B(b) of the EFAA requires that, in instances in which the State agency cannot meet all requests for TEFAP commodities, the State agency give priority in the

distribution of such commodities to eligible recipient agencies ''providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons.'' [emphasis supplied] As discussed in detail above, this is the definition of EFO as set forth in the EFAA. Thus, there is a two-tier priority system. The need to effectively describe the priority system is the primary reason for amending the regulatory definition of EFO to conform to the EFAA. The two-tier priority system provides that organizations which relieve situations of emergency and distress through the provision of food to needy persons, i.e., EFOs under the definition discussed above, are of higher priority and other organizations, which serve the needy, but do not relieve situations of emergency and distress and, thus, fall into the lower priority category. A State agency may, within the first priority, set subpriorities so that, for example, EFOs providing household distribution have access to resources before EFOs providing prepared meals, or vice versa. However, the needs of all EFOs must be satisfied before food is made available to a second-tier organization, i.e., an ERA which is not also an EFO. The supply of TEFAP commodities may not be sufficient for States to serve all ERAs. Therefore, some State agencies may be able to serve only EFOs. This rule proposes to revise Section 251.4(h) to reflect the legislatively mandated two-tier priority system.

This rule also proposes to revise Section 251.4(h) to address those instances in which the State agency chooses to delegate to ERAs, with which the State agency has an agreement, the responsibility for choosing ERAs to which they will provide TEFAP commodities. An example of this would be a central food bank distributing commodities to one or more food pantries. In such instances, the ERA is responsible for ensuring that commodities are distributed using the priority system described above. Though improbable, given the limited supplies of TEFAP commodities, there may be instances in which one ERA has sufficient inventories of commodities to serve some second-tier organizations while another ERA does not have sufficient inventories to serve all of its EFOs. The added expense and administrative complexity necessary to prevent this unlikely event would not be justified. Therefore, with regard to delegated authority, both the State agency and any ERA to which this authority has been delegated will be considered to be in compliance with the priority system requirement when the ERA distributes TEFAP commodities in a manner that ensures the needs of EFOs under its jurisdiction have been met prior to making commodities available to non-EFOs under its jurisdiction. The Department would expect State agencies and EFOs to be sufficiently knowledgeable about the organizations to which they distribute food to avoid substantial amounts of commodities being provided to non-EFOs before the needs of all EFOs have been satisfied.

To further assist States in making the best use of TEFAP commodities, Section 871(b) of Welfare Reform amended Section 202A of the EFAA to require the Secretary to encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. Such advisory boards can provide valuable guidance on how the State should allocate resources among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States use their program resources in the most efficient and effective manner possible. This rule proposes to revise Section 251.4(h) to include language encouraging States to establish an advisory board and allowing them to use TEFAP administrative funds for its support. Section 203B(b) of the EFAA, besides establishing the priority of EFOs, requires that ''[e]ach State agency shall encourage distribution of TEFAP commodities in rural areas.'' [emphasis supplied] This encouragement is set forth in Section 251.4(k) of present regulations and would be retained by this proposed rule. State agencies are also reminded that, in accordance with Section 251.4(h) of the current regulations, which reflects the provisions contained in Section 203B(a) of the EFAA, State agencies have the option to give priority to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households. This option is, of course, subject to the two-tier priority system discussed above.

Recipient Eligibility Criteria

Section 251.5(b) of the current regulations requires that State agencies establish criteria for determining the eligibility of households to receive TEFAP commodities for household use. The criteria must include income-based standards and the methods by which households may demonstrate eligibility under such standards. Criteria may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion. Section 871(a) of Welfare Reform amended Section 202A(b) of the EFAA to require that recipients reside in the ''geographic location served by the distributing agency at the time of applying for assistance.'' Accordingly, this rule proposes to amend Section 251.5(b) to reflect the fact that State agencies must establish a residency requirement for households applying to receive commodities for home consumption. However, State agencies would continue to be prohibited from establishing a length-of-residency requirement. It should be noted that Section 251.4(j) of current regulations permits State agencies to enter into cooperative agreements with other State agencies to provide commodities jointly to, or to transfer commodities to, an organization serving needy persons in a contiguous area which crosses their respective States' borders. Organizations operating under such agreements may continue to serve persons crossing State lines for assistance. Section 203B(d) of the EFAA, which authorizes these cooperative agreements, was unchanged by Welfare Reform. This rule also proposes to amend Section 251.5(c) to clarify that State agencies may not delegate the responsibility for establishing eligibility criteria for program recipients to ERAs.

As was the case under the now defunct SK/FB, individuals seeking food assistance at prepared meal sites would not be subject to a means test under the proposed rule, since such a test would obviously be difficult to implement and regulate, and not at all cost-effective when compared to the value of the benefit provided. A person may attend a soup kitchen on a very irregular basis and receive meals of which TEFAP commodities are only a small part. Rather, as discussed above, organizations which provide prepared meals would be required to demonstrate that they serve predominantly needy persons.

State Agreements With Eligible Recipient Agencies

Section 251.2(c) of the current regulations requires State agencies to enter into an agreement with an EFO receiving TEFAP commodities or administrative funds. The agreement must provide that EFOs agree to operate the program in accordance with the requirements of 7 CFR part 251 and, as applicable, 7 CFR part 250. As discussed above, this rule proposes to amend the definition of the term EFO to conform to the definition contained in

Welfare Reform and require that State agencies enter into agreements with ERAs to which they distribute TEFAP commodities and/or administrative funds; therefore, Section 251.2(c) would be amended under this proposed rule to reflect this change.

The final rule, ''Food Distribution Programs—Reduction of the Paperwork Burden,'' published in the **Federal Register** on October 16, 1997 (62 FR 53727), amended Sections 250.12(c) and 251.2(c) to make agreements between State agencies and ERAs permanent, with amendments to be made as necessary. Although none of those commenting on the rule at its proposed stage expressed concern, it has since come to the Department's attention that, while the authority for State agencies and ERAs to terminate agreements is clearly set forth in Section 250.12(c)(3), no corresponding provision is contained in Section 251.2(c). Therefore, Section 251.2(c) may have been interpreted by some to mean that State agencies could not terminate agreements with TEFAP ERAs. Since this was never the Department's intent, this rule proposes to revise Section 251.2(c) to clarify that agreements must provide State agencies and ERAs the authority to terminate the agreements upon 30 days' written notice.

In addition, this rule proposes to revise Section 251.2 to address those instances in which a State agency delegates responsibility to one or more ERAs to distribute TEFAP commodities and administrative funds to other ERAs (e.g., a central food bank distributing to one or more food pantries on the local level). In an effort to ensure that both the State agency and the ERA are fully cognizant of the responsibilities being delegated to the ERA, this rule proposes to require that the State agency specifically identify each function for which the ERA will be held responsible, and to require that the ERA perform such functions in accordance with the provisions contained in 7 CFR parts 250 and 251. Such functions must be identified in the agreement or through other written documents incorporated by reference in the agreement. In no case may a State agency delegate responsibility for establishing recipient or recipient agency eligibility criteria, or responsibility for ensuring, through State agency reviews, that the program is administered in accordance with Federal requirements. A State has the option to delegate both the authority to determine if organizations meet the State-established criteria for organizations to receive TEFAP commodities and administrative funds, and the authority to establish subpriorities consistent with the legislatively mandated priority system. If the State chooses not to exercise either one of these options, the State must identify the specific organizations which are eligible to receive TEFAP commodities and administrative funds in the agreement or other written documents incorporated by reference in the agreement.

As discussed in detail below, State agencies may choose to allocate administrative funds to ERAs for use in paying specific costs. Since the amount of administrative funds may not be sufficient to cover all costs allowable under TEFAP regulations, State agencies may also restrict ERAs' use of these funds to a narrower list of cost types than is allowed by the regulations. Their reasons for doing so might include the desire to concentrate these funds on the most important program functions, such as transport and warehousing of food, rather than on ancillary expenses, such as office supplies. This rule proposes to amend Section 251.2 to require that, when the State agency imposes on its ERAs a more restrictive use of TEFAP administrative funds than provided in Section 251.8, the restricted list of costs must be identified in the agreement, or provided to ERAs by other written documents incorporated by reference in the agreement.

Agreements Between Eligible Recipient Agencies

As discussed above, current regulations require agreements between States and ERAs to which they provide TEFAP commodities or administrative funds. There is, however, no requirement that ERAs enter into agreements with other ERAs to which they distribute TEFAP commodities or administrative funds on behalf of the State agency. It is extremely difficult to hold recipient agencies accountable for the distribution and use of TEFAP commodities and administrative funds without the existence of an agreement which sets forth the terms and conditions necessary to ensure that TEFAP commodities and administrative funds are distributed and used in accordance with Federal regulations. Therefore, this rule proposes to amend Section 251.2 to require that ERAs distributing TEFAP commodities or administrative funds to other ERAs on behalf of the State agency enter into an agreement with those organizations prior to making TEFAP commodities or administrative funds available. ERAs would have to receive formal written authorization from the State, either in the agreement itself or by other written documents incorporated into the agreement by reference, to enter into agreements with other ERAs for the further distribution of TEFAP commodities or administrative funds. While current regulations do not require that such agreements be entered into, the Department has been advised that this practice is characteristic of the program and will not, therefore, result in an increase in the paperwork burden on ERAs. The Department, in its original calculation of burden hours for part 251, assumed that agreements would be in place whenever TEFAP commodities or administrative funds were transferred between State agencies and EFOs and between EFOs, since ensuring compliance with regulatory requirements would be extremely difficult if not impossible without written agreements at all levels. Therefore, the discussion of changes in burden hours under *Paperwork Reduction Act* above does not address these agreements, as their effect on the calculations has already been taken into consideration.

Distribution Rates

Section 251.4(d)(3) of the current regulations requires that State agencies establish distribution rates for use by EFOs in distributing TEFAP commodities to needy households. This requirement was established when all, or almost all, commodities reached households through mass distributions, and when distributions of non-USDA commodities along with TEFAP commodities occurred infrequently. Increased reliance on food pantries, the growing practice of simultaneously distributing TEFAP and State or privately donated foods, and absorption of SK/FB into TEFAP have rendered mandatory distribution rates inappropriate. Such rates have also become increasingly less useful as the supply of TEFAP commodities to households has become more variable over time. Therefore, this rule proposes to revise Section 251.4(d)(3) to remove this requirement. However, State agencies may choose to develop distribution rates and require their use by all ERAs or specific types of ERAs, such as those that distribute TEFAP commodities only through mass distributions.

TEFAP State Distribution Plan

Section 251.6(b) of the current regulations requires State agencies to submit a TEFAP distribution plan to the appropriate FNS Regional Office on an annual basis. This plan is required to contain: (1) a description of the criteria to be used for determining that applicant households are in need of

food assistance; (2) household rates of distribution for commodities; (3) a description of the program monitoring system, including any factors which may contribute to requests for approval of exceptions to conducting the minimum number of reviews; (4) a description of the State's formula for allocating administrative funds; and (5) a description of the State's contribution toward the matching requirement.

Section 871(b) of Welfare Reform amended Section 202A of the EFAA in a manner that: (1) for the first time codifies the requirement of a TEFAP State Plan; (2) specifies its contents differently than present regulations; and (3) requires submittal of the plan once every four years, instead of the present annual regulatory requirement. Welfare Reform provides that the plan may be amended at any time. Welfare Reform also specifies that plans must: (1) designate the State agency responsible for distributing commodities; (2) set forth a plan of operation and administration to expeditiously distribute TEFAP commodities; (3) set forth standards of eligibility for recipient agencies; and (4) set forth standards of eligibility for individual or household recipients of commodities, which must require that individuals or households be comprised of needy persons, and that they reside in the geographic area served by the distributing agency at the time of applying for assistance.

State agencies were notified of the changes in Welfare Reform regarding the State distribution plan in the January 14, 1997 memorandum, which also indicated that they would not be required to submit a complete plan until Fiscal Year 2001. However, in the interim, State agencies were required to submit, by March 14, 1997, amendments to the plan reflecting any changes in program operations or administration, including those mandated by Welfare Reform. In accordance with the provisions of Welfare Reform, this rule proposes to amend Section 251.6 to require the submission of a State distribution plan once every four years, establishing 2001 as the base year, with amendments to be added as changes occur in aspects of State program administration that are described in the plan, or at the request of FNS.

This rule also proposes to amend Section 251.6 to reflect the provisions contained in Welfare Reform regarding the specific contents of the plan. Following is a detailed description of the information State agencies are required to provide, pursuant to Section 871(b) of Welfare Reform.

Single State Agency—Welfare Reform requires that the plan identify the State agency responsible for administration of the program. Thus, this rule proposes to require States to include the current name and address of the agency authorized to administer TEFAP, and the name of the agency official entrusted with binding signature authority. Where TEFAP and SK/FB were administered by two different State agencies prior to enactment of Welfare Reform, the January 14, 1997 memorandum required States to inform FNS of the Governor's selection of a single State administering agency; otherwise the Department assumed that the State agency administering TEFAP at the time of enactment would administer the consolidated TEFAP. The State agency identified in the plan will be responsible for all aspects of program administration, including reporting and monitoring requirements, submission of the State distribution plan, and commodity ordering, storage, and distribution. The State agency may enter into an agreement with another State agency or private organization to perform some program functions, but FNS will deal only with the designated single State agency, which remains fully responsible for program administration.

Plan of Operation and Administration—Welfare Reform requires that the State agency ''set forth a plan of operation and administration to expeditiously distribute'' TEFAP commodities. Therefore, this rule proposes to reflect the requirement that State agencies include such an element as part of the State plan.

Standards of Eligibility for Recipient Agencies—Under Welfare Reform, State agencies are now required to set forth eligibility standards for recipient agencies in their distribution plan. Within the minimum standards established by 7 CFR part 251, State agencies are afforded broad discretionary authority in establishing their distribution networks. This rule proposes to require State agencies to describe eligibility criteria established by the State agency, including any sub-priorities set within the two-tier priority system, for the receipt of TEFAP commodities and/or administrative funds.

Standards of Eligibility for Individual or Household Recipients—Welfare Reform requires that State agencies set forth standards of eligibility in their State plan which ensure that commodities are provided only to those in need, and that needy persons reside in the geographic location served by the distributing agency at the time of application for assistance. Therefore, this rule proposes to retain the requirement currently found in Section 251.6(a)(1), which requires State agencies to describe the criteria which must be used in determining the eligibility of households to receive TEFAP commodities for household use.

This rule proposes to eliminate the present State plan requirements, with the exception of the neediness criteria of Section 251.6(a)(1), as mentioned above. Also, as discussed in detail above, this rule proposes to remove the requirement of Section 251.4(d)(3) that State agencies develop distribution rates; therefore such rates will not be included in State plans. The other program requirements previously mandated to be addressed in State plans would continue to exist, as they possess an independent regulatory basis, but State agencies would no longer be required to include proposals for meeting them in their State plans. State agencies would continue to be required to comply with the program monitoring provisions contained in Section 251.10(e). They would also be bound by the criteria for allowable uses of administrative funds contained in Section 251.8(d)(1), redesignated by this proposed rule as Section 251.8(e)(1), as discussed below, but would no longer be required to describe the monitoring system or the formula for allocating administrative funds in the State plan. A description of the State's contribution toward the matching requirement contained in Section 251.9(a) would no longer be required. Section 251.9(e), referring to the matching requirement as an element of the State plan, is therefore proposed to be removed. Of course States must still meet their matching requirement and report it as required in Section 251.9(f). Under current regulations, the match is to be reported on form SF–269, Financial Status Report, which has become obsolete. Therefore, this rule would remove references to it and instead refer to form FNS–667, Report of Administrative Costs throughout Section 251.9(f), which is redesignated as Section 251.9(e) under this proposed rule. Elimination of the above plan requirements would reduce the burden associated with the administration of TEFAP at the State level, while not affecting program accountability.

Formula Adjustments

Section 214(a) of the EFAA mandates the allocation of commodities purchased with funds appropriated for TEFAP to States through a formula based 60 percent on the number of persons in the State with incomes below the poverty line, relative to national figures, and 40 percent on the average

monthly number of unemployed persons in the State, again relative to national figures. Section 204(a)(1) of the EFAA, in turn, mandates that TEFAP administrative funds be allocated among the States on the same basis.

Section 251.7 of the regulations implements this legislative mandate for the allocation of all commodities, including surplus USDA commodities, made available for distribution through TEFAP. In accordance with the regulatory provisions, the Department currently makes adjustments to the allocation formula for each State, based on updated unemployment statistics. For surplus commodities, adjustment is to be performed semi-annually, effective January 1 and July 1 of each fiscal year. For purchased commodities and administrative funds, adjustments are to be made annually, effective for the entire fiscal year. In the interest of streamlining program administration, and not subjecting States to disruptive mid-year formula adjustments, this rule proposes to revise Section 251.7 to make annual formula adjustments applicable to all commodities and administrative funds.

Disbursement of Administrative Funds

Disbursement of Funds to States by USDA—Section 251.8(c) provides for the disbursement of administrative funds to State agencies by means of U.S. Treasury checks or letters of credit in accordance with FNS Instruction 407–3 (Grant Award Process). This section currently requires that U.S. Treasury checks or letters of credit be issued pursuant to submission of the SF–270, Request for Advance or Reimbursement, and that State agencies receive funds through a letter of credit if payments are more than $120,000 for the year. Changes in financial management procedures and regulations, mainly attributable to implementation of automated electronic transactions, have rendered these provisions obsolete. It is now the practice of FNS to make funds available to States exclusively by means of letters of credit. Therefore, the above cited references to U.S. Treasury checks and the $120,000 threshold, would be removed by this proposed rule. FNS Instruction 407–3 is also obsolete, and in order to prevent part 251 from becoming outdated whenever financial management instructions change, this reference would be removed and replaced with a general reference to financial procedures established by FNS. Furthermore, as the SF–270 is no longer used, this rule would remove reference to it.

Disbursement of funds to ERAs by States—In the two-tiered priority system discussed in this preamble, not every ERA qualifies as an EFO. Under this system, State agencies and ERAs to which authority has been delegated would be required to ensure that the USDA commodity needs of all first-tier organizations, i.e., EFOs, are met before food is made available to a second-tier ERA. A similar situation exists with respect to documenting compliance with the requirement contained in Section 204(a)(2) of the EFAA that each State agency make available to EFOs not less than 40 percent of the State's share of TEFAP administrative funding. Although State agencies may disburse administrative funds to second-tier ERAs, such funds cannot be counted toward meeting the 40 percent pass-through requirement. This rule proposes to amend Section 251.9 to expressly prohibit State agencies from counting any funds provided by the State agency directly to ERAs that are not EFOs, or used by the State to pay costs on such ERAs' behalf, toward the 40 percent pass-through requirement. However, in instances in which State agencies have agreements with EFO intermediaries such as food banks, which, in turn, may share administrative funds with other EFOs as well as second-tier ERAs, requiring State agencies to account for the disposition of administrative funding to EFOs and second-tier ERAs by the organizations with which they have agreements would create undue expense and administrative complexity to protect against an unlikely event, i.e., that EFOs might receive less than 40 percent of the State's grant. Recent history has shown that administrative funding will probably not be sufficient to serve very many second-tier ERAs. In addition, most State agencies currently pass through to EFOs considerably more than 40 percent of their administrative funds, making it extremely unlikely that a State agency would fall below the minimum threshold. Therefore, this rule proposes to amend Section 251.8 to clarify that, if a State agency passes down to EFOs with which it has an agreement, or expends on behalf of such organizations, at least 40 percent of its administrative grant, the State agency will be deemed to have met its pass-through requirement. State agencies would not be required to account for how these organizations further distribute administrative funding in order to meet their pass-through requirement. For example, if a State passes administrative funds down to, or expends such funds on behalf of, a food bank with which it has an agreement, and which is an EFO, those funds can be counted toward the pass-through requirement. The State need not examine the food bank's records for the purpose of determining if the food bank passed any of the funds on to an organization which is not an EFO. All ERAs would, of course, be subject to audit and are accountable for their use of funds for necessary, reasonable, and allowable costs.

As discussed in detail below, the provisions of Welfare Reform permit State and local agencies to use TEFAP administrative funds for a much broader array of costs associated with the distribution of USDA and non-USDA commodities. This will, of course, intensify competing demands for funds, and require that additional priorities be set. The Department believes that TEFAP administrative funds should be available to leverage the supply of food to the needy, from whatever the source. However, the Department also expects that those funds should be available first to distribute the supply of TEFAP commodities. Only after this need has been fully met should TEFAP administrative funds be used to distribute non-USDA commodities. However, it would be impractical to apportion administrative funds within an organization on the basis of the proportion of USDA and non-USDA commodities it handles, in an attempt to ensure that administrative expenses associated with USDA commodities are covered before funds are used for the distribution of non-USDA commodities. Therefore, this rule proposes to amend Section 251.8(d) to provide only that State agencies and ERAs distributing administrative funds shall ensure that the administrative funding needs of ERAs which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to ERAs which distribute only non-USDA commodities.

Allowable Administrative Costs

Indirect Costs—Over the years, many questions have been raised about whether indirect costs may be charged against TEFAP administrative grants. The definition of ''storage and distribution costs'' in the initial TEFAP regulations issued on April 26, 1983 (48 FR 19004) limited allowable storage and distribution costs to ''direct costs.'' Subsequent revisions of the TEFAP regulations retained this limitation, currently found in Section 251.8(d)(1)(i). However, section 204(a)(2) of the EFAA requires States to make available not less than 40 percent of their grants as necessary to meet the ''direct expenses'' of EFOs. This term is

defined as including ''transporting, storing, handling, repackaging, processing, and distributing commodities * * * costs associated with determinations of eligibility, verification, and documentation; costs of providing information to persons receiving commodities * * * concerning the appropriate storage and preparation of such commodities; and costs of recordkeeping, auditing, and other administrative procedures required for participation in the program under this Act.''

Direct ''expenses'' does not have the same meaning as direct ''costs.'' In fact, many of the items identified in EFAA Section 204(a)(2) as ''direct expenses'' could be charged as either direct or indirect costs depending on the EFO's accounting system (e.g., recordkeeping and auditing costs). To ensure consistency in the treatment of these expenses, this rule would amend Section 251.8 to define ''direct expenses'' to include both direct and indirect costs attributable to TEFAP.

Non-USDA Commodities—Prior to Welfare Reform, States and EFOs were permitted by Section 203D(b) of the EFAA to use TEFAP administrative funds to pay costs associated with the storing, handling, and distributing of non-USDA commodities. In addition, Section 204(a)(2) of the EFAA permitted EFOs to pay costs associated with the repackaging and processing of USDA commodities, as well as the costs of transporting, storing, handling and distributing such commodities. Welfare Reform amended Section 204(a)(1) of the EFAA to expand the allowable uses of TEFAP administrative funds to permit States to use such funds to pay costs associated with the processing of both TEFAP commodities and commodities secured from other sources. However, no corresponding change was made to Section 204(a)(2). Nevertheless, upon further review of the legislative changes made to the EFAA as a result of Welfare Reform, it has been noted that removing the distinction between TEFAP commodities and commodities secured from other sources in Section 204(a)(1) affected Section 204(a)(2) as well. As a result of this amendment, both States and ERAs may use TEFAP funds to pay costs associated with the processing, as well as the transporting, storing, handling, repackaging, and distributing of USDA and non-USDA commodities. This rule proposes to revise Section 251.8(e)(1)(i) to reflect the authority of the State agencies and ERAs to use TEFAP administrative funds to pay such costs.

Interstate Costs—TEFAP regulations have consistently limited ''storage and distribution costs'' to intrastate costs at both the State and local level. This limitation was based on the language contained in Section 204(a)(2) of the EFAA which limits allowable EFO costs of transporting, storing, handling, repackaging, processing and distributing both USDA and non-USDA commodities to those costs incurred ''after [the commodities] are received by the organization.'' However, this restriction fails to recognize the increasing instances of interstate costs associated with the distribution of non-USDA commodities. The HPA first provided for the use of TEFAP administrative funds to pay costs associated with the distribution of non-USDA commodities by ERAs in 1988. Section 871(c) of Welfare Reform extended the authority to use TEFAP administrative funds for this purpose to States. These legislative changes have caused the Department to re-evaluate the prohibition on interstate costs. It has been determined that the phrase ''incurred after they are received by the organization'' does not necessarily mean that the ERA must have physical possession of the commodities. Once a particular commodity has been earmarked for a particular agency and has become its responsibility, the proposal would permit TEFAP funds to be used to pay any associated allowable cost. For example, if a farmer in another State makes potatoes available to an organization for gleaning, TEFAP funds could be used to pay the cost of transporting, processing and storing those potatoes. Therefore, this rule also proposes to amend Section 251.8(e)(1)(i) to allow interstate expenditures by both State and local agencies, with the restriction that for such expenditures to be allowable, the commodities in question must have been earmarked for the particular local agency and become its responsibility.

While the EFAA gives a more exhaustive list of the types of EFO costs that may be counted toward the 40 percent pass-through requirement, the Department considers these costs to be a subset of the full range of costs for which a State and other types of ERAs may use TEFAP funds. Included are typical ''local'' costs such as those associated with determinations of eligibility, verification, and documentation, costs of providing information to persons receiving commodities concerning the appropriate storage and preparation of such commodities, and costs of recordkeeping, auditing, and other administrative procedures required for participation in the program, as they are considered legitimate costs associated with program administration. Therefore, this rule proposes to revise Section 251.8(e)(1) to provide one list of the types of allowable costs for which TEFAP administrative funds can be used at either the State or local level.

This rule also proposes to amend Section 251.8(e)(2) to address those instances in which State agencies limit the use of TEFAP administrative funds to pay specific types of expenses. In most instances, there is not a sufficient amount of TEFAP administrative funds to pay all allowable local level costs. Therefore, some State agencies choose to limit the use of such funds to ensure that funds are utilized in a manner that results in TEFAP commodities being made available to the greatest number of needy possible. As discussed above, if the State agency chooses to limit the use of TEFAP administrative funds, the specific types of expenses for which funds can be used by ERAs must be identified in the agreement or other written documents incorporated by reference in the agreement.

The accompanying chart has been included in this preamble to assist readers in understanding the changes to the allowable administrative cost categories of Section 251.8 set forth in this proposed rule.

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ALLOWABLE ADMINISTRATIVE COSTS IN TEFAP (7 CFR 251.8)		
Types of Costs	**Current State and Local**	**Proposed State and Local**
USDA Commodities Direct costs of: transporting, storing, handling, repackaging, processing and distributing commodities determinations of eligibility, verification and documentation providing information on commodity storage and preparation publishing announcements of distributions recordkeeping, auditing, other administrative procedures	YES after commodities are received by the organization (intrastate cost limitation)	YES (indirect cost and intrastate cost limitation removed; see Indirect Costs and Interstate Costs below)
Non-USDA Commodities Direct costs of: storing, handling and distributing commodities determinations of eligibility, verification and documentation providing information on commodity storage and preparation publishing announcements of distributions recordkeeping, auditing, other administrative procedures	YES, but intrastate cost limitation	YES intrastate cost limitation removed; indirect costs allowed; see below)
Processing	NO	YES
Indirect Costs related to above cost categories for both USDA and non-USDA commodities	NO	YES
Interstate Costs related to above cost categories for both USDA and non-USDA commodities	NO	YES, but commodity must be earmarked for local agency and become its responsibility

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Recordkeeping and Reporting Requirements

Section 251.10(a)(5) currently requires EFOs to retain all records for a period of 3 years from the close of the Federal Fiscal Year to which they pertain. This rule proposes to amend Section 251.10(a)(5), which is redesignated under this proposed rule as Section 251.10(a)(4), to require records to be kept by the ERA, or the State agency on behalf of the ERA, as long as such records are reasonably accessible at all times for purposes of management evaluation reviews, audits or investigations. This change would serve to clearly state the commonly accepted rule that once records become the subject of an audit or investigation, any time limits otherwise permitting their disposal are suspended until the audit or investigation is concluded. The second advantage would be greater flexibility in custodial arrangements for records, e.g., a mass distribution site may not have appropriate record storage space and may wish to ship its records to the State for safekeeping. This provision would be further amended to require records to be kept longer than 3 years if related to an audit or investigation in progress.

Section 251.10(a)(3) of the regulations currently requires each TEFAP distribution site to keep records showing the data and method used to determine the number of eligible households served at that site. Section 251.10(d)(2) of the regulations in turn currently requires States to report, on form FNS–155, the total number of households served in the State under TEFAP. Now that TEFAP and SK/FB have been consolidated, a significant proportion of TEFAP commodities are used for prepared meals. The Department does not intend to require that sites which serve prepared meals report the number of meals served, as in many instances, some meals would not contain TEFAP commodities, and in many other situations, such commodities might comprise a small part of meals. In addition, such a requirement would impose an unreasonable burden on sites which provide prepared meals. Therefore, information relative only to the number of households served through TEFAP is of little value to the Department since it bears no relationship to the total number of needy receiving assistance through TEFAP, and does not account for the disposition of all TEFAP commodities. The Final Rule, ''Food Distribution Programs-Reduction of the Paperwork Burden,'' published at 62 FR 53727, amended Section 250.17(a) to allow the Department to establish the frequency of submission of form FNS–155 and, by implication, the information reported on the form, to conform to program needs. FNS Regional Offices were notified by means of TEFAP Policy Memorandum No. 12–TEFAP Household Participation Data, dated December 23, 1997, that the Department was exercising this authority to eliminate reporting of household data in TEFAP, and that current regulations would be amended to reflect this change. Therefore, this rule proposes to remove Section 251.10(a)(3), as it is oriented toward reporting the number of households served, and to revise Section 251.10(d)(2) to eliminate the requirement that State agencies report the total number of households served. Since it remains necessary, for purposes of accountability, to maintain information specific to each household certified for participation in the program, the requirements contained in Section 251.10(a)(4) are retained in this proposed rule, and redesignated as Section 251.10(a)(3).

Monitoring Requirements

Section 251.10(e)(2)(i) of current regulations requires State agencies to conduct on-site reviews of each participating organization with which the State has an agreement (i.e., EFO as defined by current regulations) at least once every four years, with at least 25 percent of the total number of such institutions reviewed each year. As discussed above, this rulemaking proposes to change the definition of EFO so that it corresponds to the legislative definition. Therefore, this rule proposes to replace the reference to EFO in Section 251.10(e)(2)(i) with ''eligible recipient agency with which the State agency has executed an agreement.'' However, the applicability of the requirement remains unchanged in this proposed rule.

Section 251.10(e)(2)(ii) of current regulations requires that the State agency annually review one-third or 50, whichever is fewer, of all distribution sites within the State, to be conducted, to the maximum extent feasible, simultaneously with actual distribution and/or eligibility determinations. In selecting distribution sites for review, § 251.10(e)(3) of current regulations requires the State agency to rank all the sites according to the number of households participating during the previous Federal fiscal quarter and select for review the first 25 sites, or first one-sixth of all sites, whichever is fewer, which served the greatest number of households.

As indicated above, the 25 percent review requirement is proposed to apply to all ERAs which have an agreement with the State agency. The remaining review requirement, in Section 251.10(e)(2)(ii), is proposed to apply to all other ERAs, that is, to all ERAs which have an agreement with another ERA rather than the State agency. The Department proposes to reduce the frequency of this requirement. Thus, instead of annually reviewing the lesser of one-third or 50 of all distribution sites, the State agency would be required to review the lesser of one-tenth or 20 of all ERAs which have an agreement with another ERA. With the absorption of SK/FB into TEFAP, State agencies must actually expand their monitoring activities to include ERAs which serve prepared meals, so the total number of ERAs will increase. However, the value of available USDA commodities has decreased since the current regulatory requirement was established many years ago, generally reducing the need for oversight. As such, State agencies should have the flexibility to direct limited administrative resources where there is the most need for program oversight and corrective action. This change would decrease the burden associated with administration currently imposed on State agencies while maintaining program accountability.

As indicated above, Section 251.10(e)(3) of current regulations mandates a system for selecting and ranking distribution sites for review based on the number of households they serve. As previously noted, the number of households served is no longer meaningful data since SK/FB has been merged with TEFAP. In addition, it has been determined that States should be granted more flexibility in selecting ERAs for review. Therefore, this rule proposes to remove the current Section 251.10(e)(3) and to amend Section 251.10(e)(2)(ii) to require that State agencies develop a system for reviewing ERAs which have signed an agreement with another ERA for the receipt of TEFAP commodities and/or administrative funds that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner. Examples of criteria States might apply include actual or probable deficiencies in program administration, such as weakness in inventory management, that have been identified through audits, investigations of complaints; deficiencies in, or tardiness of, reports submitted by ERAs; or the dollar value of the TEFAP commodities received in

the previous Federal fiscal quarter. Use of such criteria would yield systematic selection while at the same time providing State agencies the flexibility necessary to direct limited administrative resources where oversight and corrective action are most needed.

FNS Instruction 113–3, ''Civil Rights Compliance and Enforcement—Food Distribution Programs,'' presently includes an on-site review requirement of recipient agencies every five years to ensure compliance with civil rights regulations. In accordance with the change in on-site review requirements for TEFAP proposed above, the Department plans to revise this provision of the instruction. The revised instruction would require that on-site reviews of ERAs to ensure compliance with civil rights provisions be conducted at the frequency established in Section 251.10(e)(2)(i) and (e)(2)(ii) of this proposed rule.

Section 251.10(e)(6) of current regulations requires that the State agency submit a report of review findings to each EFO, including a description of each deficiency found and factors contributing to each, requirements for corrective actions, and a timetable for completion of corrective action. The State agency must then monitor the implementation of corrective actions identified in the report. The Department has determined that this requirement is too prescriptive. State agencies should be given more flexibility to determine the manner in which they will work with ERAs to develop corrective action plans to remedy deficiencies. Therefore, this rule proposes to redesignate Section 251.10(e)(6) as Section 251.10(e)(5) and to amend it to require the State agency to submit a report of review findings to an ERA only if the review discloses deficiencies in program administration. In addition, the specific requirements for the report would be removed. State agencies would, however, continue to be responsible for ensuring that ERAs take corrective action to eliminate the deficiencies identified during the review.

Maintenance of Effort

Section 871(d)(5) of Welfare Reform amended Section 214(d) of the EFAA to allow States greater flexibility in complying with the maintenance-of-effort requirement by removing the mandate that a State agency maintain the amount of State funds made available to support other (non-TEFAP) nutrition programs in the State during each fiscal year. The prohibition against reducing State funding remains only for TEFAP itself, i.e., it applies only to State agencies that use their own funds to provide commodities or services to organizations receiving federal funds or services under TEFAP. This rule proposes to amend Section 251.10(h) accordingly.

In recent years, some States have been supporting TEFAP with significant amounts of their own funds, a development that should be encouraged. Therefore, the maintenance-of-effort requirement should not be construed to require that State spending on TEFAP within the State never fall below the highest level achieved in any year. Such an interpretation would no doubt cause States to become extremely wary of increasing their support for TEFAP, for fear that they would be forced, even if unable, to continue to provide the increased level of contributions in future years. Therefore, in an effort to encourage States to contribute additional resources to the extent feasible in any given year, this rule proposes to amend Section 251.10(h) to define the ''base year'' to be used in determining if States are complying with the maintenance-of-effort requirement as ''the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.'' The maintenance-of-effort requirement is independent of the State matching requirement for TEFAP administrative funds which States retain for State-level administrative costs, as set forth in Section 251.9.

National School Lunch Program—State Advisory Councils and Consultation Requirement

Section 707(b) of Welfare Reform amended Section 14(e) of the NSLA (42 U.S.C. 1762a(e)) to remove the requirement that State educational agencies-which typically are not involved with decisions relative to the commodity program-establish an advisory council for the purpose of advising the agency on schools' needs relative to the selection and distribution of commodities. Current regulations at 7 CFR 210.28 require State educational agencies to maintain these advisory councils. State agencies were informed via the January 14, 1997 policy memorandum that, effective immediately, State educational agencies need not maintain the formerly required advisory councils. The elimination of this requirement from the regulations is being addressed by FNS's Child Nutrition Division in a separate rulemaking covering the implementation of Welfare Reform relative to child nutrition programs. States should not interpret this change in the law as a requirement to disband their advisory councils. To the extent that they have proved useful, States may wish to retain them. It should be noted that, as mentioned previously, Section 871(b) of Welfare Reform amended Section 202A(c) of the EFAA to require the Secretary to encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. As noted above, this rule proposes to revise Section 251.4(h) to include language encouraging States to establish such an advisory board.

Section 707(b) of Welfare Reform also amended section 14(e) of the NSLA (42 U.S.C. 1762a(e)) to require that State agencies responsible for the distribution of commodities consult with representatives of schools in the State that participate in the National School Lunch Program when making decisions regarding the selection and distribution of commodities. Food Distribution Program regulations regarding commodity acceptability reports and information dissemination (Sections 250.13(k) and 250.24(b) respectively) should prove adequate to fulfill this consultation requirement, especially given Congress' decision to eliminate the requirement for advisory councils, and the general need to reduce the burden of program administration. Therefore this rule proposes no new regulations in furtherance of this legislative mandate. The above regulatory provisions do, however, include references (Sections 250.13(k)(2) and 250.24(b)(4)) to the no-longer-required advisory councils, which this rule proposes to eliminate.

Alien Provisions

The provisions of Welfare Reform affecting aliens do not require that States in any way restrict access of aliens to TEFAP. States can continue serving all categories of aliens they served prior to enactment of Welfare Reform. While Welfare Reform does not require discontinuation of benefits to aliens, Section 742 does give States the option to provide, or not provide, program benefits to any individual who is not a citizen or a qualified alien. However, prior to making any changes in program administration based on the alien provisions of Welfare Reform, States are advised to consult with their legal counsel.

States should also be aware that Section 403(a) of Welfare Reform imposes a five-year waiting period after

a qualified alien enters the country before s/he is eligible for any ''Federal means-tested public benefit.'' The Department has determined that FNS's food distribution programs, including TEFAP, are not subject to this provision. Therefore the five-year waiting period does not apply. The Department will publish a separate rulemaking to incorporate the provisions of Welfare Reform regarding eligibility of aliens for TEFAP and other food distribution programs.

Technical Amendments

This rule proposes to amend part 251 to remove the obsolete word ''Temporary'' from Section 251.1 and to correct outdated references.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are proposed to be amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

§ 250.3 [Amended]

2. In Section 250.3, the definitions of *Food bank* and *Soup kitchen* are removed.

§ 250.13 [Amended]

3. In § 250.13:

a. Paragraph (a)(1)(iv) is amended by removing the words ''emergency feeding organizations'' wherever they appear and adding the words ''eligible recipient agencies'' in their place.

b. The last sentence of paragraph (k)(2) is amended by removing the words '', including, for example, State Food Distribution Advisory Council Reports''.

§ 250.24 [Amended]

4. In § 250.24, paragraph (b)(4) is removed, and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

§ 250.41 [Amended]

5. In § 250.41, the first sentence of paragraph (a)(1) is amended by removing the words ''With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the'' and adding in their place ''The''.

§ 250.52 [Removed]

6. Section 250.52 is removed.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

§ 251.1 [Amended]

2. In § 251.1, the word ''Temporary'' is removed.

3. In § 251.2:

a. Paragraph (a) is amended by adding the heading ''Food and Nutrition Service.'';

b. Paragraph (b) is amended by adding the heading ''State Agencies.'', by removing the words ''emergency feeding organizations'' and by adding the words ''eligible recipient agencies'' in their place;

c. Paragraph (c) is revised; and

d. Paragraph (d) is added.

The revision and addition read as follows:

§ 251.2 Administration.

* * * * *

(c) *Agreements*. (1) *Agreements between Department and States*. Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies*. Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies*. (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement; and

(iii) The name of the person responsible for administering the program in the receiving eligible recipient agency.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; *except* that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with

§ 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

4. Section 251.3 is revised to read as follows:

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5(b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

5. In § 251.4:

a. The words ''emergency feeding organization'', ''emergency feeding organizations'' and ''emergency feeding organization's'' are removed wherever they appear in the section, and the words ''eligible recipient agency'', ''eligible recipient agencies'' and ''eligible recipient agency's'' respectively are added in their place;

b. Paragraph (c)(1) is amended by removing the reference to ''§ 251.3(d)''and adding a reference to ''§ 251.3(h)'' in its place;

c. Paragraph (d)(3) is removed;

d. Paragraph (f)(5) is amended by removing the reference ''§ 250.15'' and adding in its place the reference ''§ 250.30'';

e. Paragraphs (g) and (h) are revised;

f. Paragraph (j) is amended by adding the words ''that has signed an agreement with the respective State agencies'' after the words ''eligible recipient agency'';

The revisions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of

without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies-priority system and advisory boards.*—(1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority*. When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority*. After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation*. When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks*. Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards*. Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

* * * * *

6. Section 251.5 is revised to read as follows:

§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations*. Prior to making commodities available, State agencies or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities, must ensure that an organization applying for participation in the program meets the definition of an ''eligible recipient agency'' under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households*. Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals*. Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency or eligible recipient agency to which they have applied for the receipt of commodities, that they serve predominantly needy persons. State agencies may establish a higher standard than ''predominantly'' and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status*. Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as ''organized or operated exclusively for religious purposes'' under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension of not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all

information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

7. Section 251.6 is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, the address of such agency, and the name of the agency official entrusted with binding signature authority;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

8. Section 251.7 is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

9. In § 251.8:

a. Paragraph (a) is amended by removing the reference ''§ 251.3(d)'' and adding in its place the reference ''§ 251.3(h)'';

b. Paragraph (b) is amended by removing the reference ''part 3015'' and adding in its place the reference ''part 3016 or part 3019, as applicable.'';

c. Paragraph (c)(1) is amended by removing the words ''U.S. Treasury Department checks or'';

d. Paragraph (c)(2) is amended by:

1. removing the words ''FNS Instruction 407–3 (Grant Award Process)'' and adding in their place the words ''procedures established by FNS'';

2. removing from the first sentence the words ''either'' and ''or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement'';

3. removing the second sentence; and

4. removing reference to ''§ 251.8(e)'' and in its place adding reference to ''§ 251.8(f)'';

e. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and new paragraph (d) is added; and

f. Newly redesignated paragraph (e) is revised.

The addition and revision read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to organizations which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

* * * * *

10. In § 251.9:

a. The words ''emergency feeding organization'' and ''emergency feeding organizations'' are removed wherever they appear in the section, and added in their place are the words ''eligible recipient agency'' and ''eligible recipient agencies'' respectively;

b. Paragraph (a) is revised;

c. In paragraph (c) introductory text, the reference ''3016.24(b)(1)'' is removed, and in paragraph (c)(2)(i) the reference ''3016.24(c) through 3016.24(f)'' is removed, and the reference ''part 3016 or 3019, as applicable'' is added in both places.

d. Paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively;

e. Newly redesignated paragraph (e) is amended by removing the words ''SF–269, Financial Status Report,'' and adding the words ''FNS–667, Report of TEFAP Administrative Costs,'' in their place.

f. Newly redesignated paragraph (f) is amended by removing the reference ''SF–269'' wherever it appears and adding the reference ''FNS–667'' in its place.

The revision reads as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in accordance with § 251.8(e)(4) of this part.

* * * * *

11. In § 251.10:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by adding the words ''commodities distributed for home consumption and meals prepared from'' after the word ''law,'';

c. Paragraph (c) is amended by adding the words ''for home consumption or availability of meals prepared from commodities'' after the word ''foods''.

d. Paragraphs (d) and (e) are revised;

e. Paragraph (f) is amended by:

1. removing the words ''emergency feeding organizations and distribution sites'', ''emergency feeding organization or distribution site'' and ''emergency feeding organization's or distribution site's'' wherever they appear, and adding in their place the words ''eligible recipient agencies'', ''eligible recipient agency'' and ''eligible recipient agency's'' respectively;

2. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(1) introductory text;

3. adding the words ''for home consumption or prepared meals containing TEFAP commodities'' after the word ''commodities'' in paragraph (f)(1)(ii);

4. adding the words ''or meal service'' at the end of paragraph (f)(1)(iii);

5. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(2); and

6. removing the words ''the distribution of commodities by'' in paragraph (f)(4);

f. Paragraph (g) is amended by removing the words ''emergency feeding organizations'' and adding in their place ''eligible recipient agencies'';

g. Paragraph (h) is revised.

The revisions read as follows:

§ 251.10 Miscellaneous provisions.

(a) *Records.* (1) *Commodities.* State agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part in accordance with requirements of § 250.16 of this chapter. State agencies must also ensure that eligible recipient agencies maintain such records.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information.* Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

* * * * *

(d) *Reports.* (1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system.* (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, and reporting and recordkeeping requirements.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

* * * * *

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

Dated: June 24, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–17160 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–30–U

federal register

Thursday
July 8, 1999

Part III

Environmental Protection Agency

Pesticides; Policy Issues Related to the Food Quality Protection Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00610; FRL–6088–7]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on four policy papers entitled ''Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health,'' ''Exposure Data Requirement for Assessing Risks of Pesticide Exposure to Children,'' ''The Office of Pesticide Programs' Policy on Determination of the Appropriate FQPA Safety Factor(s) for Use in the Tolerance-Setting Process,'' and ''Standard Operating Procedures (SOP) for Determining the Appropriate FQPA Safety Factor(s) for Use in Tolerance Assessment.'' This notice is the ninth in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee (TRAC).

DATES: Written comments for these policy papers, identified under one docket control number provided in Unit I. of this document, should be submitted by September 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of this document. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Penelope A. Fenner-Crisp, Environmental Protection Agency (7501C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0654; fax: 703–305–4776; e-mail: fenner-crisp.penelope@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, 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?

1. *Electronically.* You may obtain electronic copies of this document and the four science policy papers from the EPA Home Page under the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select ''TRAC'' and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at the Federal Register--Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/) to obtain this notice and the four science policy papers.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section of this document. In addition, the official records for the science policy papers listed in the SUMMARY section of this document, including the public version, have been established under the docket control number OPP–00610 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. Public versions of these records, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), are available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

1. *By mail.* Submit written comments 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.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch; the telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the draft science policy papers, new approaches the Agency has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''subject'' heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10–year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with the FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27, 1998 through April 29, 1999.

The Agency has been working with TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision-making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues.

The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues. TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning the nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of the four documents identified in the SUMMARY section of this document.

III. Background on FQPA Safety Factor Papers

A. 1993 National Research Council (NRC) Study

In response to a request from the U.S. Congress, the National Research Council (NRC) conducted a study on the scientific and policy issues concerning pesticides in the diets of infants and children. In its 1993 report, ''Pesticides in the Diets of Infants and Children,'' the NRC concluded that although the uncertainty factors that are widely used to establish guidelines for human exposure on the basis of animal testing results generally provide adequate protection for infants and children, children may be uniquely susceptible to chemical exposures at particularly sensitive stages of development. The NRC further concluded, ''in the absence of data to the contrary, there should be a presumption of greater toxicity to infants and children.''

B. Applicable FQPA Requirements

The Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170) was signed into law on August 3, 1996. FQPA establishes a new safety standard and new procedures for EPA's pesticide tolerance-setting activities. Under new section 408(b)(2)(A)(i) of FFDCA, EPA can establish, revise or leave in effect a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if it is determined to be ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' Section 408(b)(2)(C) requires EPA to give special consideration to infants and children by ensuring ''that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue.''

FQPA instructs EPA, in making its ''reasonable certainty of no harm'' finding, that in ''the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of data with respect to exposure and toxicity to infants and children.'' Section 408(b)(2)(c) further states that ''the Administrator may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.''

C. EPA 10X Task Force

In March 1998, the U.S. Environmental Protection Agency (EPA) established an agency-wide ''10X Task Force'' to address the use of the ten-fold (10X) margin of safety for infants and children (otherwise known as the ''FQPA Safety Factor'') provided for in the Food Quality Protection Act (FQPA) of 1996. Task Force members included high-level scientists primarily from the Office of Children's Health Protection, the Office of Prevention, Pesticides and Toxic Substances, and the Office of Research and Development. This group was charged with developing recommendations regarding the implementation of the FQPA Safety Factor.

In response to this charge, the 10X Task Force formed two working groups--the Toxicology Working Group and the Exposure Working Group. These groups have each drafted a report ''Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health'' and ''Exposure Data Requirements for Assessing Risks of Pesticide Exposure to Children,'' respectively, which are summarized in Units IV.A. and IV.B. of this document. These reports contain recommendations concerning the implementation of the FQPA Safety Factor.

D. Pesticide Program Guidance

The Office of Pesticide Programs (OPP) is responsible for implementing the requirements of FQPA in making its pesticide regulatory decisions daily. Accordingly, OPP has developed updated, interim guidance as to how it will comply with FQPA concerning the FQPA Safety Factor for protecting infants and children. In drafting this guidance, OPP has taken into account the recommendations of the 10X Task Force as embodied in the above-mentioned documents. OPP's guidance consists of two documents: ''The Office of Pesticide Programs' Guidance Document on the Determination of the Appropriate FQPA Safety Factor(s) for Use in the Setting of Tolerances'' and ''Standard Operating Procedures (SOP) for Determining the Appropriate FQPA Safety Factor(s) for Use in Tolerance Reassessment'' which are summarized in Units IV.C. and IV.D. of this document. The former paper explains the general policies that OPP proposes to follow in making determinations concerning the use of the FQPA Safety Factor, while the latter paper specifies the detailed procedures that OPP will use in following these policies.

E. Scientific Peer Review

Since the FQPA was promulgated, OPP has submitted all interim policy and guidance documents on the FQPA safety factor for independent scientific peer review, with concurrent requests for public comment. Responses and comments received from the independent scientific panels, other offices within the Agency, government agencies, and from the public sector, in response to each of these document releases and/or presentations, have been carefully considered throughout the process of developing interim policy. The first interim policy paper explaining the OPP position on the use of the ten-fold margin of safety, was presented to the FIFRA Scientific Advisory Panel (SAP) in October 1996. In March 1998, a second OPP interim policy paper on the application of the ten-fold safety factor to risk assessments entitled ''Presentation for FIFRA Scientific Advisory Panel by Office of Pesticide Programs Health Effects Division on FQPA Safety Factor for Infants and Children,'' was presented to the SAP. An update on the Agency's progress in addressing issues raised by the SAP was brought before a subsequent Panel in July 1998; however, the primary positions described in the March paper were not altered in that update.

F. Public Comments

Before and during the TRAC meetings, the Agency received comments on how to approach and improve its interim policies. Specifically, EPA received several petitions, including those from the National Food Processors Association, the Natural Resources Defense Council (NRDC) and others, a report from the Implementation Working Group (IWG), letters from the Environmental Working Group, and various correspondence from Congress and others. These documents will be considered as the Agency refines its science policies, and will also be made available through the public docket.

1. *NRDC petition*. On April 23, 1998, the NRDC and various individuals and other public interest organizations filed a petition requesting that EPA issue an interpretive rule/policy statement regarding EPA's implementation of the FQPA provision concerning the additional ten-fold safety factor to protect infants and children. The petition seeks three specific actions:

i. Issuance of a policy statement/interpretive rule providing that EPA maintain the ten-fold safety factor unless the Administrator has determined that there are reliable data on [evolving] prenatal and postnatal toxicity and exposure for fetuses, infants, and children. The petition sets forth a minimum set of data that petitioners believe constitutes ''reliable data'' and requests that the statement/rule direct EPA to apply the additional ten-fold factor if any of these data are absent.

ii. Convene a ''blue ribbon panel'' to assist EPA in determining when there are reliable data for prenatal and postnatal toxicity to fetuses, infants, and children. NRDC recommends that this panel be convened under the auspices of the Children's Health Protection Advisory Committee.

iii. Issuance of a policy statement/interpretive rule providing that, pending completion of the panel's report, EPA will apply the ten-fold safety factor.

2. *Grower group and trade association petition*. On May 26, 1998, EPA received a petition on rulemaking under the FQPA submitted on behalf of several grower groups and trade associations. The petition requested EPA to use notice and comment rulemaking to establish policies and procedures for implementing FQPA. The petitioners claimed that rules are needed to establish policies and procedures for determining when the FQPA ten-fold safety factor may be reduced or removed.

3. *IWG report.* The IWG, a coalition of farm, food, manufacturing, and pest management organizations, issued a ''road map'' report on June 18, 1998, which presents the IWG's views on how EPA can ensure what they regarded as a more balanced and workable implementation of FQPA. Their comments included the FQPA Safety Factor.

IV. Summary of FQPA Safety Factor Papers

A. Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health

The Toxicology Working Group of the 10X Task Force has developed a report addressing the role of toxicology data requirements in assessing risks to children's health from pesticide exposure. Specifically, the report provides guidance on the use of toxicity data in hazard characterization and dose-response analysis relevant to decisions about the FQPA 10X Safety Factor.

First, the report expands on the definition of prenatal and postnatal toxicity (developmental toxicity) from the EPA Guidelines for Developmental Toxicity Risk Assessment (1991), and recommends a core toxicology data set for conventional, food-use pesticides. In particular, the report suggests that adult and developmental neurotoxicity testing and adult immunotoxicity testing be included as a routine part of the core test data set for food-use pesticides because the current weight-of-the-evidence triggers may not identify all pesticides that have the potential to produce developmental neurotoxicity and immunotoxicity.

The report then describes criteria for assessing the overall ''degree of concern'' for children's health effects that encompasses a review of all available toxicity information. The recommended approach, which includes an evaluation of the degree of concern for children's health, represents an evolution and further harmonization of the approaches previously taken by EPA. The criteria for this approach fall into four basic categories, each of which the report discusses in detail:

1. Human data on prenatal and postnatal toxicity.
2. Prenatal and postnatal toxicity in animal studies.
3. The dose-response nature of the experimental animal data.
4. The relevance of the experimental animal data for humans.

When a dose-response analysis is done for health effects of pesticides in general, the report recommends how a dose-response analysis should be performed for children's health effects. That is, the data on developmental toxicity should be evaluated along with the data on adult toxicity, and the No Observed Adverse Effect Level (NOAEL) for the more sensitive or critical effect levels should be based on consideration of all health effects observed. In doing so, children's health will be protected along with that of other sensitive populations.

The report indicates that the default intraspecies ten-fold uncertainty factor, which is applied to account for variations in toxicity among humans, will be adequate in the majority of cases for protecting children's health regarding toxicity concerns, if a complete developmental toxicity data base is available. The report suggests that when data specific to children's health are missing or inadequate for a particular pesticide, application of the data base uncertainty factor in addition to the ten-fold intraspecies variability factor would account for the possibility that children may be significantly more sensitive than adults.

Although the report asserts that there is no formal process for considering the degree of concern in the RfD determination, the report recognizes that some aspects of degree of concern are taken into account at this point in the risk assessment process, for example, when developmental effects are selected as the most sensitive endpoints. Nevertheless, the report recommends that this issue be further considered in the calculation of the RfD.

In addition to the recommendations described above, the report makes several recommendations concerning the development of new data requirements:

1. 40 CFR part 158.340 should be updated to include the adult and developmental neurotoxicity guidelines and the adult immunotoxicity guidelines and to refer to the newly revised two-generation reproduction and prenatal developmental toxicity testing guidelines.

2. Guidelines for pharmacokinetic studies should be developed that include considerations of exposure during pregnancy and lactation, and of infants and children. These data can be developed as part of a tiered approach to overall pharmacokinetic evaluations and should be required for assessment of effects of pesticides on infants and children in 40 CFR part 158.

3. Specific testing guidelines for other types of functional or latent effects (e.g., developmental immunotoxicity, developmentally-induced cancer) do not currently exist. As well, guidelines for direct dosing of neonates and appropriate interpretation and application of such data are not available. Efforts should be made to develop these guidelines as well as criteria for when such studies should be conducted.

B. Exposure Data Requirements for Assessing Risks to Children's Health from Pesticide Exposure

The Exposure Working Group of the 10X Task Force has developed a report addressing the role of exposure data requirements in assessing risks to children's health from pesticide exposure. The report gives information and describes general principles for conducting exposure assessments. It also discusses issues that are specific to conducting exposure assessments for children.

The report contains criteria by which OPP evaluates data sets used in an exposure assessment. If direct measurements of exposure are used for the assessment, then the available exposure data must be of suficient quality and quantity to provide high confidence that the assessment will be protective of infants and children. If models are used to estimate exposure, then the exposure assumptions in the models must be judged to be conservative. The greater the uncertainty in the data associated with the assumptions, the more conservative (i.e., unlikely to underestimate exposure) the assumptions should be.

Finally, the report describes the assessment procedures for estimating single pathway pesticide exposures from food, drinking water, and non-occupational sources. It also characterizes the types of data that are used in the assessments. For each pathway, the procedures and data are evaluated to determine if there is a high level of confidence that the assessment is protective of infants and children. The report lists a number of recommendations on how to improve the assessment procedures, mentions the ongoing work within EPA to improve the procedures, and addresses the issues associated with aggregating exposures from different sources.

C. The Office of Pesticide Programs' Guidance Document on the Determination of the Appropriate FQPA Safety Factor(s) for Use in the Setting of Tolerances

The OPP guidance document describes the OPP policies for determining the appropriate FQPA Safety Factor(s) to apply when establishing, modifying, leaving in effect, or revoking a tolerance or exemption for a food use pesticide. It presents the legal framework for the FQPA Safety Factor and key interpretations of that framework. It states that, while the legislative language incorporates the term ''safety factor'' instead of the term ''uncertainty

factor,'' OPP believes that Congress clearly intended the FQPA Safety Factor to address uncertainty resulting from incompleteness of data and, therefore, deems the statutory term to incorporate the ''uncertainty factor'' concept. The document offers the opinion that the FQPA Safety Factor is to be applied in addition to the two routine or baseline factors which account for: (1) Differences in sensitivity and variability between humans (the ''intraspecies'' uncertainty factor) and (2) differences in sensitivity between experimental animals and humans, if animal data have been used as the basis for deriving the hazard values (the ''interspecies'' uncertainty factor). Therefore, the FQPA Safety Factor would include other uncertainty or modifying factors used in the calculation of hazard values, for example, the data base uncertainty factor that is applied when one or more critical core studies are missing.

The document describes the set of pesticides for which FQPA Safety Factor determinations would be made primarily as food-use chemicals of ''conventional'' chemistry for which hazard values such as the acute or chronic reference doses (RfD) can be derived. OPP would expect to make FQPA Safety Factor decisions when assessing risk to infants and children up through the time of sexual maturation, women of child-bearing age, and on occasion, sexually mature males. FQPA Safety Factor recommendations will be made as the risk characterization is being developed; the final decision will be made during the risk management process.

The guidance describes the criteria by which OPP determines the completeness of the toxicology data base for conducting a high quality hazard characterization. OPP makes this determination employing a weight-of-the-evidence approach. The core toxicology data base for a specific chemical generally consists of studies which meet three criteria:

1. All studies in the core data base must have ''official'' testing guidelines or standard, well-documented protocols available.

2. The studies will have been required under FIFRA/ FFDCA as first tier requirements or will have been triggered by results of Tier 1 or other existing studies (see the regulations in 40 CFR 158.340, subpart F). Alternatively, studies are required under a well-established policy and practice for registration and reregistration/renewal (e.g., data call-ins) and this requirement has resulted in the generation and submission of the data with which the Agency has acquired experience in evaluating.

3. There is consensus in the scientific community that there is a body of evidence supporting the conclusion that the results of such studies significantly improve the understanding of the potential hazard of the pesticide to humans, including infants and children.

The document notes that OPP will, in the next few months, propose to revise the toxicology data requirements in part 158, to include several new studies as Tier 1 requirements (e.g., the acute and subchronic neurotoxicity studies in adult mammals, the developmental neurotoxicity study, two immunotoxicity studies, and the 21–day dermal study) plus others as Tier 2 (i.e., conditionally required). In addition, there is a description of the criteria and other bases by which OPP has concluded that it is appropriate to begin the process to issue data call-ins for the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study for a subset of conventional chemistry pesticides which are known neurotoxins.

Separate from the question of what data will comprise a complete data base is the issue of what data base uncertainty factor should be applied when critical core studies are missing or inadequate. This document addresses this issue, including when the number of studies considered critical for a ''high confidence'' chronic RfD is expanded in the near term from five to six, and, then, after the studies are routinely required, received and understood, to eight. The data base uncertainty factor fulfills the same purpose as, and, in effect, becomes part of the FQPA Safety Factor. This guidance document incorporates the criteria and factors for assessing the degree of concern regarding the potential for prenatal and postnatal effects, as presented in the framework described in the report of the Toxicology Working Group of the Agency 10X Task Force entitled ''Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health.'' (Toxicology Working Group, 1999).

The guidance document also considers the completeness of the toxicology data base and degree of concern in the selection and application of uncertainty factors when calculating the acute or chronic RfD and in the recommendations regarding the FQPA Safety Factor. The RfD derivation process takes into account deficiencies in the core toxicology data base and the potential for hazard to fetuses, infants and children (and, therefore, the degree of concern). The document articulates criteria for determining OPP's overall level of confidence in the hazard-related information and hazard assessment approaches employed. If, for some reason, an assessment does not meet this standard, then the assessment is said to contain ''residual uncertainties or concerns.'' Any residual concerns remaining after the hazard assessment is examined are dealt with when making the final FQPA Safety Factor decision(s). During the period after a determination is made to require new toxicology studies, but before they become part of the core toxicology data base, their absence is evaluated as part of ''residual uncertainties or concern'' in the FQPA Safety Factor assessment process. This document states OPP's intention to solicit broad public input regarding the appropriate consideration of the absence of these particular newly-required studies in the FQPA Safety Factor assessment process.

Just as for hazard potential, determination of the completeness of the exposure data base--in the context of aggregate exposure and risk assessment--is a primary consideration relative to the FQPA Safety Factor. As described in the report of the Exposure Working Group of the Agency 10X Task Force entitled ''Exposure Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health'' (Exposure Working Group, 1999), OPP estimates exposure using chemical-specific and other reliable empirical data as well as models and conservative assumptions, which also are based upon reliable data. The Office is confident that, in the great majority of cases, it is not underestimating exposure to infants and children or to the general population. The guidance document acknowledges the desirability of obtaining more extensive and specific exposure data and notes that OPP continues to pursue the acquisition of such data from the private sector and its own and other agencies' research efforts. If any residual concerns remain after the exposure assessment is examined, these are dealt with when making the final FQPA Safety Factor decision(s). The guidance states that the absence of detailed and specific exposure data would require the application of an additional safety factor unless OPP can determine that the available data and its assessment methodologies give a high degree of confidence that exposure to infants and children is not underestimated. However, because OPP's approach to estimating exposure in the absence of extensive, specific data is typically very conservative, OPP can

usually conclude, with a high degree of confidence, that its approach adequately protects infants and children, and the FQPA Safety Factor would not be needed to address uncertainties in the exposure data base.

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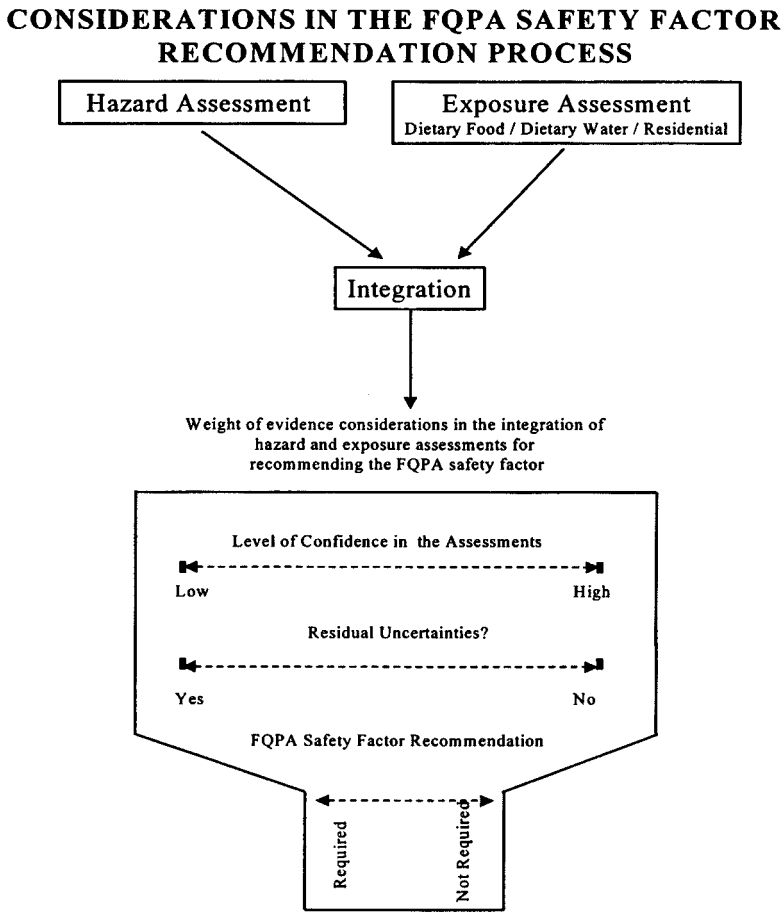

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The guidance document notes that the decision, either that the default FQPA Safety Factor is to be applied or that there are reliable data which support the application of a different factor, uses a ''weight-of-the-evidence'' approach. This approach simply means that all of the data with regard to both hazard and exposure are considered simultaneously as the total body of evidence with regard to the pesticide(s) being evaluated. The integration approach to evaluating the available hazard- and exposure-related information involves characterization of the overall confidence that infants and children will be protected. As illustrated in the figure above, the weight-of-the-evidence considerations include the level of confidence in the hazard and exposure assessments, and whether or not there are any residual uncertainties identified in the risk characterization. If there is a high level of confidence that the combination of the hazard and exposure assessments is adequately protective of infants and children, then the default FQPA factor would not be applied at this stage in the process. For example, the optimal case would be one in which there is a high level of confidence that the hazard and exposure assessments are sufficiently conservative and there are no residual uncertainties in the assessment; then it would not be necessary to apply an additional safety factor to protect infants and children. At the other extreme is the case where OPP may find that reliable data do not support a particular finding other than to retain the 10X default factor, given the low level of confidence that the hazard and exposure assessments are sufficiently conservative and there are residual uncertainties that have not been dealt with in the assessment. Alternatively, in other cases where there is also a low level of confidence in the hazard and exposure assessments and residual concerns remain, an additional safety factor other than the 10X default (perhaps even greater) would be applied. The size of the final factor would depend on the overall weight-of-the-evidence and the level of confidence in the assessment.

The recommendation concerning the FQPA factor is made based upon consideration of the nature and level of confidence in the hazard and exposure assessments, the degree of concern for potential hazard to the fetus, infants and children, and any residual uncertainties that are not accounted for in the hazard and exposure assessments. The final decision on the FQPA Factor is informed by the science presented in the risk characterization and the recommendation.

D. ''Standard Operating Procedures (SOP) for HED FQPA Safety Factor Committee''

The Standard Operating Procedures (SOP) is a working level document designed to obtain and organize information from disciplinary review

scientists regarding the following: (1) The contribution of the hazard and dose response evaluations in determining whether an additional FQPA safety factor is required; (2) the contribution of the exposure assessment(s) in evaluating the safety factor; and (3) the characterization of both the toxicology and exposure data bases. The Committee considers this information in making the safety factor recommendation for each pesticide on a case-by-case basis using a weight-of-the-evidence approach. On December 9, 1998, the OPP FQPA Safety Factor Committee presented to the FIFRA Scientific Advisory Panel (SAP) its SOP for recommending the safety factor for risk assessments prepared in support of tolerance decisions. The Committee has revised its draft Standard Operating Procedures (SOP) in accordance with the draft OPP Policy Document and the recommendations of the SAP; the committee is issuing this revised document for comment today.

V. Questions/Issues for Comment

Because the four science policy documents covered by this notice have many common issues, the Agency encourages the public to submit comments by issue or topic rather than for each separate document. To facilitate this approach to commenting, EPA has placed all four documents under the same docket number (see Unit I.C. of this document). In this way, commenters may efficiently address a science policy or other issues that are addressed in the different documents.

Although EPA is making four documents concerning the FQPA 10X Safety Factor available for review and public comment, the Agency encourages the public to focus particularly on the OPP Guidance Document, ''The Office of Pesticide Programs' Policy on Determination of the Appropriate FQPA Safety Factor(s) for Use in the Tolerance-Setting Process.'' While OPP used the two papers produced by the Toxicology and Exposure Working Groups of the Agency's 10X Task Force in developing its guidance, at this time, the 10X Task Force is not planning to revise and reissue these documents following public comment. In addition, the OPP Standard Operating Procedure is largely derived from the OPP Guidance Document, and any changes in it following public comment should reflect changes in the Guidance Document. Therefore, of the four documents being made available, OPP considers its Guidance Document the most important for the public to review and comment on.

Following are several issues and associated questions for which EPA has particular interest in receiving comments:

General FQPA Safety Factor Issues

1. The OPP Guidance indicates that OPP will generally apply the FQPA Safety Factor only to food-use pesticides of ''conventional'' chemistry. Please comment on this approach. The Guidance also indicates that different decisions about the need for, and size of, an additional FQPA Safety Factor may be appropriate for different durations of exposure and different exposed populations. Please comment on this approach. Finally, the Guidance indicates that it would be appropriate to make only one FQPA Safety Factor decision for a single population/exposure period, even though such exposure might occur by different routes and pathways. Please comment on this approach.

2. Is a weight-of-the-evidence approach to making FQPA Safety Factor decisions appropriate, taking into consideration the toxicology and exposure data bases for a pesticide and the potential risks for the developing fetus, infant and child as well as other populations? If not, why not? Given the scope of the evidence which OPP intends to consider, are there any other types of information that OPP should consider in making its FQPA Safety Factor determinations?

3. Do you agree with the view that the models and assumptions used by OPP in the risk assessment process, together with reliable data available on specific pesticides and other reliable, empirical data, typically do not understate risk? If not, under what circumstances do you believe OPP's current approaches to assessing risks from aggregate exposure to a single pesticide produce risk assessments that understate the risks to infants and children?

4. Do you agree with OPP's view that the FQPA Safety Factor should be applied in addition to the interspecies and intraspecies uncertainty factors, but that the FQPA Safety Factor should not be applied in a manner that results in ''double-counting'' of uncertainties that are otherwise addressed in the toxicity and exposure assessments through, for example, the data base uncertainty factor or conservative exposure models? If you disagree, why?

Toxicology Issues

1. Please comment on OPP's proposed criteria for defining the core toxicology data base.

2. After having considered the recommendations from the FIFRA Scientific Advisory Panel and the Toxicology Working Group, OPP is beginning the process of calling in data for three studies (the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study) for a subset of conventional chemistry food-use pesticides known neurotoxicants. In addition, OPP will be proposing to require the same set of studies for all conventional chemistry food-use pesticides in the revision of the part 158 regulations. Please comment on this two-stage approach.

3. The OPP Policy Guidance indicates that one of the critical issues is whether or not to apply an FQPA Safety Factor pending receipt of newly-required studies. There are a variety of possible approaches. One possible approach would be to apply the FQPA Safety Factor's data base uncertainty component to gaps related to new core data requirements only where there are specific concerns regarding the pesticide pertaining to the data requirement. Alternatively, OPP could apply the default 10X factor (or some other additional factor) whenever a new data requirement is added and/or whenever a testing guideline is changed. Please explain how you think the FQPA Safety Factor provision should be implemented when OPP makes such changes. In commenting, please address whether OPP should apply the default FQPA 10X factor, some different yet additional factor, or no factor at all in the following circumstances:

i. A minor change to testing guidelines.

ii. A major change to testing guidelines.

iii. An addition of a new required test.

iv. An addition of a new required test to core requirements.

4. In the absence of the results from any of the studies to be required through data call-in notices (i.e., the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study), what information from existing studies on a specific chemical would increase or decrease the concerns about the potential for prenatal and postnatal hazard, in general, and for neurotoxicity and developmental neurotoxicity, in particular? Which, if any, of the seven criteria discussed in section V.A.1.a., footnote 4 and associated text of the OPP Guidance document is appropriate for judging whether there is increased concern about the potential for a pesticide to cause developmental neurotoxicity? Are there any other criteria which would be useful for informing this judgment?

5. Please comment on whether you would expect that developmental neurotoxicity studies would, for a

substantial number of chemicals, identify effects that are not detected in other studies and more fully characterize the potential risks of exposures during development. In addition, please comment on the sensitivity of these tests vis-a-vis other studies required and used for age-related comparisons for acute, intermediate, or chronic RfD derivation (e.g., prenatal developmental toxicity or multi-generation reproduction study, subchronic and chronic studies, etc.). Please explain the basis of your opinion.

6. OPP's Guidance states that currently five studies (a multi-generation reproduction study, prenatal developmental toxicity studies in two species, and chronic toxicity studies in a rodent and non-rodent species) comprise the toxicity data base necessary to produce a ''high confidence RfD,'' and that some additional data base uncertainty factor will be imposed if the data base on a pesticide lacks one or more of these studies. OPP proposes to expand this core data base to include the subchronic neurotoxicity study. Eventually, OPP also includes the acute neurotoxicity study in adult mammals and the developmental neurotoxicity study, once these studies have met the criteria for inclusion in the core toxicity data base. Please comment on OPP's proposed approach to imposing a data base uncertainty factor of 3x if one key study is missing from the data base and a factor of 10x if more than one is missing.

7. OPP is proposing to adopt the framework and its criteria/factors for assessing the degree of concern about the potential for prenatal and postnatal effects as recommended by the Toxicology Working Group. Please comment on the appropriateness of the proposed criteria/factors for use in this assessment process, and OPP's proposed approach for accommodating its concerns in the Reference Dose derivation and FQPA Safety Factor decision processes, in the near term, and in the longer term.

8. When the hazard to infants and children is well-characterized, and the data show that infants and/or children are more susceptible than adults, under what circumstances, if any, should this information lead OPP to employ an additional Safety Factor?

Exposure Issues

1. Subject to the qualifications expressed in the OPP Policy document and the report from the Exposure Working Group, OPP believes that each of the tiers for estimating exposure to a pesticide through food, in almost all instances, will not underestimate exposure to infants and children. Please comment on this conclusion, as it applies to each of the tiers.

2. OPP is developing a tiered approach to assessing the likelihood and magnitude of contamination of drinking water and its sources by a pesticide. As an interim approach, when direct assessment is not possible, is it reasonable and protective to regard the estimates generated by OPP's current screening methodology as upper bound pesticide concentrations for surface and ground water and to assume that this concentration generally will not be exceeded in drinking water?

3. OPP is developing approaches to assess the likelihood and magnitude of exposure to pesticides in residential and other non-occupational use scenarios. When direct assessment is not possible, is it reasonable and protective to regard the estimates of exposure for the major residential and other non-occupational exposure use scenarios developed by OPP as upper bound estimates of the exposure received by infants and children from such use?

4. In OPP's view, its aggregate exposure assessments generally do not underestimate the exposure to infants and children because the aggregate exposure is calculated by adding the high-end estimates of exposure to pesticides in food, to the high-end estimates of exposure to pesticides both in water and as a consequence of pesticide use in residential and similar settings. Please comment on this view.

VI. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The ''revised'' guidance will not be unalterable. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis, EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VII. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number ''OPP–00610.'' In addition, the documents referenced in the framework notice, which published in the **Federal Register** of October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

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

Dated: June 30, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–17315 Filed 7–7–99; 8:45 am]

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federal register

Thursday
July 8, 1999

Part IV

Environmental Protection Agency

National Superfund Permanent Relocation Interim Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–9]

National Superfund Permanent Relocation Interim Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability with request for comment on interim policy on the use of permanent relocation as part of superfund remedial actions.

SUMMARY: The Environmental Protection Agency (EPA) has developed and is requesting comment on an ''Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions.'' This policy provides direction to EPA staff on when to consider permanent relocation of residents and businesses living near or on National Priorities List (NPL) sites as part of a Superfund remedial action.

EFFECTIVE DATE: The effective date for this policy is June 30, 1999.

ADDRESSES: Members of the public may request copies of the ''Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions'' by postal mail from Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), 401 M Street, SW, Washington, DC 20460, 703–603–9232, or (800) 424–9346. Written comments on the interim policy may be submitted to the above address. EPA expects to hold a meeting in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. Written comments will be accepted up until this meeting.

The ''Interim Policy on the Use of Permanent Relocation as Part of Superfund Remedial Actions'' and other documents related to development of the policy are also available on the Internet at http://www.epa.gov/oerrpage/superfund/tools/topics/relocation.

FOR FURTHER INFORMATION CONTACT: Jo Ann Griffith, phone (703) 603–8774, Region 2/6 Accelerated Response Center, Office of Emergency and Remedial Response (Mail Code 5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The U.S Environmental Protection Agency (EPA) responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), enacted by Congress in 1980. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 121 of CERCLA, the NCP (40 CFR 300.430) includes evaluation criteria for determining the selection of remedial actions to address releases of hazardous substances. Further the NCP (40 CFR part 300, App. D(g)) states that, ''[t]emporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment.''

Today's **Federal Register** document introduces a policy entitled ''Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions' which provides direction to EPA regional decision makers on when to consider permanent relocation as part of a Superfund remedial action. This policy outlines some of the circumstances under which permanent relocation (in conjunction with cleanup) may be considered to protect human health and the environment.

II. Background

In January 1995, the National Environmental Justice Advisory Council's (NEJAC) Waste and Facility Siting Subcommittee requested that EPA develop a policy to determine when citizens should be relocated away from residential areas near or affected by Superfund sites. NEJAC was responding to requests from communities who wanted to be relocated away from Superfund sites because of: Fear of the potential health effects; their concerns that they could no longer sell their homes; and the effects on their overall quality of life. Responding to these concerns, the Assistant Administrator of the Office of Solid Waste and Emergency Response issued a memorandum entitled ''Relocation of Residents Affected by Superfund Sites'' on May 11, 1995, to announce EPA's intent to develop a national relocation policy.

To understand fully the issues associated with relocation, EPA initiated several efforts. First, EPA selected the Escambia Wood Treating Company site in Pensacola, Florida, as a national relocation pilot. On February 12, 1997, a record of Decision (ROD) was issued for the permanent relocation of 358 households. The Agency made a decision to relocate the residences and clean up the properties to levels that are protective for industrial use. Although the pilot project has not yet been completed, several key themes are already emerging. These include the need for EPA to: keep communities informed throughout the process; promptly address community concerns; and factor community concerns into EPA decisions. Upon completion of the relocation pilot, EPA plans to conduct an evaluation to determine what lessons can be applied at future sites and in the final relocation policy.

Second, EPA reviewed a number of sites where cleanups in residential areas had been conducted. To date, the overwhelming majority of Superfund sites located in residential areas are being cleaned up without the need to permanently relocate residents and businesses. For example, at the Glen Ridge, Montclair/West Orange Radium sites in New Jersey, the Bunker Hill Mining site in Idaho, and the Tar Creek site in Oklahoma, EPA has successfully excavated contaminated soils from approximately 5,000 residential properties down to levels of contamination that no longer pose unacceptable risks. By addressing the risks at these three sites through cleanups, people were able to remain in their homes and entire communities were kept intact.

Finally, EPA sponsored a series of stakeholder forums to solicit views and experiences on the subject of relocation. Forums were held between May 1996 and October 1997 with representatives from state governments, local governments, federal agencies, Native

American communities, environmental justice groups (which included citizens from communities near Superfund sites), industries, and public health officials. Input from the relocation forums were considered in developing the ''Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions.'' There are three documents available that provide information on the relocation forums: ''Proceedings: Superfund Relocation Roundtable Meeting'' (December 1996, OSWER 9378.0–03, EPA 540–K–96–010, PB96–963254); ''Meeting Summaries from the EPA/ICMA Relocation Stakeholder Forums'' (May 1998, OSWER 9378.0–12, EPA/540–R–98–002, PB98–963203); and ''Relocation Stakeholder Forums Responsiveness Summary'' (June 1999, OSWER 9375.1–14, EPA 540–F–98–058, PB99–963206). These documents can be obtained through the CERCLA Docket which is listed in the **ADDRESSES** section of this notice.

Themes that emerged from these meetings included the need for EPA to: Work closely with members of the community to address their issues; involve the community in the decision making process; and communicate openly and honestly. Stakeholders also offered their opinions as to what types of situations warrant the use of permanent relocation at a site. Many believed that there should be clearly defined trigger conditions under which permanent relocation automatically should be offered, regardless of whether or not the residential areas could be cleaned up. One such suggested trigger condition was the presence of adverse health effects for those who live on or immediately adjacent to a Superfund site. There was a range of opinions on what type of health effects data should be considered, and how exactly they should factor into a relocation decision. Some suggested using the baseline risk assessment performed to assess the threats posed by the Superfund site, while others believed any unexplained or anecdotal reports of health effects in the area of the Superfund site should be sufficient to trigger a relocation offer. Still others asked EPA to consider cumulative and synergistic effects of multiple contaminants from other industrial sources.

In addition to health effects, stakeholders recommended that relocation be considered whenever the site has a negative influence on the resident's quality of life. Stakeholders provided anecdotal information about residents who curtailed all outside activities (e.g., allowing children to play outside, socializing outdoors, or opening windows) because of their fear of living near a Superfund site. Several also expressed concern that EPA might impose restrictions on normal residential activities (e.g., recommending that children not play in their yards) instead of cleaning up residential areas. Others questioned EPA's ability to implement a remedy safely, adding that relocation should be considered whenever cleanups result in dust emissions or heavy equipment in residential areas. Although stakeholders acknowledged that temporary relocations could address these safety concerns, some suggested that EPA offer permanent relocation when temporary relocation exceeds an acceptable duration.

Stakeholders also recommended that EPA make relocation experts available as early as possible whenever relocation is being contemplated as a potential remedial alternative so the community can be better informed of their options before a decision is made. There was also a general view that if relocation is necessary, EPA should seek ways to enhance stability and restore the remaining community's viability by working with other governmental and nonprofit agencies.

III. Summary of Interim Policy

Having proven our ability to successfully restore contaminated property at many Superfund sites, generally, EPA's preference is to address the risks posed by the contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. This is consistent with the mandates of CERCLA and the implementing requirements of the NCP which emphasize selecting remedies that protect human health and the environment, maintain protection over time and minimize untreated waste.

Because of CERCLA's preference for cleanup, it will generally not be necessary to routinely consider permanent relocation as a potential remedy component. Whenever permanent relocation is under consideration, EPA must ensure that the vacated properties do not pose a current or future risk to human health and the environment for those that may come in contact with the site. As a result, some type of cleanup or other response action generally will be needed to address the vacated properties.

The following list, although not inclusive, provides examples of the types of situations where permanent relocation may be considered. Generally, the primary reasons for conducting a permanent relocation would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup.

- Permanent relocation may be considered in situations where EPA has determined that structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures, are not implementable from an engineering perspective. The methods may be technically infeasible because they are too difficult to undertake or success may be too uncertain. Additionally, these methods may prove not to be cost-effective when compared with other alternatives that are protective of human health and the environment.
- Permanent relocation may be considered in situations where EPA has determined that structures cannot be decontaminated to levels that are protective of human health for their intended use, thus the decontamination alternative may not be implementable.
- Permanent relocation may be considered when EPA determines that potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited). Such options may not be effective in the long-term, nor is it likely that those options would be acceptable to the community.
- Permanent relocation may be considered when an alternative under evaluation includes a temporary relocation expected to last longer than one year. A lengthy temporary relocation may not be acceptable to the community. Further, when viewed in light of the balancing of tradeoffs between alternatives, the temporary relocation remedy may not be practicable, nor meet the statutory requirement to be cost-effective. Additionally, a shortage of available long-term rentals within the immediate area, may make any potential temporary relocation extremely difficult to implement.

Whenever permanent relocation is to be considered, it is imperative that EPA work with the affected stakeholders (e.g., potentially affected residents and businesses, the state, the tribe, the local government, and other members of the community) to identify the major issues associated with the relocation, including acceptability of relocation to the community, so the issues can be

factored into the remedy selection evaluation.

A permanent relocation funded through CERCLA should be implemented in accordance with the Uniform Relocation and Real Property Acquisition Policies Act (URA), 42 U.S.C. 4600–4655, and applicable regulations, 49 CFR part 24, *et seq.* The purpose of the URA is to ensure that persons displaced as a direct result of a project are treated fairly, consistently, and equitably. EPA uses the services of the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation to assist in conducting relocations because of their expertise in applying the URA. All relocations funded by potentially responsible parties (PRPs), as part of the remedy selected by EPA, should follow procedures comparable to the URA.

As soon as EPA becomes involved at a site, discussions with the community should begin to inform residents and businesses of activities at the site and to allow the opportunity for citizens to become part of the process. These activities may include, but are not limited to: distributing fact sheets to inform the community of site activities; conducting availability sessions for residents to ask questions; posting news releases about site activities; and establishing hotlines to answer citizens' questions.

When a permanent relocation is considered, residents and businesses should understand the multitude of issues associated with the relocation process, including the financial benefits. Communities may want to use a relocation expert or advisor to provide independent assistance to the residents and businesses before EPA makes a decision to relocate. A relocation expert may be accessed through EPA's Technical Assistance Grant (TAG) program.

The TAG program awards grants of up to $50,000 to eligible communities so they can hire independent technical advisors to interpret information about the site. A relocation expert, funded under a TAG, would need to meet requirements regarding activities and qualifications that apply to TAGs (see 40 CFR part 35, subpart M). Generally, a qualified relocation expert should possess the following credentials: experience in working on family and/or business relocations including knowledge of the URA, and private relocation programs; experience working with real estate brokers and lenders; and demonstrated knowledge of appraisals, title searches, real estate title insurance, and relevant state and local real estate tax laws. In Indian country, the relocation expert should also understand relevant federal Indian law and tribal law. The relocation expert should be impartial and have the ability to explain the costs, benefits, pitfalls, and other lifestyle effects of relocation to residents. If a relocation decision is made, then EPA will provide relocation counseling services as required under the URA. On a voluntary basis, PRPs may fund a relocation expert for a community.

In addition to addressing the community's information needs, there are other procedural ways the community can be involved in the cleanup process. In response to the President's Executive Order on Environmental Justice 12898, Superfund established the Community Advisory Group (CAG) program. CAGs, comprising representatives with diverse community interests, provide a public forum for community members to present and discuss their needs and concerns about a site. At sites where relocation is being considered, EPA recommends that a CAG or similar-type group be formed to fully engage all the interested parties in a meaningful dialogue about the site cleanup and how relocation may or may not fit into a community's long-term vision and plans.

The prospect of permanent relocation as a remedial action alternative may raise a number of practical problems that should be carefully considered by citizens residing in an affected community. In some communities, a permanent relocation could alter the fabric of a locality by affecting the local tax base and the services that the communities support, including small businesses, schools, churches, and hospitals. Furthermore, permanent relocation can result in the break up of neighborhoods dissolving valuable social cohesion. Community involvement activities at a particular site should be tailored to meet the various needs and concerns of individual citizens within the affected community. EPA should also explore opportunities to partner with other federal agencies (e.g., Department of Housing and Urban Development, Agency for Toxic Substances and Disease Registry, or Department of Transportation), the state, local agencies, non-governmental organizations, and non-profit organizations (e.g., Red Cross) to help identify other potential assistance that may be available to the relocated residents or to those in the community that remain behind.

IV. Additional Considerations for Native Americans, Including Alaska Native Villages

For all decisions affecting federally recognized tribes, EPA is guided both by statute and policies. As provided in CERCLA section 126(b), if the Agency finds that "* * * the proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred on by the affected tribal government before relocation shall occur * * *." If there is nonconcurrence, EPA should work with the tribal government and community on a site-specific basis to address other cleanup options at these sites to protect tribal members' health and welfare. Additionally, CERCLA section 126(b) states that if the tribal government concurs in the relocation decision, then EPA, in cooperation with the Department of the Interior, "* * * shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe * * *."

As discussed previously, EPA conducted a stakeholder forum with Native American and Alaska Native participants. During that meeting, they generally expressed their views that permanent relocations should not be conducted on tribal lands. The participants asked that tribal lifestyles be considered when evaluating any potential relocation alternative. These considerations should include subsistence lifestyles (e.g., hunting/fishing territories, dietary needs, medicinal plants), treaty-protected resources, and religious beliefs tied closely with the land (e.g., sacred religious sites). Due to the close relationship between Native Americans and specific lands, relocation of tribal communities can have a profound impact on community well-being and integrity. Given these unique considerations, EPA expects that tribal government concurrence on the use of permanent relocation, as required by CERCLA section 126(b), may be quite limited.

V. Public Comments

EPA's goal is to receive feedback on the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions' from the

widest range of interested parties possible. The policy has already enjoyed the benefits of considerable input and broad public comments will improve it even further. EPA will review the public comments received on the policy and where appropriate, incorporate changes responsive to those comments. In addition, EPA is planning to hold a meeting with a variety of interested parties in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. EPA will accept written comments up until the time of this meeting.

This policy is not intended to be, and should not be construed as a rule. Use of the policy is not legally binding on EPA staff or on other parties; rather it is intended to be a tool available for use as site-specific conditions warrant. EPA is seeking public comment at this time to ensure hearing the widest range of views and obtaining all information relevant to the development of the policy. EPA expects to respond to the comments received on the interim policy. EPA staff applying the guidance will have discretion to follow it or diverge from it as site-specific conditions may warrant, and each site-specific action will be explained in its own record. Please contact individuals and offices listed in the section of this notice entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** to learn more about the ''Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions.''

Dated: July 1, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–17344 Filed 7–7–99; 8:45 am]

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Thursday
July 8, 1999

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–1999–5925; Notice No. 99–10]

RIN 2120–AG82

Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) intends by this proposed rule to enable the implementation of Reduced Vertical Separation Minimum (RVSM) in Pacific oceanic airspace. RVSM is the reduction of the vertical separation of aircraft from 2,000 feet to 1,000 feet at flight levels (FLs) between FL 290 (29,000 feet) and FL 410 (41,000 feet). RVSM is applied only between aircraft that meet stringent altimeter and auto-pilot performance requirements. RVSM is currently applied only in North Atlantic (NAT) Minimum Navigation Performance Specification (MNPS) airspace. The introduction of RVSM in Pacific oceanic airspace would make more fuel and time efficient flight levels and tracks available to operators and would enhance airspace capacity. Since March 1997 in the North Atlantic, RVSM has been shown to maintain an acceptable level of safety. International RVSM planning groups have agreed to implement RVSM on or before February 24, 2000.

DATES: Comments must be submitted on or before September 7, 1999.

ADDRESSES: Comments on this NPRM should be delivered or mailed, in triplicate, to: U.S. Department of Transportation Dockets, Docket No. [FAA–1999–5925], 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments must indicate the Docket Number. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room Plaza 401 weekdays between 10:00 a.m. and 5:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Grimes, AFS–400, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, 600 Independence Avenue, SW., Washigton, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Comments Invited

This action is a product of international agreements under which the international aviation community, including the United States, plans to implement RVSM in Pacific airspace. The International Civil Aviation Organization (ICAO) Asia/Pacific Air Navigation Planning and Implementation Regional Group (APANPIRG), the Informal Pacific Air Traffic Service Coordinating Group (IPACG), and the Informal South Pacific Air Traffic Service Coordinating Group have concluded that Pacific oceanic traffic will continue to increase significantly in the next few years. To accommodate this increase in air traffic, these groups have established a goal of implementing RVSM in Pacific Oceanic airspace on or before February 24, 2000. Affected FIRs include Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, and Vancouver.

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments should identify the regulatory docket number and be submitted in triplicate to the above-specified address.

Because this proposed rule was developed as a result of an international agreement, comments deemed substantive will be presented for consideration and reviewed by the international community under the auspices of ICAO. If considered salient, the comments will be included for use by all participating member States.

All comments received will be available both before and after the closing date for comments in the Department of Transportation Docket for examination by interested persons.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1999–5925.'' The FAA will date, time stamp, and return the postcard.

Availability of This Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this rule.

Persons interested in being placed on the mailing list for future rulemaking actions should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board Service (800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's Web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Background

Statement of the Problem

Air traffic on Pacific routes between the U.S. and Asia has increased steadily in the past few years and is projected to continue to increase. The North Pacific Track System (NOPAC) is the densest oceanic traffic area in the Pacific. Between 1994 and 198, the annual traffic count on the NOPAC increased from 42,305 to 60,772 flights which represents an increase of 44 percent. The FAA Aviation Forecast for Fiscal Years 1998–2010 estimates that transpacific passenger traffic will continue to increase at 6.6 percent per year through 2010. Studies conducted by independent aviation industry analysts forecast the Pacific area to be the fastest growing area for flights to/from the United States.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

With air traffic levels increasing annually worldwide, FAA airspace

planners and their international counterparts continually explore methods of enhancing the air traffic control (ATC) system's ability to accommodate traffic in a safe and efficient manner. NAT airspace was chosen to be the first airspace for RVSM introduction because it is the busiest oceanic airspace in the world and traffic is forecast to continue to increase. The NAT Traffic Forecasting Group Report shows that the number of annual flight operations increased 30 percent between 1991 and 1996 with a forecast 67 percent rise over the 1992 level of 228,200 by 2002.

Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than those requested by the operators in their filed flight plans. These flights were, therefore, generally conducted at less than optimum tracks and altitudes for the aircraft, resulting in time and fuel inefficiencies.

The North Atlantic Implementation Management Group has observed the following improvements in NAT operations due to the introduction of RVSM:

1. 50 percent of the fuel penalty attributed to NAT system operation was eliminated. (The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level and traffic congestion penalties).

2. 25 percent fewer fixed tracks were required to be published. (This allows more airspace for operators to fly preferred tracks).

3. There was a 5 percent increase in flights cleared to fly both at the altitude and on the track that the operator requested.

RVSM alleviates the limitation on air traffic management at high altitudes imposed by the conventional 2,000-foot vertical separation standard. Below FL 290, air traffic controllers can assign aircraft operating under Instrument Flight Rules (IFR) altitudes a minimum of 1,000 feet apart. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet.

Note: Flight levels are stated in digits that represent hundreds of feet. The term flight level is used to described a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude [in the United States, 18,000 feet] on this standard reference. FL 290 represents the pressure surface equivalent of 29,000 feet based on the 29.29″ Hg datum; FL 310 represents 31,000 feet, and so on.)

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft crossing oceanic airspace operate most economically. At peak hours these FLS can become congested. When all RVSM FLs are utilized, six additional flight levels are available: FLs 300, 320, 340, 360, 380, and 400. Increasing the number the FLs available in the Pacific region is projected to achieve operator benefits similar to those achieved in the NAT (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks). In the Pacific, RVSM is initially planned to be implemented between FL 290 and FL 390 (inclusive). At this time, traffic density above FL 390 does not warrant implementing RVSM at FL 400 and FL 410.

Another factor that has led Pacific planners to believe that RVSM implementation should be pursued aggressively is that a large percentage of Pacific operators and aircraft have already received approval to conduct RVSM operations. This is due to the fact that Pacific operators conduct operations worldwide and therefore, have been required to obtain RVSM approval to operate in NAT RVSM airspace. Aircraft that have been approved for RVSM are approved for RVSM in any area of the world where it is applied. The Pacific RVSM Implementation Task Force (Task Force) has reviewed the RVSM approval status of Pacific operators and aircraft and found that approximately 36 percent of Pacific operations are already conducted by RVSM approved operators and projected that this figure will grow to 56 percent in the near term.

History

The ICAO APAN/PIRG develops and provides oversight for plans and policy related to air navigation in the Pacific and Asia. The APAN/PIRG established the Task Force to develop and implement RVSM policy and programs in the Pacific. The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the Pacific. The following reviews the RVSM program development in U.S. and ICAO forums.

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970s in implementing RVSM above FL 290. In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1,000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) Aircraft altimeters has not been improved sufficiently, (2) improved maintenance and operational standards has not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affected safety. Nevertheless, the FAA recognized the potential benefits of RVSM under certain circumstances and continued to review technological developments, committing extensive resources to studying aircraft altitude-keeping performance and necessary criteria for safely reducing vertical separation above FL 290. These benefits and data showing that implementing RVSM is technically feasible have been demonstrated in studies conducted cooperatively in international forums, as well as separately by the FAA.

Because of the high standard of performance and equipment required for RVSM, the FAA advocated initial introduction of RVSM in oceanic airspace where special navigation performance standards were already required. Special navigation areas require high levels of long-range navigation precision due to the separation standard applied. RVSM implementation in such airspace requires an increased level of precision demanded of operators, aircraft, and vertical navigation systems.

On March 27, 1997, RVSM was implemented in one such special navigation area of operation, the NAT MNPS, established in the ICAO NAT Region. In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between Fs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet. All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, section 91.705 and vertical navigation performance standards of part 91, section 91.706. Operators must follow procedures that ensure the standards are met, and flight crews are trained and qualified to meet the standards. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT MNPS. The NATSPG Central Monitoring Agency monitors NAT MNPS. The NATSPG Central Monitoring Agency monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

FAA data indicate that the altitude-keeping performance of most aircraft flying in oceanic airspace can meet the

standards for RVSM operations. The FAA and ICAO research to determine the feasibility of implementing RVSM included the following four efforts:

1. FAA Vertical Studies Program. This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. RTCA Special Committee (SC)–150. RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, DC, that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 was formed in March 1982 to develop minimum system performance requirements, identify required improvements to aircraft equipment and changes to operational procedures, and assess the impact of the requirements on the aviation community. SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. ICAO Review of the General Concept of Separation Panel (RGCSP). In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The Panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and en route airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, systems performance monitoring, and risk assessment.

4. NATSPG and the NATSPG Vertical Separation Implementation Group (VISG).

The NATSPG Task Force was established in 1988 to identify the requirements to be met by the future NAT Region Air traffic services systems; to design the framework for the NAT airspace system concept; and to prepare a general plan for the phased introduction of the elements of the concept. The objective of this effort was to permit significant increases in airspace capacity and improvement in flight economy. At the meeting of the NATSPG in June 1991, all of the NAT air traffic service provider States, as well as the International Air Transport Association (IATA) and International Federation of Airline Pilots Association (IFALPA), endorsed the Future NAT Air Traffic Services System Concept Description developed by the NATSPG Task Force. With regard to the implementation of RVSM, the Concept Description concludes that priority must be given to implementation of this measure as it is believed to be achievable within the early part of the concept time frame. The NATSPG's initial goal was to implement RVSM between 1996 and 1997. To meet this goal, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Programs and documents to approve aircraft and operators for conducting flight in the RVSM environment and to address all issues related to aircraft airworthiness, maintenance, and operations. The group has produced guidance material for aircraft and operator approval that ICAO has distributed to civil aviation authorities and NAT users. Also, ICAO has planned that the guidance material be incorporated in the approval process established by the States.
- Developing the system for monitoring aircraft altitude-keeping performance. This system is used to observe aircraft performance in the vertical plane to determine that the approval process is uniformly effective and that the RVSM airspace system is safe.
- Evaluating and developing ATC procedures for RVSM, conducting simulation studies to assess the effect or RVSM on ATC, and developing documents to address ATC issues.

The ICAO Limited NAT Regional Air Navigation Meeting held in Portugal in November 1992 endorsed the NATSPG RVSM implementation program. At the meeting, it was concluded that RVSM implementation should be pursued. The FAA concurred with the conclusions of the NATSPG on RVSM implementation.

Reference Material

The FAA and other entities studying the issues of RVSM requirements have produced a number of studies and reports. The FAA used the following documents in the development of this amendment:

- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (FAA, July 1988).
- Initial Report on Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (RTCA SC–150, November 1984); the report provides information on the methodology for evaluating safety, factors influencing vertical separation, and strawman system performance standards.
- Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (Draft 7, RTCA, August 1990); the FAA concurred with the material developed by RTCA SC–150.
- The Report of RGCSP/6 (ICAO, Montreal, 28 November–15 December 1988) published in two volumes. Volume 1 summarizes the major conclusions reached by the panel and the individual States. Volume 2 persents the complete RVSM study reports of the individual State:
- European Studies of Vertical Separation Above FL 290—Summary Report (prepared by the EUROCONTROL Vertical Studies Subgroup).
- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (prepared by the FAA Technical Center and ARINC Research Corporation).
- The Japanese Study on Vertical Separation.
- The Report of the Canadian Mode C Data Collection.
- The Results of Studies on the Reduction of Vertical Separation Intervals for USSR Aircraft at Altitudes Above 8,100 m (prepared by the USSR).
- Report of RGCSP/7 (Montreal, 30 October–20 November 1990) containing a draft Manual on Implementation of a 300 M (1,000 Ft) Vertical Separation Minimum (VSM) Between FL 290 and 410 Inclusive, approved by the ICAO Air Navigation Commission in February 1991 and published as ICAO Document 9574.
- Interim Guidance Material 91–RVSM, ''Approval of Aircraft and Operators for Flight in Airspace Above FL 290 Where a 1,000 Foot Vertical Separation is Applied'' (March 14, 1999). The interim guidance continues to provide recommended procedural steps for obtaining FAA approval.

• AC No. 91–70, ''Oceanic Operations'' (September 6, 1994).

• Flight Standards Handbook Bulletin for Air Transportation (HBAT) ''Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where a 1,000 Foot Vertical Separation Minimum is Applied'' (HBAT 97–02).

• NATSPG Airspace Monitoring Sub-group Vertical Monitoring Report. (Issued quarterly)

Related Activity

Projected increases in pacific oceanic air traffic and the successful implementation of RVSM operations in the NAT support the addition of RVSM in the Pacific. Pacific operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The Pacific RVSM Implementation Task Force is the international body that is developing Pacific RVSM implementation plans. The Task Force is chaired by an FAA representative from the Air Traffic International Staff and supported by an ICAO representative from the Asia/Pacific Regional Office. The Task Force has three standing sub-groups: the Air Traffic Operations Group, the Aircraft Operations and Airworthiness Group and the Safety and Monitoring Group. The working groups are chaired by FAA air traffic and flight standards specialists. The Task Force includes representatives from Asia and Pacific civil aviation authorities, operators and the pilot and air traffic controller associations. The Task Force meets at approximately quarterly intervals to develop policy and procedure documents and to progress implementation tasks.

The Task Force chairperson and the three sub-group chairpersons will oversee the two phases of the Pacific implementation process:

System Verification Phase

During the verification phase, aircraft will continue to be separated vertically by 2,000 feet. Operators and aircraft that have not already been approved for RVSM will begin to receive RVSM approval in accordance with part 91, section 91.706 and Appendix G (or their equivalent for foreign operators). The overall objectives of the system verification phase are to:

1. Confirm that the target level of safety (TLS) will continue to be met.

2. Confirm that aircraft approved for RVSM operation demonstrate altitude-keeping performance that meets RVSM standards. This will be achieved by:

• Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups; and

• Monitoring a sample of RVMS-approved aircraft and operators that is representative of the total Pacific population.

3. Verify that operational procedures adopted for RVSM are effective and appropriate.

4. Confirm that the altitude-monitoring program is effective. The principal purpose of this phase has been to gain confidence that the operational trial phase can begin.

Initial Operational Capability/System Monitoring Phase

When the objectives of the system verification phase have been met, RVSM will be implemented at designated flight levels. The first year after implementation is considered the operational trials phase. The objectives of the operational trial phase are to:

1. Continue to collect altitude-keeping performance data.

2. Increase the level of confidence that safety goals are being met.

3. Demonstrate operationally that there are no difficulties with RVSM implementation.

Beginning February 24, 2000, only RVSM compliant aircraft will be cleared to operate in the major Pacific FIRs between FLs 290 and 390 (inclusive). Aircraft that are not RVSM compliant (e.g., State aircraft, ferry and maintenance flights) will only be cleared to operate between FLs 290 and 390 (inclusive), traffic permitting, after prior coordination with the appropriate oceanic center. 2,000-foot vertical separation will be applied to such aircraft.

Provided that all requirements continue to be met, at the end of one year, RVSM will be declared fully operational.

Altitude-Keeping Performance

For the past three years, the FAA, in conjunction with the NATSPG, has monitored aircraft altitude-keeping performance of RVSM approved aircraft. A major objective of monitoring is to establish that the altitude-keeping performance of the aircraft fleet operating in airspace where RVSM is applied continues to meet minimum requirements.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. In the past three years, 36,000 measurements of altimetry system error have been taken for over 3,000 different airframes. Those measurements have shown that the altitude-keeping performance of aircraft approved for RVSM operations is significantly better than the minimum requirement. The ASE requirement established for RVSM is that average ASE not exceed 80 feet and 99.9% of ASE observed not exceed 245 feet. The monitoring results have shown that actual average ASE is −4 feet and 99.9% of ASE is within 156 feet.

The FAA has determined that the appropriate method of assessing collision risk is the Reich collision risk model (CRM). As noted in AC No. 91–70, Oceanic Operations, collision risk refers to the number of midair accidents likely to occur due to the loss of separation in a prescribed volume of airspace for a specific number of flight hours.

Collision Risk Methodology (CRM) was used to develop the requirements for safe implementation of a 1,000-foot vertical separation standard. The United States supported the methodology used to derive the accepted level of safety for RVSM implementation.

The TLS that is being used in the North Atlantic and the Pacific regions to assess safety is no more than five fatal accidents in 1 billion flying hours. The level of safety was developed using historical data on safety from global sources. One precedent used was a period of 100 to 150 years between midair collisions. When the TLS of 5 accidents in a billion flying hours is projected in terms of a calendar year interval between accidents in the Pacific, it yields a theoretical interval of approximately 322 years between midair collisions. The accepted level of safety is consistent with the acceptable level for aircraft hull loss and is based on the precedence of extremely improbable events as they relate to system safety, the basis for certain requirements in certification regulations such as 14 CFR 25.1309.

To ensure that the TLS is met, the FAA is monitoring the total vertical error (TVE) and the remaining CRM parameters that are critical for safety assessment (probability of lateral and longitudinal overlap). TVE is defined as the geometric difference between the aircraft and the flight level altitude. To monitor TVE, the FAA has deployed measurement systems that will produce estimates of aircraft and flight level geometric altitude. The overall goal of monitoring is to ensure that airworthiness, maintenance, and operational approval requirements result in required system performance (and level of safety) in the flight environment on a continuing basis. One such measurement/monitoring system is a Global Positioning System (GPS)-

based monitoring system (GMS). The GMS has been used extensively in the NAT along with ground based Height Monitoring Units (HMUs). Due to the lack of land masses in the PAC, the GMS will be used for RVSM system verification and monitoring.

The on-going assessment of risk in the North Atlantic over the past two years has shown that the TLS of 5 accidents in 1 billion flight hours can be met. All sources of error related to aircraft performance and to human error have been assessed. One major incident that was observed in the on-going monitoring was judged to be a pilot error not related to the introduction of RVSM. In this incident, an aircraft did not fly the flight level to which it was cleared, but reported to ATC that it was flying the cleared level. This incident was advertised to the user community for emphasis in pilot training programs.

Current Requirements

Part 91 Section 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace.) and Appendix G to Part 91 (OPERATIONS IN REDUCED VERTICAL SEPARATION MINIMUM (RVSM) AIRSPACE) were published in April 1997. They are based on the ICAO Manual on RVSM. Technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed the criteria in a joint FAA/JAA working group. Section 91.706 requires that aircraft and operators meet the requirements of Appendix G and receive authorization from the Administer prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

Flight Standards Handbook Bulletin (HBAT) 97–02 entitled ''Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where 1,000 Foot Vertical Separation Minimum Is Applied'', has been distributed through Flight Standards District Offices (FSDOs). This document provides guidance to FAA Flight Standards inspectors on the process and procedures to follow before approving an operator and its aircraft for RVSM operations. It details inspector responsibilities for assessment of airworthiness approval, maintenance program approval, and operations approval requirements in the rule. It discusses timing, process, and maintenance and operations material that the operator should submit for FAA review and evaluation normally at least 60 days before the planned operation in RVSM airspace. Operators under Title 14, Code of Federal Regulations (14 CFR) part 91 receive FAA approval in the form of a Letter of Authorization (LOA), and operators under 14 CFR parts 121, 125, and 135 receive Operations Specifications (OPS–SPEC) approval.

For operations over the high seas outside the United States, 14 CFR 91.703 requires that aircraft of U.S. registry comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation. Annex 2, amendment 32, effective February 19, 1996, reflects the change from 2,000 feet to 1,000 feet vertical separation for Instrument Flight Rules (IFR) traffic between FL 290 and FL 410, based on appropriate airspace designation, international agreements, and conformance with specified conditions.

General Discussion of the Proposal

The proposal allows operation of civil aircraft of U.S. registration in Pacific oceanic airspace where RVSM is applied. It is based on improvements in altitude-keeping technology. These improvements include:

- Introduction of the air data computer (ADC), which provides an automatic means of correcting the known static source error of aircraft to improve aircraft altitude measurement capability.
- Development of altimeters with enhanced transducers or double aneroid for computing altitude.

Under this proposal, airspace or routes in the Pacific where RVSM is applied would be considered special qualification airspace. Both the operator and the specific types of aircraft that the operator intends to use in RVSM airspace would have to be approved by the appropriate FAA office before the operator conducts flights in RVSM airspace.

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

- Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are able to fly closer to their optimum altitude at initial level off and through step climbing to the optimum altitude during the enroute phase.
- Greater availability of the most time and fuel-efficient tracks and routes (and an increased probability of obtaining these tracks and routes). Operators often are not cleared on the track or route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. RVSM allows ATC to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.
- Increased controller flexibility. RVSM gives ATC greater flexibility to manage traffic by increasing the number of flight levels on each track or route.
- Reduction of pilot and controller work load. When controllers are required to re-route aircraft from their filed track and/or altitude they are required to re-coordinate and revise clearances. Pilots are required to re-program aircraft navigation systems (which has been a major cause of navigational errors). RSVM will reduce the number of re-routes required and therefore reduce both pilot and controller workload.
- Enhanced flexibility to allow aircraft to fly across route systems. Operators are often required to remain at lower, less fuel-efficient altitudes until the aircraft crosses a route system. RVSM makes more flight levels available at higher, more fuel-efficient altitudes to allow aircraft to cross route systems.
- Enhanced safety in the lateral dimension. Studies indicate that RVSM produces a wider distribution of aircraft among different tracks and altitudes, resulting in less exposure to aircraft at adjacent separation standards. RVSM reduces the number of occasions when two aircraft pass each other separated by a single separation standard (e.g., 60 nm laterally). The benefit to safety is that, should an aircraft enter, as a result of gross navigation error, onto an adjacent track, and another aircraft is on that track, there is an increased probability that the two aircraft would be flying at different flight levels.

This amendment to Sec. 91.706, Appendix G, Section 8 would add the Pacific oceanic FIRs to the list of FIR's where RVSM can be applied

Regulatory Evaluation Summary

Executive Order 12866 directs federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Each federal agency shall assess both the costs and the benefits of proposed regulations while recognizing that some costs and benefits are difficult to

quantify. A proposed rule is promulgated only upon a reasoned determination that the benefits of the proposed rule justify its costs.

The order also requires federal agencies to assess whether a proposed rule is considered a ''significant regulatory action.'' The Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. The Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule: (1) generates benefits that justify its costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) does not have a significant impact on a substantial number of small entities; and (4) does not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal amends FAR 91, Section 91.706, Section 8 (Airspace Designation) by adding the appropriate Pacific Oceanic Flight Information Regions (FIRs) where RVSM would be implemented. The benefits of this proposed rulemaking are (1) an increase in the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $21.7 million for the ten-year period 2000–2009 or $19.5 million, discounted. Estimated benefits, based on fuel savings for the commercial airplane fleet over the years 2000–2009, would be $120 million, or $83.8 million, discounted. Therefore, based on a quantitative and qualitative evaluation of this action, the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agency must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

A review of the Pacific traffic data shows that no small entities operate in Pacific oceanic airspace where this rule applies. The FAA has also examined the impact of this rulemaking on small operators of general aviation aircraft. The FAA database of U.S. registered aircraft operators shows that these airplanes are all operated by commuter or air taxi operators. Commuter or air taxi operators do not operate in Pacific oceanic airspace.

The FAA has determined that there are reasonable and adequate means to accommodate the transition to RVSM requirements, particularly for general aviation operators (many of whom are small). As of May 1999, 50% of the U.S. registered GA aircraft were approved for RVSM operations based on the NAT application of RVSM.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the State, 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.

Paperwork Reduction Act of 1995

The reporting and record keeping requirements associated with this rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0026. The FAA believers that this rule does not impose any additional record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995 Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annual for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernment mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to

provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental and private sector mandate that exceeds $100 million a year, therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation Organization (ICAO), it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of Title 14 of the Code of Federal Regulations (14 CFR part 91) as follows;

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Part 91, appendix G, is amended by revising Section 8 to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 8. Airspace Designation

(a) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestron FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic.

(b) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, and Vancouver.

(c) RVSM may be effective in the Minimum Navigation Performance Specification (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace FL 285 and FL 420 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

Issued in Washington, DC, on June 30, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–17360 Filed 7–7–99; 8:45 am]

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federal register

Thursday
July 8, 1999

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Year 2000 Airport Safety Inspections; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; SFAR No. 85–]

RIN 2120–AG83

Year 2000 Airport Safety Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to require certain airport operators to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, this proposal would temporarily revise the time period these airport operators have to repair or replace certain emergency equipment. This proposal is needed to ensure that airport operators identify and address any unforeseen problems with date-sensitive airfield equipment and systems. These proposed changes are intended to maintain the current level of airport safety on and after January 1, 2000.

DATES: Comments must be submitted on or before August 9, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5924, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operations Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–5924.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800)322–2722 or (202)267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the *Government Printing Office's* WebPages at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202)267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

History

Since 1970, the FAA Administrator has had the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish safety standards for the operation of those airports. This authority is currently found in Title 49, United States Code (U.S.C.) § 44706, Airport operating certificates. The FAA has used this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title 14, Code of Federal Regulations part 139 (14 CFR part 139), Certification and Operations: Land Airports Serving Certain Air Carriers.

Under part 139, the FAA requires airports to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 passenger seats). When an airport satisfactorily complies with these requirements, the FAA issues to that facility an airport operating certificate that permits the airport to serve commercial operations using these aircraft. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings, and lighting, notification to air carriers of unsafe or changed conditions, and preparedness for aircraft accidents and other emergencies. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements.

Many airport operators use computers or equipment with embedded microprocessors to meet certain part 139 requirements. For example, an operator of a certificated airport may have computer systems that control when airfield lighting is turned on, or that control access to the airfield through vehicle and passenger gates. Safety and maintenance vehicles, such fire fighting trucks, and emergency communications systems may likewise have computerized systems.

On January 1, 2000, many computers worldwide could malfunction or shut down because the year will change from 1999 to 2000. The problem, often referred to as the Year 2000 (Y2K) problem, is the result of how computers and other microprocessors have traditionally recorded and computed dates. Typically, these machines have used two digits to represent the year, such as ''98'' for 1998, to save electronic storage space and reduce operating costs. However, this format fails to distinguish the year 2000 (represented as ''00'') from the year 1900. Software

and computer experts are concerned that this could cause computers and equipment with internal microprocessors to malfunction in unforeseen ways or to fail completely.

FAA Y2K Monitoring and Compliance

In preparing for the year 2000, the FAA is working with airport operators to ensure that all airfield equipment and systems used to support compliance with part 139 requirements are Y2K compliant, or that the airport operator has developed an alternative means of complying with the part 139 requirements.

In June 1998, the FAA sent a letter to the operators of the approximately 5,300 public-use airports in the U. S. to alert them that they may have systems on their airports that could be affected by date change to January 1, 2000. A follow-on letter was subsequently sent in October 1998 to the operators of airports certificated under part 139. This letter emphasized the need for these operators to take the necessary steps to ensure that Y2K issues would not affect any equipment and systems containing computers or microprocessors that are used to comply with part 139. It also stated that airport operators could develop an alternative means of meeting the regulation's requirements that did not rely on systems with computers or microprocessors, and provided some criteria for determining Y2K compliance.

At the same time, the FAA also formed an airport Y2K airport team to contact operators of certificated airports to monitor the Y2K status of each of these operator's systems that are used to support compliance with part 139 requirements. The results of these contacts have shown that airport operators are working to address Y2K issues at their airports. The Y2K airport team will continue to work with the operators of certificated airports throughout the remainder of 1999 to ensure that the agency is kept informed of the Y2K status at each part 139 airport.

Current Requirements

Self-Inspection of Airport Safety Systems

Part 139 currently requires operators of certificated airports to conduct daily inspections of their facilities to ensure compliance with the regulation. Such inspections include a visual check of movement areas (areas used by air carriers to land, takeoff, and taxi) and operational tests of equipment and systems used to comply with part 139 requirements. However, these required inspections are conducted at times determined by the airport operator. Typically, various elements of the self-inspection are conducted throughout the day. As such, the existing inspection requirement does not require inspection early on January 1, before most operations begin, and does not necessarily require the kind of tests that would determine if there is a Y2K-related problem that was not detected by pre-January Y2K validation testing. Certain equipment required by part 139, unlike other aviation systems, is intended for use only in an emergency. If special early testing is not required, a Y2K problem might only be detected when the equipment was needed for an actual emergency.

While part 139 also requires reporting of aircraft rescue and fire fighting (ARFF) equipment outages and conditions that affect air carrier operations, those reports would not be received until the equipment was tested or used, which could be after operations begin. The FAA believes that there is a substantial need for a system-wide reporting of Y2K testing results to quickly identify any effects of Y2K on the national airport system. This will permit the FAA to coordinate solutions at airports throughout the U.S. that use similar models of equipment, and to provide early assurances to the public that operations are normal, if in fact there are no Y2K problems.

ARFF Index

In addition, part 139 provisions regarding the repair or replacement of inoperative ARFF vehicles are not well adapted to the unique circumstances of the Y2K effect on equipment. The provisions of § 139.319(h)(3) allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport's ARFF index. The ARFF index for an airport, which is determined by the size of aircraft using the airport and number of daily departures, determines the number and size of ARFF trucks needed and, thereby, limits the size of aircraft that the airport can serve. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle.

Under normal operations, this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, since some ARFF vehicles may have embedded computer chips, a Y2K-related problem, while highly unlikely, is possible. Since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports. Therefore, a delay in repairing a Y2K problem at a number of airports could have a system-wide impact.

Alternatives Considered by the FAA

The FAA considered four alternatives to this rulemaking. These alternatives would affect all currently certificated airports, including those considered to be small business entities (owned and operated by a municipality with less than 49,999 population). In analyzing these alternatives, the FAA addressed the concerns of airports of varying sizes and operations, including those classified as small business entities.

First, the FAA considered not making changes to part 139 for the January 1, 2000, date rollover. Under this alternative, operators of certificated airports would continue to comply with current part 139 requirements. Scheduled operations could be conducted before emergency equipment was checked, and could continue for 48 hours, even if ARFF equipment experiences a Y2K problem. Airport operators would rely exclusively on pre-January tests to predict Y2K compliance, and might only become aware of an unexpected Y2K problem when a piece of equipment was needed for an actual emergency. Also, this approach would make it significantly more difficult for individual airport operators and the FAA to react to outages of airfield safety equipment if the problems were identified only in the course of actual operations over several days or weeks, rather than in a pre-test conducted at a specified time.

Second, the FAA arguably could determine Y2K compliance an ''unusual condition'' under § 139.327(a)(2) and require all certificate holders to conduct an inspection within a specified time period to identify and correct any deficiencies. While this approach is within the scope of part 139, there is no regulatory provision that would address the possibility, however remote, of widespread failure of ARFF vehicles.

Third, the FAA considered requiring the inspections only at airports holding an airport operating certificate and serving scheduled operations of air carrier aircraft with more than 30 passenger seats (as opposed to a holder of a limited airport operating certificate that serves unscheduled air carrier operations). However, many operators of limited certificated airports serve scheduled operations by aircraft with 10–30 passenger seats, and persons using those airports could benefit from the confirmation that ARFF and other airfield safety equipment at the airport are not affected by Y2K.

Fourth, the FAA considered mandating both the self-inspection and reporting requirement, as well as the suspension of the 48-hour grace period for repair of ARFF vehicles. For the reasons discussed in the first three alternatives above, the FAA is proposing this alternative. Of the four alternatives considered to continue the current level of safety after January 1, 2000, the fourth alternative is the most comprehensive and the most costly. However, the costs are still minimal and only marginally greater than the other alternatives, and the benefits of the certainty of mandatory safety inspections fully justify this approach.

Discussion of the Proposal

This proposed rule would affect the approximately 566 civilian airports certificated under part 139, and would temporarily amend the regulation to require Y2K testing to determine the affects of the date rollover and to ensure adequate emergency support service as of January 1, 2000.

Section 139.327(a) requires operators of certificated airports to conduct regular facility inspections to ensure compliance with the regulation. However, as noted above, this does not require inspections on January 1, 2000, prior to air carrier operations, and would not necessarily require the kind of tests that would determine if there was a Y2K-related problem that was not detected by pre-January Y2K validation testing. To address these concerns and provide for thorough Y2K testing, the proposed Special Federal Aviation Regulation (SFAR) would require specific equipment and systems tests.

This proposal also would temporarily modify reporting requirements of § 139.327. Currently, this section requires airport operators to have a reporting system that ensures prompt correction of any unsafe conditions found during the self-inspections. These records are checked by the FAA during periodic inspections. This proposal would temporarily modify this requirement by requiring operators of certificated airports to report to the FAA the results of Y2K inspections and testing and the steps to be taken to resolve any discrepancies. The FAA has determined that this would efficiently provide the FAA with information that the 566 certificated airports remain compliant with part 139 requirements immediately after the unique circumstances of the Y2K date rollover. This information cannot be obtained by FAA inspection, because it would be impossible for the small number of FAA airport certification safety inspectors to visit more than a very few of the 566 certificated airports on January 1.

This special testing would apply only to systems identified by the FAA at each airport as critical to airfield safety and efficiency, and used by the airport to meet part 139 requirements. Generally these systems include ARFF equipment, airfield communications, emergency alarm systems, and airfield lighting. The specific systems on each airport that the FAA considers to be covered by this proposed requirement will be provided to the airport operator by the FAA Y2K representative for the FAA region in which the airport is located, after consultation with the airport operator, no later than October 1999.

The FAA proposes that as of January 1, 2000, each operator of a certificated airport be required to complete readiness tests at least one hour before the first air carrier operation is scheduled to occur. For example, if the first air carrier operation is scheduled for 10:00 a.m. on Monday, January 3, 2000, the airport operator would have to complete all required tests by 9:00 a.m. on that date. The FAA recognizes that this may not be possible at those few airports were the first air carrier operation would occur before 2 a.m. on January 1, 2000. To accommodate those early flights that would not allow testing to be completed one hour prior to the operation, e.g., an air carrier aircraft arrival at 12:30 a.m., the FAA proposes that the operators of these airports initiate required testing as soon as possible after 12:00 a.m. and be completed by 1:00 a.m. In any case, airport operators would be required to complete required tests before January 5, 2000, even if the airport operator does not serve air carrier operations (scheduled or unscheduled) before this date.

Finally, the provisions of § 139.319(h)(3) that allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport?s ARFF index, would be temporarily suspended. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle. As noted above, under normal conditions this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, some ARFF vehicles may rely on computers or microprocessors, and since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports.

A temporary suspension of the 48-hour grace period would effectively require that airports have a backup plan for ARFF coverage for the first few days of January 2000 if they want to ensure they will maintain their current ARFF index. This would serve both to handle actual Y2K problems and also to provide assurance to the public that ARFF coverage will continue on January 1, 2000, in the event of Y2K problems. If the ARFF equipment was needed to maintain the airport?s ARFF index, and the airport had not provided for backup coverage, a temporary reduction in the size of aircraft serving the airport would be required.

Paperwork Reduction Act

Information collection requirements in this proposal are small and have previously been approved for part 139 by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0063. This authorization was renewed in May 1999, and in anticipation of possible Y2K testing, the hour burden of this proposal's one-time, small information collection were included in the renewal. However, it should be noted that this proposal would not require new inspections or reports that are not already required by part 139, but would only require that those reports be done within a specified period.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

The Joint Aviation Authorities, an associated body of the European Civil Aviation Conference, develop Joint Aviation Requirements (JAR) in aircraft design, manufacture, maintenance, and operations for adoption by participating member civil aviation authority. The JAR does not address airport certification.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small business and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

However, if an agency determines that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect, and the basis for it, is included in the proposed regulation. The FAA has determined that this proposed rule meets this criteria. The expected impacts of this rule would be so minimal as to not warrant a full regulatory evaluation, and a full evaluation in the docket was not prepared.

This SFAR would establish a one-time self-test and reporting requirement that is essentially identical to the existing requirement, except for the timing, and would require that certain airports arrange for backup ARFF services or reduce their ARFF index if ARFF vehicles fail the test. Since self-inspection and reporting are already required under § 139.327(a), this regulation imposes little additional costs on airport operators. The FAA estimates that the tests required by this proposal may be completed in less than two hours, including reporting test results to the FAA. In addition, the expense of an ARFF backup requirement is both small and considered a low-probability event.

The proposed requirement that certificated airports provide immediate ARFF backup would require these airports to either maintain the current ARFF index or reduce their ARFF index. Operators of most certificated airports are required to maintain ARFF index to serve current scheduled air carrier operations. Many of these operators already provide for an ARFF backup plan, and if not, can relatively inexpensively and quickly make such arrangements. A satisfactory backup plan could be a prearranged plan with other local fire departments for auxiliary coverage.

An economic impact could occur in the following scenario. For those operators of certificated airports that are required to meet a specified ARFF index, this proposed rule does not allow the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. This rule may result in ARFF costs equal to the 48-hour expense of providing sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur, all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF index.
3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes that while an ARFF expense can occur, the expected likelihood is thought to be very low.

The FAA has determined that it is unlikely that all three events will occur. However, in the event an airport does incur the cost of having backup ARFF vehicles available, only the first 48-hours of that cost is attributable to this proposed rule because the current rule imposes the same requirement after a 48-hour grace period. The cost for an airport that might need to provide a backup vehicle could be zero, if the vehicle were obtained from other fire units of the airport owner, or from other local governments through a mutual aid agreement. Accordingly, the expected cost is very small that an airport operator would be required under the proposed rule to incur costs for obtaining one or more backup ARFF vehicles. Finally, if the ARFF index was affected, an airport operator could choose to accept a lower ARFF index temporarily, with no effect on scheduled service, if aircraft currently used for scheduled service at the airport do not require the higher index. Thus the FAA expects this element of the proposed rule to be minimal.

The benefit of the proposed rule is that it will provide assurance that airport operator's preparations for Y2K have been effective and that compliance with part 139 requirements is not compromised due to the January 1, 2000 date rollover. In the unlikely event that this date rollover were to interrupt systems that are used to comply with part 139, the proposal would ensure an early knowledge of such interruption and facilitate immediate action to maintain safety, if necessary.

The FAA solicits comments from affected entities with respect to the cost and benefit assessment in the regulatory evaluation and requests that commenters provide supporting data or analyses.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, § 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As detailed above in the regulatory evaluation there are two costs that may be incurred. First, the proposed inspection costs are expected to be minimal as the expected inspection time is thought to be two hours or less. Second, the probability that the proposed requirement may impose an ARFF cost is expected to be very low. Of the 566 certificated airports, 177 meet the criteria for small entities. Fully 135 of those 177 airports are approved for air carrier operations using mutual aid, or have other arrangements that do not require the airport operator to have

on the airfield ARFF equipment to meet a particular index requirement. These airports would not be financially affected by the suspension of the 48-hour ARFF grace period. The remaining 42 airports that are considered small entities do have an assigned ARFF index, and potentially could be affected by the proposed SFAR. The expected ARFF cost that this rule could impose on these 42 airports is expected to be minimal.

The proposed rule does not allow airports the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. Thus, the rule may impose an ARFF cost equal to a 48-hour expense of providing sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass theY2K readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF index.
3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes, for reasons discussed above, that an ARFF expense can occur, but the expected likelihood is thought to be very low. In addition, the actual cost is expected to be low as mutual aid agreements with other fire departments and the potential of a lower ARFF index still permit the operation of scheduled flights.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that commenters provide supporting data or analyses.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries, or the import of foreign goods and services into the United States.

Federalism Implications

The regulations 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 rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments in the aggregate, or by the private sector.

Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 139 of Title 14, Code of Federal Regulations as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701–44706, 44709, and 44719.

2. Part 139 is amended by adding Special Federal Aviation Regulation No. to read as follows:

SFAR —YEAR 2000 AIRPORT SAFETY INSPECTIONS

1. *Test requirements.*

(a) Each certificate holder shall test each piece of equipment and system described in (b) and (c) of this paragraph to ensure that compliance with part 139 requirements has not been affected by the date change to January 1, 2000. Testing shall demonstrate that the equipment or system is sufficiently operational to continue to support the airport operator's compliance with the requirements of part 139.

(b) Equipment and systems to be tested include—

(1) Runway and taxiway lighting required under § 139.311;

(2) Emergency alarm/communication systems required under § 139.319(j)(6);

(3) ARFF vehicles and associated equipment required under §§ 139.213(b)(11), 139.317, and 139.319;

(4) Communication systems required under § 139.329; and (5) Any other system or unit of equipment that the Administrator determines—

(i) Relies on or contains a computer or microprocessor;

(ii) Is used in support of the holder's compliance with part 139 requirements; and

(iii) Is critical to the safety and efficiency of aircraft operations.

(c) Tests of ARFF vehicles shall include the discharge of fire extinguishing agents.

(d) After consultation with each certificate holder, the Administrator will make a final determination of equipment and systems to be tested and provide written notification of this determination by October 31, 1999.

2. *Reporting Requirements.* No later than one hour following the completion of testing required under paragraph 1 of this SFAR, each certificate holder shall report the results of each test to the Regional Airports Division Manager.

3. *Test Schedule.*

(a) Each certificate holder shall complete the tests prescribed in paragraph 1 of this SFAR, as follows:

(1) By 1:00 a.m. on January 1, 2000, if the first air carrier operation is scheduled to occur before 2:00 a.m. on this date.

(2) At least one hour before the first air carrier operation is scheduled to occur, if the operation is scheduled to occur after 2:00 a.m. on January 1, 2000.

(b) All required tests shall be completed before January 5, 2000, regardless of whether the airport has received air carrier operations from January 1 through January 4, 1999.

4. *Vehicle readiness.* Notwithstanding § 139.319(h)(3), until January 5, 2000, any required vehicle that becomes inoperative to the extent that it cannot perform as required by § 139.319(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If the required Index level is not restored immediately after the testing required by this SFAR, the airport operator shall notify the Regional Airports Division Manager and limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and fire fighting equipment.

5. *Self-inspection requirements.* The requirements of this SFAR do not relieve the certificate holder from self-inspection obligations required under § 139.327. However, testing conducted in compliance with this SFAR may be used to fulfill applicable part 139 requirements.

6. *Effective times.* All of the times described in this SFAR are in local time at the airport.

7. *Expiration.* This Special Federal Aviation Regulation expires on January 5, 2000.

Issued in Washington, DC, on July 1, 1999.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 99–17359 Filed 7–7–99; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 435/P.L. 106–36

Miscellaneous Trade and Technical Corrections Act of 1999 (June 25, 1999; 113 Stat. 127)

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