7–28–99
Vol. 64 No. 144
Pages 40735–41002

federal register

Wednesday
July 28, 1999

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Federal Register

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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.

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Economic Research Service

7 CFR Part 3700

Revision of Delegations of Authority and Revision of Organizations and Functions

AGENCY: Office of the Secretary and Economic Research Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department in order to delegate to the Chief Economist and the Director of Office of Energy Policy and New Uses, the authority to advise the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products; and removes these authorities from the delegations made to the Under Secretary for Research, Education, and Economics, the Administrator of Economic Research Service, and the Director of the Office of Energy and New Uses.

EFFECTIVE DATE: Effective July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Betty L. Ollila, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 1457–S, Washington, D.C. 20250, telephone 202–720–5824.

SUPPLEMENTARY INFORMATION: Pursuant to Title VI, Section 602 of the Agricultural Research, Extension, and Education Reform Act of 1998, Public Law 105–185, 112 Stat. 523, an Office of Energy Policy and New Uses was established. The Office of Energy Policy and New Uses provides policy advice for the Office of the Secretary on energy matters, coordinates energy-related activities within the Department, serves as liaison with other Departments on energy issues, and conducts a program on the economic feasibility on new uses of agricultural products.

The delegations of authority of the Department of Agriculture are amended to delegate to the Chief Economist the authority vested in the Secretary to provide policy advice for the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products.

Prior delegations of authority by the Secretary to the Under Secretary for Research, Education, and Economics, and by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service, and by the Administrator, Economic Research Service to the Director, Office of Energy and New Uses to provide advice for the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products are removed. These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and good cause is found that this rule may be made effective upon publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 801, and thus does not require review by Congress.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 3700

Organization and functions (Government agencies).

Accordingly, 7 CFR parts 2 and 3700 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(1)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.21, paragraph (a)(9) is removed and paragraph (a)(10) is redesignated as paragraph (a)(9).

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

3. Section 2.29 is amended by adding a new paragraph (a)(11) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(11) (*Related to energy*. (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy, the Environmental Protection Agency and other governmental agencies and departments.

(iii) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

(iv) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(v) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and programs progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related polices and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(vi) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

4. Section 2.73 is added to read as follows:

§ 2.73 Director, Office of Energy Policy and New Uses.

(a) Delegations. Pursuant to § 2.29(a)(11), the following delegations of authority are made by the Chief Economist to the Director, Office of Energy Policy and New Uses:

(1) Providing Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans;

(v) Preparing reports on energy and energy-related policies and programs required under Act of Congress and Executive Orders, including those involving testimony and reports on legislative proposals.

(2) Providing Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from departments and agencies of the Federal government pursuant to interagency agreements.

(3) Representing the Chief Economist at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy, the Environmental Protection Agency, and other governmental departments and agencies.

(4) Providing the Chief Economist with such assistance as requested to perform the duties delegated to the Director concerning energy and new uses.

(5) Working with the Office of the Assistant Secretary for Congressional Relations to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in congress, appearances before Congressional committees, and related activities.

(6) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(7) Conduct a program on the economic feasibility of new uses of agricultural products. Assist agricultural researchers by evaluating the economic and market potential of new agricultural products in the initial phase of development and contributing to prioritization of the Departmental research agenda.

(b) [Reserved]

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

5. In § 2.67, paragraphs (a)(11), (a)(12) and (a)(13) are removed. Paragraph (a)(14) is redesignated as paragraph (a)(11).

CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3700—ORGANIZATION AND FUNCTIONS

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.67.

§ 3700.3 [Amended]

2. Section 3700.3 paragraph (g) is removed.

Dated: July 19, 1999.

Dan Glickman,

Secretary of Agriculture.

Dated: June 21, 1999.

Keith Collins,

Chief Economist.

Dated: June 14, 1999.

I.M. Gonzalez,

Under Secretary for Research, Education, and Economics.

[FR Doc. 99–19015 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 57

[Docket No. PY–99–003]

Rules of Practice Governing Proceedings Under the Egg Products Inspection Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising its regulations governing the mandatory shell egg surveillance program to add that the Administrator may enter into a stipulation, prior to the issuance of a complaint, with any person to resolve violation cases arising under the Egg Products Inspection Act (EPIA) or the regulations, without resort to formal disciplinary proceedings. In December 1998, regulations in 7 CFR part 59 administered by AMS were redesignated as a new part 57. AMS is amending 7 CFR part 57 to add regulations previously proposed to expedite the resolution of violations under the shell egg surveillance program.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, 202/720–3506.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of

businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.601) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*), enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. The EPIA regulations require that shell egg handlers and hatcheries register with the United States Department of Agriculture. The EPIA further authorizes inspections at least once each calendar quarter of egg packers that have 3,000 or more laying hens and pack eggs for the ultimate consumer. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these 700 registered shell egg processors, we believe approximately 500 meet the definition of a small business.

The implementing regulations for the EPIA were originally contained in 7 CFR part 59. Congress added provisions for imposing civil penalties for certain EPIA violations as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991. To implement these 1991 EPIA amendments, the AMS proposed changes to 7 CFR part 59. Before AMS published a final rule, however, the Department consolidated food safety issues into FSIS. Egg products inspection functions in the EPIA were delegated to FSIS, while shell egg surveillance functions continued to be administered by AMS. In August 1998, FSIS promulgated a final rule to revise the regulations in 7 CFR part 59. In December 1998, those portions of part 59 pertinent to shell egg surveillance were redesignated as a new part 57. AMS is now revising the regulations in 7 CFR part 57 to set forth procedures for resolving compliance cases with civil penalties as provided in the 1991 EPIA amendments.

These regulations provide that USDA's uniform rules of practice will be applicable to formal administrative proceeding for civil penalties. These regulations also set forth procedures for expediting the resolution of violations before institution of formal administrative proceeding under the shell egg surveillance program through the use of stipulation agreements. Use of these procedures by alleged violators is optional. These regulations impose no new requirements on businesses.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The Egg Products Inspection Act (EPIA) authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. From its enactment in 1970, AMS administered the EPIA and its regulations in 7 CFR part 59.

Congress amended the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub. L. 102–237) (hereafter referred to as ''the 1991 EPIA amendments''). The 1991 EPIA amendments provided that civil penalties may be imposed for certain violations of the mandatory inspection regulations. These amendments become effective 12 months after promulgation of final regulations (21 U.S.C. 1034 note).

To implement the 1991 EPIA amendments, the AMS proposed changes to 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). One proposed change added that the Administrator may enter into a stipulation, prior to the issuance of an administrative complaint, with any person to resolve violation cases arising under the EPIA or the regulations, without resorting to formal disciplinary proceedings. Before AMS published a final rule, however, the Department consolidated food safety issues into FSIS following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354; 7 U.S.C. 2204e). This included delegating responsibility for the EPIA egg products inspection functions to FSIS, while the shell egg surveillance functions remained with AMS. FSIS promulgated a final rule that implemented the 1991 EPIA amendments by revising 7 CFR part 59 (63 FR 45663, August 27, 1998; effective August 27, 1999).

To complete the Department reorganization, other regulatory changes have occurred to ensure that AMS and FSIS have the appropriate regulations they need to carry out their responsibilities. The AMS promulgated a final rule to duplicate and redesignate those portions of 7 CFR part 59 pertinent to shell egg inspection as a new 7 CFR part 57 (63 FR 69968, December 17, 1998; effective December 18, 1998). FSIS promulgated a final rule to redesignate the remaining portions of 7 CFR part 59 and transfer them to 9 CFR part 590 (63 FR 72351, December 31, 1998; effective December 31, 1998). AMS is now revising the regulations in 7 CFR part 57 to provide for the settlement of cases where civil penalties apply through a stipulation procedure, before instituting a formal disciplinary proceeding.

Stipulation Procedure for Assessing Penalties

The amended EPIA includes provisions for imposing civil penalties for certain violations of the mandatory inspection regulations. These penalty provisions are applicable to the egg and egg products inspection programs, with the exception of violations occurring in official egg products plants and violations for which criminal penalties have already been imposed. The Secretary of Agriculture has the authority under the Act to impose civil penalties through formal administrative proceedings. However, these regulations permit the AMS Administrator, prior to initiating a formal administrative proceeding, to enter into a written agreement or stipulation with a violator who agrees to waive a hearing and pay a civil penalty.

Under these stipulation procedures, the AMS Administrator would give the violator notice of the alleged violation and an opportunity for a hearing. The violator would have the option to waive the hearing and agree to pay a specified civil penalty within a prescribed period of time. In turn, the Administrator would agree to accept the civil penalty in settlement of the particular matter involved if the penalty is paid within the specified time. If, however, the violator does not pay the civil penalty within that period of time, the Department would institute a formal administrative proceeding. A civil penalty offered in a stipulation would have no bearing on the civil penalty that the Department might seek in a formal administrative proceeding.

A formal disciplinary proceeding can take a relatively long period of time to resolve, and can be costly for both the Department and the violator. The Department is implementing the use of stipulation agreements, where appropriate, to improve compliance with the EPIA. Accordingly, AMS is amending the regulations by adding a

subpart on stipulation procedures. This procedure would enable AMS to better enforce the Act and regulations by expediting the resolution of compliance cases.

List of Subjects in 7 CFR Part 57

Eggs and egg products, Exports, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 57 is amended as follows:

PART 57—INSPECTION OF EGGS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 57 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

2. Sections 57.1 through 57.970 are designated as subpart A and the heading of subpart A is added to read as follows:

Subpart A—Regulations Governing the Inspection of Eggs

* * * * *

3. A new subpart B is added to read as follows:

Subpart B—Rules of Practice Governing Proceedings Under the Egg Products Inspection Act

Scope and Applicability of Rules of Practice

§ 57.1000 Administrative proceedings.

(a) The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicating administrative proceedings under section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041).

(b) In addition to the proceedings set forth in paragraph (a) of this section, the Administrator, in his discretion, at any time prior to the issuance of a complaint seeking a civil penalty under the Act may enter into a stipulation with any person, in accordance with the following prescribed conditions:

(1) The Administrator gives notice of an apparent violation of the Act or the regulations issued thereunder by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order including an agreement to pay a specified civil penalty within a designated time; and

(3) The Administrator agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time.

(4) If the specified penalty is not paid within the time designated in such stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty that may be assessed after the institution of a formal administrative proceeding pursuant to the Uniform Rules of Practice, Subpart H, Part 1, Title 7, Code of Federal Regulations.

Dated: July 22, 1999.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 99–19290 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 402

RIN 0563–AB68

General Administrative Regulations, Subpart U; and Catastrophic Risk Protection Endorsement; Regulations for the 1999 and Subsequent Reinsurance Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations, subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act (7 CFR part 400, subpart U) and the Catastrophic Risk Protection Endorsement (7 CFR part 402) to implement the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) and the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act) enacted on October 19, 1998.

EFFECTIVE DATE: This rule is effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001. This rule was amended to implement the statutory mandates of the 1998 Research Act which changed the administrative fee for CAT coverage from $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which the producer elected to obtain limited coverage, to $60 per crop per county. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment or an Environmental Impact Statement is needed.

Background

This rule finalizes revisions to part 400, subpart U and part 402 mandated by the 1998 Research Act, enacted June 23, 1998, and the 1999 Appropriations Act enacted on October 19, 1998. On Thursday, July 30, 1998, FCIC published an interim rule in the **Federal Register** at 63 FR 40630–40632 to amend subpart U and the Catastrophic Risk Protection Endorsement to implement the statutory mandates of the 1998 Research Act, which requires the provisions be implemented for the 1999 and subsequent reinsurance years. The 1999 Appropriations Act enacted after the publication of the interim rule waives the administrative fee of 10 percent of the premium that was enacted in the 1998 Research Act for the 1999 and subsequent reinsurance years. Changes in this rule, not made effective by the interim rule, are not in effect until the effective date of this rule.

Following publication of the interim rule, the public was afforded 60 days to submit written comments. A total of 8 comments was received from an insurance company and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization stated that private carriers are expected to complete forms, issue policies, adjust losses, audit policies, and now reprogram the computer systems to handle the change in the Basic Provisions procedures and perform the billing function for CAT policies in exchange for minimal reimbursement. The insurance service organization suggested that FCIC, through the Standard Reinsurance Agreement, allow companies to retain 50 percent of the fees, including flat fees or percentages based on premium computations.

Response: The 1998 Research Act specifies all administrative fees shall be deposited in the crop insurance fund to be available for the programs and activities of FCIC and specifically prohibits use of this fund to compensate insurance providers or agents for the delivery of services. Therefore, no change has been made.

Comment: An insurance service organization suggested the definitions for ''additional coverage,'' ''administrative fee,'' ''catastrophic risk protection,'' ''limited coverage,'' and ''limited resource farmer'' be deleted from the Catastrophic Risk Protection Endorsement since they are being added to the Basic Provisions. The insurance service organization suggested if they were not eliminated they should be revised to match those definitions in the Basic Provisions, unless additional information is needed in the Catastrophic Risk Protection Endorsement.

Response: FCIC has deleted the definitions for ''additional coverage,'' ''administrative fee,'' ''catastrophic risk protection,'' ''limited coverage,'' and ''limited resource farmer'' from the Catastrophic Risk Protection Endorsement and moved them to the Basic Provisions.

Comment: An insurance company and an insurance service organization stated the regulation references 10 percent of the premium subsidy and the law refers to this as 10 percent of the imputed premium. They asked if there was a reason for the difference in the wording. They stated the industry is now accustomed to the idea of ''imputed premium.''

Response: The 1998 Research Act refers to 10 percent of the premium. Section 6(b)(1) of the Catastrophic Risk Protection Endorsement refers to 10 percent of the premium subsidy because all of the CAT premium is subsidized by the Federal Government. However, this provision has been revised to remove all reference to 10 percent of the premium as required by the 1999 Appropriations Act.

Comment: An insurance company and an insurance service organization stated it was their understanding that for nursery, the billing date is at the beginning of the coverage period and this presumably would be the fee due date. The nursery program requires periodic inventory updates, thus the premium could vary depending on the inventory. They asked if the fee continually adjusts through the year depending on inventory and the corresponding imputed premium when the fee is 10 percent of the imputed premium.

Response: For the old nursery policy, the administrative fees will be paid with the premium. If there are more than one premium due dates, the administrative fee must be paid by the final due date. Since the provision regarding the administrative fee of 10 percent of the premium has been removed, inventory adjustments are no longer an issue.

Comment: An insurance company and an insurance service organization stated the pecan program is a two year coverage module. They asked whether a CAT pecan policy that has been in effect for one year under the previous administrative fee structure would keep that fee or if the new fees specified in section 7(b)(1) of the Catastrophic Risk Protection Endorsement apply for the second year.

Response: Since the pecan policy is a two year coverage module and the first year's sales closing date was prior to the effective date of this regulation, the administrative fee that applied for the 1998 crop year will also apply for the 1999 crop year.

In addition to these changes, the administrative fee for catastrophic coverage has been changed due to the 1999 Appropriations Act. The administrative fee for catastrophic coverage for each crop in the county has been changed from $10 plus the greater of either $50 or 10 percent of the premium subsidy to $60 per crop per county. Also, due to the Appropriations Act, paragraph 9(b) of the Catastrophic Risk Protection Endorsement has been revised to state that producers eligible for CAT coverage are also eligible for emergency loans.

List of Subjects in 7 CFR Parts 400 and 402

Administrative practice and procedure, Catastrophic risk protection endorsement, Claims, Crop insurance, Fraud, Insurance provisions, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the interim rule amending 7 CFR parts 400 and 402, published on July 30, 1998 at 63 FR 40630, is adopted as final with the following changes:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT; REGULATIONS FOR THE 1999 AND SUBSEQUENT REINSURANCE YEARS

1. The authority citation for 7 CFR part 402 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 402.4 [Amended]

2. Amend § 402.4 as follows:

a. Remove the definitions of ''additional coverage,'' ''administrative fee,'' ''catastrophic risk protection,'' ''limited coverage,'' and ''limited resource farmer'' in Section 1.

b. Revise Section 6 paragraph (b)(1).

c. Revise Section 9 paragraph (b). The revisions to § 402.4 read as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

6. Annual Premium and Administrative Fees.

* * * * *

(b) * * *

(1) The administrative fee owed for each crop in the county is $60.

* * * * *

9. Claim for Indemnity.

* * * * *

(b) If you are eligible to receive an indemnity under this endorsement and benefits compensating you for the same loss under any other USDA program, you must elect the program from which you wish to receive benefits. Only one payment or program benefit is allowed. However, if other USDA program benefits are not available until after you filed a claim for indemnity, you may refund the total amount of the indemnity and receive the other program benefit. Notwithstanding the first sentence of this subsection, farm ownership, operating, and emergency loans may be obtained from the USDA in addition to an indemnity under this endorsement.

* * * * *

Signed in Washington, DC, on July 20, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–19014 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 457

RIN 0563–AB67

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years; and the Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes subpart T in the General Administrative Regulations (7 CFR part 400, subpart T) and the Common Crop Insurance Regulations, Basic Provisions (7 CFR 457.8), to implement the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) and Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act), enacted on October 19, 1998.

EFFECTIVE DATE: This rule is effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001. This rule was amended to implement the statutory mandates of the 1998 Research Act which changed the administrative fee for additional coverage from $10 per crop to $20 per crop. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions

published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes revisions to subpart T and the Basic Provisions mandated by the 1998 Research Act, enacted June 23, 1998, and subsequently amended by the 1999 Appropriations Act, enacted on October 19, 1998. On Thursday, July 30, 1998, FCIC published an interim rule in the **Federal Register** at 63 FR 40632–40635 to amend subpart T and the Basic Provisions to implement the statutory mandates of the 1998 Research Act, which required the provisions be implemented for the 1999 and subsequent reinsurance years. The 1999 Appropriations Act, which was enacted after publication of the interim rule, waives the administrative fee of 10 percent of the premium that was enacted in the 1998 Research Act for the 1999 and subsequent reinsurance years. Changes in this rule, not made effective by the interim rule, are not in effect until the effective date of this rule.

Following publication of the interim rule, the public was afforded 60 days to submit written comments. A total of 18 comments was received from an insurance company and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance company and an insurance service organization suggested the word ''expected'' be replaced with the word ''projected'' in the definitions of ''additional coverage'' and ''limited coverage'' in the Basic Provisions since that is the word used when market price elections are announced.

Response: Sections 508(b), (c), (d), and (e) of the Federal Crop Insurance Act all refer to the phrase ''expected market price'' and the regulations, procedures, and clarifications were written accordingly. When market price elections are announced, FCIC will also use the term ''expected market price.'' Therefore, no change has been made.

Comment: An insurance service organization suggested revising the definition of ''limited resource farmer'' in the Basic Provisions by removing the words ''notwithstanding the previous sentence'' and adding two parts such as ''A producer or operator of a farm or farms:

(a) With an annual gross income * * * each of the prior two years; or

(b) Of less than 25 acres * * * does not exceed $20,000.''

Response: This definition of ''limited resource farmer'' is more clear. Therefore, this definition will be added to the Basic Provisions and the definition removed from Subpart T .

Comment: An insurance company and an insurance service organization suggested that exceptions for: (1) a producer who grows hybrid seed corn or hybrid sorghum seed with different companies; and (2) when the crop provisions allow for a crop to be insured at different levels and at multiple prices, should be added to section 3(f) of the Basic Provisions since this section identifies exceptions to the requirement that the producer must obtain the same level of coverage for all acreage of the crop in the county. The insurance service organization also suggested deleting the example of California grape varieties which only deals with one crop in one state.

Response: The Basic Provisions are intended to provide the terms that are general to all policies. Exceptions are provided in the Crop Provisions, which take precedence over the Basic Provisions. The Hybrid Sorghum Seed Crop Provisions and the Hybrid Seed Corn Crop Provisions have the exception to allow any of the insured crop under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. Likewise, those Crop Provisions that allow the crop to be insured at different levels and multiple prices will also contain the exception to the Basic Provisions. The example of two grape varieties insured under CAT coverage and two varieties insured under limited coverage in California, which specifies that separate administrative fees will be due for each of the four varieties, adds clarity even though it is only for one crop in one state. Therefore, no change has been made.

Comment: An insurance company and an insurance service organization suggested the entire administrative fee for nursery be collected at one time and not at three different dates since 40 percent of the premium is due at the time of application, with the balance due at two other times during the year. They asked if section 7(e)(3) of the Basic Provisions should specify when the administrative fee is due since it is not accurate for nursery as written.

Response: With respect to section 7(e)(3) of the Basic Provisions, these provisions are intended to apply to all crops and the premium due date is not the same for each crop. Therefore, a fixed date cannot be included here. The new Nursery Crop Provisions (99–073), which are effective for the 1999 and succeeding crop years, will only have one premium due date specified in the Special Provisions, and this will be the date that all premium and administrative fees are due. For the 1999 crop year, for the old Nursery Crop Insurance Provisions (96–056), all administrative fees must be paid by the third billing date, which is not inconsistent with the Basic Provisions. This policy will not be effective after the 1999 crop year. Therefore, no change has been made.

Comment: An insurance service organization suggested revising section 7(e)(5) of the Basic Provisions to read ''The administrative fee for limited coverage will be waived if you request it and qualify as a limited resource farmer.''

Response: FCIC has made the requested change.

Comment: An insurance company and an insurance service organization asked if the phrase ''is not refundable'' should be deleted from section 7(e)(6) of the Basic Provisions since the administrative fee for additional coverage is not due until the premium is due, and this provision for CAT coverage was removed from the CAT provisions after the fee due date was changed.

Response: FCIC has removed the phrase.

Comment: An insurance company and an insurance service organization questioned what is meant by section 35(b) of the Basic Provisions and how it will be implemented, who will make the determination and the timing of the determination. They also asked if this provision should be added to the Crop Provisions instead of the Basic Provisions since not all crops have other USDA programs. They stated that section 35(c) of the Basic Provisions implies that crop insurance indemnity payments would always be done prior to any USDA payment. They asked if insurance companies would be in a position to determine the additional USDA amount due if non-crop insurance USDA benefits are distributed through the crop insurance delivery system. They do not think this will always be the case, which would add confusion and could reduce the perceived value of crop insurance to policyholders. The company also stated that it appears that due to the producers

decision to purchase crop insurance other free benefits could be limited or reduced and this situation should be avoided.

Response: Section 508(n) of the Act specifies that a producer who purchases limited or additional coverage may also receive assistance for the same crop loss under other programs administered by the Secretary, except the amount received for the loss under the limited or additional coverage together with the amount received under the other programs may not exceed the amount of the actual loss of the producer. Section 35(b) of the Basic Provisions specifies how to determine the amount of the actual loss. Since a producer pays for crop insurance coverage, the indemnity will always be paid in accordance with the terms and conditions of the policy. FSA will determine and pay any additional amount due or collect any overpayment if such benefits are paid prior to the payment of any indemnity regardless of how such benefits are delivered. These provisions are only needed in the Basic Provisions. Therefore, no change has been made.

In addition to the changes described above, FCIC has made a few minor editorial changes.

List of Subjects in 7 CFR Parts 400 and 457 '

Administrative practice and procedure, Basic Provisions, Claims, Common Crop Insurance Regulations, Crop insurance, Reporting and record keeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the interim rule amending 7 CFR parts 400 and 457, published on July 30, 1998, at 63 FR 40632, is adopted as final with the following changes:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 400.651 [Amended]

2. Amend § 400.651 by removing the definition of ''limited resource farmer.''

3. Amend the definition of ''linkage requirement,'' in § 400.651, the introductory text of § 400.653, and §§ 400.653(a), 400.654(b) and (c)(4) by removing the section designation of ''§ 400.657'' and adding in its place the section designation of ''§ 400.655.''

PART 457—COMMON CROP INSURANCE REGULATIONS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 457.8 [Amended]

5. Amend § 457.8 as follows:

a. Revise the definitions of ''administrative fee,'' ''catastrophic risk protection'' and ''limited resource farmer'' in Section 1 of the Basic Provisions.

b. Revise Section 2 paragraph (i) of the Basic Provisions.

c. Revise Section 3 paragraph (f) of the Basic Provisions.

d. Revise Section 7 paragraphs (e)(1), (4), (5), and (6) of the Basic Provisions.

e. Revise Section 15 paragraph (d) of the Basic Provisions.

f. Remove Section 35 paragraph (d) of the Basic Provisions. The revisions to § 457.8 read as follows:

§ 457.8 The application and policy.

* * * * *

1. Definitions.

* * * * *

Administrative fee. An amount you must pay for catastrophic risk protection, limited, and additional coverage for each crop year as specified in section 7 and the Catastrophic Risk Protection Endorsement.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC that is required before you may qualify for certain other USDA program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

* * * * *

Limited resource farmer. A producer or operator of a farm:

(a) With an annual gross income of $20,000 or less derived from all sources, including income from a spouse or other members of the household, for each of the prior two years; or

(b) With less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000.

* * * * *

2. Life of Policy, Cancellation, and Termination.

* * * * *

(i) When obtaining catastrophic, limited, or additional coverage, you must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(f) You must obtain the same level of coverage (catastrophic risk protection, limited or additional) for all acreage of the crop in the county unless one of the following applies:

(1) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under a limited coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) If you have limited or additional coverage for the crop in the county and the acreage has been designated as ''high risk'' by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the limited or additional coverage policies and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the limited or additional coverage was obtained.

* * * * *

7. Annual Premium and Administrative Fees.

(e) * * *

(1) If you elect limited coverage, you must pay an administrative fee each crop year of $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which you elected to obtain limited coverage.

* * * * *

(4) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report you

may be subject to criminal and administrative sanctions.

(5) The administrative fee for limited coverage will be waived if you request it and you qualify as a limited resource farmer.

(6) The administrative fee for additional coverage is not subject to any limits and may not be waived.

* * * * *

15. Production Included in Determining Indemnities.

* * * * *

(d) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planted will be based on a reduced guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

* * * * *

Signed in Washington, DC, on July 20, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–19013 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–62–AD; Amendment 39–11236; AD 99–16–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300–600 series airplanes, that currently requires repetitive high frequency eddy current inspections to detect cracks in bolt holes where parts of the main landing gear are attached to the rear spar, and repair, if necessary. This amendment requires repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane.

DATES: Effective September 1, 1999.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997, as listed in the regulations is approved by the Director of the Federal Register as of September 1, 1999.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994, as listed in the regulations was approved previously by the Director of the Federal Register as of November 9, 1995 (60 FR 52618, October 10, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–20–02, amendment 39–9380 (60 FR 52618, October 10, 1995), which is applicable to certain Airbus Industrie Model A300–600 series airplanes, was published in the **Federal Register** on April 23, 1999 (64 FR 19942). The action proposed to require repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary.

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

Conclusion

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

Cost Impact

There are approximately 54 airplanes of U.S. registry that will be affected by this AD.

The new inspections that are required by this AD will take approximately 226 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $732,240, or $13,560 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9380 (60 FR 52618, October 10, 1995), and by adding a new airworthiness directive (AD), amendment 39–11236, to read as follows:

99–16–01 Airbus Industrie: Amendment 39–11236. Docket 98–NM–62–AD. Supersedes AD 95–20–02, Amendment 39–9380.

Applicability: Model A300–600 series airplanes, having manufacturer's serial numbers (MSN) 252 through 553 inclusive, certificated in any category; except those airplanes on which Airbus Industrie Production Modification No. 07601 has been accomplished prior to delivery.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 95–20–02:

Note 2: Accomplishment of the inspections and repair of cracking in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, prior to November 9, 1995 (the effective date of AD 95–20–02, amendment 39–9380), is acceptable for compliance with the applicable action specified in this amendment.

(a) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994.

Note 3: This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information.

(1) For airplanes that have accumulated 17,300 total landings or less as of November 9, 1995: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after November 9, 1995, whichever occurs later.

(2) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of November 9, 1995: Inspect within 1,500 landings after November 9, 1995.

(3) For airplanes that have accumulated 19,300 or more total landings as of November 9, 1995: Inspect within 750 landings after November 9, 1995.

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 (as described in Airbus Industrie Service Bulletin A300–57–6020) has not been accomplished, inspect at the time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings, until the inspection required by paragraph (d)(2)(i)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings, until the inspection required by paragraph (d)(2)(i)(B) has been accomplished.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished, inspect at the time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7,500 landings, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

(c) If any crack is found during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 has not been accomplished: Oversize the bolt hole by 1/32 inch and repeat the HFEC inspection required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, dated July 25, 1994. After accomplishing the oversizing and HFEC inspection, repeat the inspection as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

Note 4: For the purposes of this AD, airplanes that are repaired in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, are considered to be subject to repetitive inspections at the same interval as those airplanes on which Airbus Industrie Modification 07716 has been accomplished.

(i) If no cracking is detected, install the second oversize bolt in accordance with the service bulletin.

(ii) If any cracking is detected, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, International Branch, ANM–116. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

New Requirements of This AD

New Initial and Repetitive Inspections

(d) Perform an ultrasonic inspection to detect cracks in certain bolt holes where the MLG forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

Note 5: Inspections accomplished prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 2, dated January 14, 1997, are considered acceptable for compliance with paragraph (d) of this AD.

(1) For airplanes not inspected prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, or Revision 1 (includes Appendix 1), dated July 25, 1994: Inspect at the time specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this AD, as applicable. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(i) For airplanes that have accumulated 17,300 total landings or fewer as of the effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 17,301 total landings or more but fewer than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(iii) For airplanes that have accumulated 19,300 total landings or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(2) For airplanes on which an HFEC inspection was performed prior to the effective date of this AD in accordance with paragraph (a) of AD 95–20–02, or in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993: Inspect at the time specified in paragraph (d)(2)(i) or (d)(2)(ii), as applicable.

(i) If no cracking was detected during any HFEC inspection accomplished prior to the effective date of this AD, and if Airbus

Industrie Modification 07716 has *not* been accomplished: Inspect at the time specified in paragraph (d)(2)(i)(A) or (d)(2)(i)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 13,000 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(i) of this AD.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 8,400 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 5,500 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(ii) of this AD.

(ii) If any cracking was detected during any HFEC inspection performed prior to the effective date of this AD, regardless of the method of repair, or if Airbus Industrie Modification 07716 *has* been accomplished: Inspect at the time specified in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 11,800 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,200 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 10,700 landings after the initial inspection in accordance with paragraph (a) of AD 95–20–02, or within 7,500 landings after the most recent HFEC inspection, whichever occurs later, and thereafter at intervals not to exceed 4,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(e) If no cracking is detected during the ultrasonic inspection required by paragraph (d)(1) of this AD, repeat that inspection thereafter at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 8,900 landings.

(2) For airplanes having MSN 232 through 464 inclusive: Repeat the inspection at intervals not to exceed 5,500 landings.

Repair

(f) If any cracking is detected during any inspection performed in accordance with paragraph (d) or (e) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Action

(g) Accomplishment of Airbus Industrie Modification 11440 (Airbus Industrie Service Bulletin A300–57–6073, dated September 30, 1997) constitutes terminating action for the repetitive inspection requirements of paragraphs (d) and (e) of this AD, as applicable.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(j) Except as provided by paragraphs (c)(1)(ii), (c)(2), (f), and (g) of this AD, the actions shall be done in accordance with Airbus Industrie Service Bulletin A300–57-6017, Revision 1 (includes Appendix 1), dated July 25, 1994, and Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997. The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997 is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994, was approved previously by the Director of the Federal Register as of November 9, 1995 (60 FR 52618, October 10, 1995). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 7: The subject of this AD is addressed in French airworthiness directive 94–031–155(B)R1, dated May 7, 1997.

(k) This amendment becomes effective on September 1, 1999.

Issued in Renton, Washington, on July 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19155 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–8]

Correction of Class D Airspace, Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will correct the Class D airspace ceiling at Laughlin/Bullhead International Airport, Bullhead City, AZ.

EFFECTIVE DATE: 0901 UTC September 9, 1999. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 27, 1999.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Division, Airspace Specialist, AWP–520.1, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to correct the Class D airspace area ceiling associated with Laughlin/Bullhead International Airport. On January 4, 1996, the Class D airspace ceiling of Laughlin/Bullhead International Airport was published and chartered in error as 2,500 feet Above Ground Level (AGL). FAA Order 7400.9F requires all altitudes to be published in feet above Mean Sea Level (MSL). The corrected altitude of 3200 feet MSL will not change the boundaries or volume of Class D airspace area associated with Laughlin/Bullhead International Airport but will only correct the ceiling of existing Class D airspace area from an

AGL height to reflect the same altitude using MSL. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace area designation listed in this document would be subsequently corrected in this order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on essentially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–AWP–8.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389; 14 CFR 11.69.

§ 71.1 [Correction]

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

Paragraph 500. Class D Airspace

* * * * *

AWP AZ D Bullhead City, AZ [Correction]

Laughlin/Bullhead International Airport, AZ
(Lat. 35°09′27″ N, long. 114 °33′34″ W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of the Laughlin/Bullhead International Airport; excluding that airspace west of a line 1.8 miles west of and parallel to the north/south runway. This Class D airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on June 17, 1999.

Charles A. Ullman,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–17173 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 97N–0435]

Substantial Evidence of Effectiveness of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), as directed by the Animal Drug Availability Act of 1996 (ADAA), is amending its new animal drug regulations to further define the term ''substantial evidence.'' The purpose of this final rule is to encourage the submission of new animal drug applications (NADA's) and supplemental NADA's for single

ingredient and combination new animal drugs. The final rule also encourages dose range labeling.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0220.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA (Pub. L. 104–250) on October 9, 1996. The purpose of the ADAA is to facilitate the approval and marketing of new animal drugs and medicated feeds. In furtherance of this purpose, section 2(a) of the ADAA amended section 512(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(3)) to revise parts of the definition of ''substantial evidence.'' Section 2(e) of the ADAA directs FDA to issue proposed regulations and final regulations to further define ''substantial evidence'' and to encourage dose range labeling. In the **Federal Register** of November 5, 1997 (62 FR 59830), FDA proposed to amend its regulations in part 514 (21 CFR part 514) to further define ''substantial evidence'' and to encourage dose range labeling. FDA provided 90 days for public comment on the proposed rule.

Before FDA can approve a new animal drug, FDA must find, among other things, that there is substantial evidence that the new animal drug is effective for its intended uses under the conditions of use prescribed, recommended, or suggested in the proposed labeling. The changes made to the definition of ''substantial evidence'' by the ADAA and by the further definition of that term in this final rule give FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective.

II. Comments on the Proposed Rule

FDA received nine letters, primarily from trade associations and manufacturers, commenting on the proposed definition of ''substantial evidence.'' One comment stated a belief that the proposed definition of substantial evidence, particularly the provisions that allow FDA to exercise more flexibility in determining the most efficient and cost effective number and types of studies required and the provision that encourages dose range labeling, will benefit sponsors by reducing some costs to gain approvals of animal drugs, for both major and minor species. In general, however, the comments objected to the tone of the preamble to the proposed regulation. The comments raised specific objections to FDA's statement that a single adequate and well-controlled study frequently will not suffice to establish the effectiveness of a new animal drug, the definition of an antibacterial, and the perceived prejudice expressed by FDA against the use of published and foreign studies.

A. Substantial Evidence (§ 514.4)

1. Several comments objected to the tone of the preamble to the proposed rule. One comment noted that while the proposed language of the regulation seemingly is consistent with the flexibility envisioned by the ADAA, the preamble provides content and meaning, which appear to be inconsistent with the spirit of the ADAA and its legislative history. Specifically, the comment stated that the real focus of FDA's oversight should be to ensure that new animal drugs are safe and the effectiveness study(ies) is of sufficient quality to demonstrate substantial evidence of effectiveness. The comment alleged that the preamble departs from the notion that flexibility was intended to be utilized in a way that would minimize the burden on sponsors. The comment suggested the elimination of § 514.4(b)(3)(i) relating to the number of studies and the addition of the following sentence to proposed § 514.4(b)(3)(ii) relating to types of studies: ''Every effort will be made to require the least burdensome type of study.''

The definition of substantial evidence as revised by Congress continues to require a sponsor to submit substantial evidence of effectiveness, such that qualified experts can fairly and reasonably conclude that a new animal drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested (hereinafter suggested) in the proposed labeling. As a comment notes, the proposed language of the regulation is consistent with the ADAA. The proposed regulation gives FDA the flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. It is FDA's intent to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective. The number and types of adequate and well-controlled studies needed to demonstrate by substantial evidence that a new animal drug is effective will need to be sufficient to lead qualified experts to conclude that the new animal drug is effective. Thus, as proposed § 514.4(a) already states, ''Substantial evidence shall include such adequate and well-controlled studies that are, as a matter of sound scientific judgment, necessary to establish that a new animal drug will have its intended effect.'' Addition of the language suggested by the comment is not necessary.

In the preamble to the proposed rule, the discussion regarding the number of studies focused on two sound scientific principles: Independent substantiation and inferential value. The goal of independent substantiation is to provide adequate assurance that an experimental finding is not the result of unanticipated, undetected, systematic biases or chance. Inferential value of data relates to the confidence with which the data relating to effectiveness of a new animal drug for an intended use under the conditions tested can be used to conclude that the new animal drug will be effective in the target animal population for the intended use and associated conditions of use suggested in the proposed labeling. FDA anticipates and welcomes further discussion of implementation of the regulation. The principles of independent substantiation and inferential value form a sound scientific basis upon which these discussions can proceed.

B. Intended Uses and Conditions of Use (§ 514.4(b)(2))

2. One comment suggested that FDA introduced in its discussion of dose range labeling the concept of risk-assessment. The comment criticized FDA's failure to further explain that term and suggests that FDA is making a safety assessment within the context of the substantial evidence determination. The comment further noted that with the elimination of the requirement for dose optimization it is unclear the extent to which FDA is requesting dose response information.

Proposed § 514.4(b)(2) requires that a sponsor demonstrate that a new animal drug is effective for each proposed intended use and associated conditions of use, including the dose or dose range. Before enactment of the ADAA, FDA could not approve a new animal drug for use at a particular dose or over a dose range that exceeded the dose reasonably required to accomplish the physical or other technical effect for

which the new animal drug was intended, the optimum dose. This required that sponsors conduct adequate and well-controlled dose titration studies to characterize the critical aspects of the dose-response relationship. As part of the approval process, FDA used this information regarding effectiveness and weighed it against safety information to make a risk-benefit assessment of a new animal drug. Thus, the concept of a risk-benefit assessment is not new.

As explained in the preamble to the proposed rule, a risk-benefit assessment is a determination whether the effectiveness of a new animal drug outweighs the risks to the target animal at the dose or over the dose range prescribed in the proposed labeling. Thus, it is more accurately termed a risk-effect assessment. The application of a risk-effect assessment has always been a part of FDA's decision whether to approve a new animal drug. The risk-effect assessment is not made within the context of the substantial evidence determination but is made within the context of the approval decision.

While the ADAA modified the definition of substantial evidence and eliminated the requirement for dose titration, the other provisions of the act relating to approval of a new animal drug continue to be applicable. The act provides that FDA will refuse to approve an NADA or a supplemental NADA if, based on a fair evaluation of all material facts, the labeling for the new animal drug is false or misleading. Because before enactment of the ADAA, FDA could only approve a new animal drug at or below the optimum dose or over a dose range, the upper limit of which is at or below the optimum dose, there came to be the expectation that the dose suggested on a label is the optimum dose or that there is increasing effectiveness over the dose range suggested. Even though the requirement for dose optimization has been eliminated, there is still a need to sufficiently characterize the dose-response relationship so that the labeling is not false or misleading.

Sponsors should justify the dosage (i.e., dose or dose range, dosing frequency, and the dosing duration) and characterize for each intended use and associated conditions of use the critical aspects of the dose-response relationship relevant to the dose or dose range selected. While the sponsor must demonstrate by substantial evidence that the new animal drug is effective at the dose or over the dose range selected, the justification of the dosage and characterization of the dose-response relationship need not be demonstrated by substantial evidence. Nonetheless, a sponsor may in the interest of minimizing the number of studies conduct a single adequate and well-controlled study that both demonstrates that a new animal drug is effective at the dose or over the dose range recommended in the label and characterizes the dose-response relationship under the proposed conditions of use.

3. One comment expressed concern that FDA may use its general authority to prevent false and misleading labeling as a pretext for requiring more studies even as the definition of substantial evidence has become more flexible.

It is not FDA's intent to use the false and misleading provision to circumvent the spirit of the ADAA and require more than the number and types of studies needed by FDA to fairly and reasonably conclude that a new animal drug is effective. Nonetheless, one of the criteria for approval is that FDA find, based on a fair evaluation of all material facts, that the labeling for the new animal drug is not false or misleading (21 U.S.C. 512(d)(1)(H)). Therefore, as discussed in comment 2 of section II.B of this document, some studies may be necessary to justify the dosage and characterize the dose-response relationship so that a new animal drug can be labeled properly to inform the user about the effectiveness of the new animal drug at the suggested dose or over the suggested dose range. There may be other instances in which no additional studies are needed but FDA or the sponsor has knowledge about the effectiveness of the new animal drug that must be addressed in the labeling for the drug so that it is not false and misleading. For example, FDA or the sponsor may be aware that even though a combination new animal drug is approvable under 21 U.S.C. 512(d)(4), one active ingredient or animal drug in the combination may interfere with the effectiveness of another active ingredient or drug in the combination. In such an instance, the labeling for the combination new animal drug should indicate that the active ingredient or drug may be less effective for its intended use when used in combination than if it were applied or administered separately.

4. One comment suggested that § 514.4(b) (characteristics of substantial evidence) be revised. The comment suggested that the first word, ''Studies,'' in § 514.4(b)(1) and (b)(2) be changed to ''A study or studies.'' The comment also suggested that the sentence, ''Sponsors should, to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose.'' be changed to read as follows: ''Sponsors should, at their discretion and to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose.''

Because substantial evidence can consist of one or more adequate and well-controlled studies, § 514.4(b)(1) has been changed in this final rule to read ''Any study that is intended to be part of substantial evidence of the effectiveness * * *.'' Upon further consideration, FDA also has revised § 514.4(b)(2) to read as follows: ''Substantial evidence of effectiveness of a new animal drug shall demonstrate that the new animal drug is effective for each intended use and associated conditions of use for, and under, which approval is sought.'' This revision clarifies the point that proposed § 514.4(b)(2) was intended to convey, whether one study or multiple studies are submitted as substantial evidence of effectiveness, FDA must be able to determine by substantial evidence that the new animal drug is effective for each of its intended uses and conditions of use.

FDA has not changed § 514.4(b)(2)(i) to add ''at [the sponsor's] discretion and.'' Section 514.4(b)(2)(i) already states that dose range labeling should be utilized to the ''extent possible.'' Dose range labeling always is at the discretion of the sponsor. Approval of new animal drugs for use over a dose range, however, gives the users greater flexibility and, therefore, increases the utility of new animal drugs. Thus, in the spirit of the ADAA and as directed by section 2(e)(2)(C) of the ADAA, this final regulation implies sponsor discretion as well as encourages the use of dose range labeling.

FDA has revised proposed § 514.4(b)(2)(i) to clarify that this section states the requirements that generally apply to demonstrating the effectiveness of a new animal drug over a dose range and to address dose range labeling by specific intended use to make it consistent with the other provisions of the regulation. Generally, substantial evidence for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for that intended use at the lowest dose of the dose range suggested in the proposed labeling for that

intended use. In many instances, there is a well-established scientific basis on which experts can conclude that effectiveness of a new animal drug, particularly those intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease caused by bacteria or other pathogenic organisms, will not decrease as the dose increases. In such instances, qualified experts can fairly and reasonably conclude that if a new animal drug is effective for an intended use at the lowest dose in the suggested dose range, the new animal drug will be effective over the entire suggested dose range for the intended use, the upper limit of which will generally be established based upon target animal safety, human food safety, or practicality. For new animal drugs intended to affect the structure or function of the body of an animal, scientific evidence does not generally exist to permit experts to conclude that the effectiveness of such a new animal drug will not decrease as the dose increases. In this case, substantial evidence to support the dose range for the intended use must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for such intended use at all the doses within the dose range suggested on the proposed labeling. Similarly, for certain new animal drugs intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease other than that caused by bacteria or other pathogenic organisms, substantial evidence may need to consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for such intended use at all the doses within the dose range suggested on the proposed labeling. FDA intends to issue further guidance regarding the substantial evidence needed to demonstrate the effectiveness of new animal drugs over dose ranges.

C. Number of Studies (§ 514.4(b)(3)(i))

5. One comment suggested that § 514.4(b)(3)(i) (number of studies) be removed. No basis for the proposal to remove this section was provided.

Section 514.4(b)(3)(i) provides objective criteria for determining how many adequate and well-controlled studies are needed to demonstrate by substantial evidence that a new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. FDA believes these scientifically-based criteria provide sponsors considerable flexibility to work with FDA to design an approvable application. Therefore, FDA is not removing § 514.4(b)(3)(i). FDA is, however, changing ''an intended use'' to ''each intended use'' to make it clear that a sponsor must demonstrate that a new animal drug is effective for each proposed intended use and associated conditions of use.

6. Several comments objected to language in the preamble to the proposed rule that indicates that FDA believes that there will be limited instances in which it can rely on a single adequate and well-controlled study to determine the effectiveness of a new animal drug. Comments interpreted this language to mean that a drug sponsor's burden with respect to new animal drug development will not be lessened at all by the regulations implementing the ADAA and, therefore, believe such language is contrary to the spirit of the ADAA. The comments also referred to the discussion in the preamble that indicates that FDA is more likely to rely on a single adequate and well-controlled study if it is a multicenter study. Comments questioned the meaning of the term multicenter study. One comment urged FDA to retract the language in the preamble stating where only one study is to be accepted as substantial evidence of effectiveness, it would generally need to be a multicenter study. The comment also urged FDA to provide in the final rule and other appropriate guidance documents a detailed explanation of the underlying principles that should guide the design of a study.

When Congress made changes to the definition of substantial evidence under the ADAA, Congress did not change the standard that evidence must meet to constitute substantial evidence. The definition of substantial evidence, both before and after the ADAA, requires that the evidence provided must be such that qualified experts can fairly and reasonably conclude that the new animal drug would be effective for the intended uses and conditions of use suggested in the proposed labeling. Thus as amended by the ADAA, the act permits FDA to rely on a single adequate and well-controlled study if FDA can fairly and reasonably conclude from such a study that the new animal drug is effective. As discussed in the preamble to the proposed regulation, any study(ies) that supports a determination that a new animal drug is effective must provide independent substantiation that experimental findings of effectiveness are not the result of: unanticipated, undetected, or systematic biases or chance. As the preamble notes, independent substantiation can be achieved by conducting multiple adequate and well-controlled studies that corroborate the results of one another. However, the preamble also suggests characteristics of a single adequate and well-controlled study the presence of which can provide independent substantiation: The study involves prospective randomized stratifications or identified analytic subsets that each show a significant effect; the study includes multiple endpoints involving different events; the study provides highly reliable and statistically strong evidence of effectiveness; or the study is a multicenter study in which no single study site provides an unusually large fraction of the target animals and no single investigator or site is disproportionately responsible for the effects seen. A multicenter study is a study of a design in which a single study protocol, with allowance for minor site-specific modifications, is followed at multiple locations.

Experts must be able to fairly and reasonably conclude by substantial evidence that a new animal drug is effective for all the conditions of use prescribed, recommended or suggested in the proposed labeling. Thus, the second scientific principle enunciated in the proposed regulation is that the study(ies) that constitute substantial evidence must have sufficient inferential value. If the proposed conditions of use for a new animal drug vary widely (e.g., geographic conditions, husbandry practices, animal genetics), one adequate and well-controlled study conducted at a single location may not provide representative conditions of use from which experts can conclude that the new animal drug is effective for all of the conditions of use suggested in the proposed labeling. However, if a single adequate and well-controlled study can be designed which is representative of varied conditions of use, such a study may provide adequate inferential value upon which experts can determine whether there is substantial evidence that the drug is effective.

As FDA stated in the preamble to the proposed regulation, the number and types of studies needed to demonstrate that a new animal drug is effective will depend upon how narrowly or broadly the intended uses and conditions of use for the new animal drug are defined as well as existing knowledge about the new animal drug, similar compounds, or the disease to be treated or structure or function to be affected. It should not be assumed that a drug sponsor's burden with respect to new animal drug development will not be lessened at all

by the regulations implementing the ADAA when FDA determines that a single adequate and well-controlled study will not suffice to establish the effectiveness of a new animal drug. In addition to giving FDA greater flexibility regarding the number of studies that are needed to demonstrate that a new animal drug is effective, the ADAA eliminated the requirement for a field study in some instances and listed many types of adequate and well-controlled studies that can be submitted to support a determination by FDA that a new animal drug is effective. Whether the burden on sponsors is lessened will be a function of the types of studies as well as the number of studies conducted. FDA reiterates that it is FDA's intent to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective.

With the further explanation given in this response, FDA does not believe it necessary to retract its statement that where only one adequate and well-controlled study is to be accepted as substantial evidence of effectiveness, that single study should provide sufficient inferential value and independent substantiation of the results of the study to permit qualified experts to determine whether the new animal drug is effective. The underlying principles that govern the design of a study intended to demonstrate effectiveness are already set forth in the further definition of adequate and well-controlled study that published in the **Federal Register** of March 5, 1998 (63 FR 10765). FDA will, subject to public input, issue further guidance on how to determine the number and types of studies necessary to demonstrate by substantial evidence that a new animal drug is effective. FDA will consider various public forums, including workshops, for discussing the number and types of studies necessary to demonstrate by substantial evidence that a new animal drug, production or therapeutic, is effective. Use of single studies as substantial evidence of the effectiveness of a new animal drug intended for production purposes, among other issues, will be further discussed in a public forum.

7. Another comment expressed concern regarding how the presumption that for one study to be accepted as substantial evidence it would generally need to be a multicenter study applies to field studies. The comment noted that the specific intent of Congress in redefining substantial evidence was to eliminate the requirement that a field study be conducted in all instances to prove effectiveness and further that FDA move away from the longstanding notion that, where one or more field investigations are required, there must be three investigations in geographically distinct regions of the country. The comment also noted that there is no meaningful difference between multiple field studies and a single field study with multiple study centers and, therefore, FDA should have to justify requesting multiple sites just as it is required to justify a requirement for more than one field study.

As discussed in comment 6 of section II.C of this document, substantial evidence is predicated on the principles of independent substantiation and inferential value to meet the statutory requirement that the studies must be sufficient such that experts can fairly and reasonably conclude the drug is effective for the intended uses and conditions of use suggested in the proposed labeling. Studies conducted at more than one site provide a basis for satisfying these criteria, but FDA will consider alternative approaches. These underlying principles apply equally to laboratory and field studies. Whether a field study is needed to demonstrate effectiveness depends upon the new animal drug and the nature of its intended uses. The legislative history of the ADAA recognized this fact. ''Assessing the safety and effectiveness of new animal drugs under conditions of use which closely approximate actual field use conditions will remain an important element of many new animal drug approvals.'' H. Rept. 104–823 at 15. However, there are situations, e.g., approval of anthelmintics, in which the effectiveness of the new animal drug can be demonstrated without a field study.

The act, as amended by the ADAA, entitles any person intending to file a request for investigational use of a new animal drug, an NADA, or a supplemental NADA to request one or more presubmission conferences. If it is decided during a presubmission conference that more than one field study is needed to demonstrate effectiveness, FDA is statutorily required to provide a written order setting forth a scientific justification for requiring more than one field study. In those instances in which FDA requires more than one field study, FDA will provide written scientific justification for such a requirement. One study can be a study at a single location or a study in which data are collected from multiple locations, and FDA agrees with the comments that the need for a multilocation field study falls within the spirit of the justification provision of the ADAA. Therefore, if FDA requires a field study to be conducted at multiple locations, FDA will provide a scientific justification for requiring the study to be conducted at multiple locations.

FDA plans to issue guidance or regulations to describe how to request a presubmission conference and to describe the procedures for the conduct of the presubmission conference. FDA also intends to issue guidance regarding the circumstances under which more than one field study may be necessary to demonstrate effectiveness. For example, FDA would require more than one field study when a single field study, although adequate and well-controlled, would not provide results from which valid inferences can be drawn regarding whether the new animal drug is effective under actual conditions of use for the intended uses suggested in the proposed labeling. In developing guidance on this issue, FDA will solicit public input.

8. Several comments criticized FDA's introduction of the terms ''persuasiveness'' and ''sufficient quality'' to describe the required characteristics of effectiveness studies. The comments noted that the statute requires that effectiveness studies be adequate and well-controlled.

Substantial evidence as defined in the act is evidence consisting of one or more adequate and well-controlled studies by experts qualified by scientific training and experience to evaluate the effectiveness of the drug, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling. Thus, to maintain that the statute requires that effectiveness studies be adequate and well-controlled is to acknowledge only half of the statutory requirement. As stated earlier in this preamble, Congress did not change the standard that evidence must meet to be substantial evidence. Not only must the study(ies) that constitute substantial evidence be adequate and well-controlled, the study(ies) must also provide a basis upon which qualified experts can fairly and reasonably conclude that a new animal drug is effective.

FDA has by regulation further defined the characteristics of adequate and well-controlled studies (63 FR 10765); these characteristics relate primarily to the design of an adequate and well-controlled study. The terms ''sufficient quality'' and ''persuasiveness'' relate respectively to the conduct and results of the study.

The fact that a study is an adequate and well-controlled study does not mean that the results of such a study will support a finding that a new animal drug is effective. Whether experts can reasonably conclude from adequate and well-controlled studies that a new animal drug is effective will depend upon the quality of the studies, i.e., whether the study was actually conducted in accordance with the study design as described in the study protocol and in accordance with reasonable scientific practices for the conduct of studies. Whether experts can conclude that a new animal drug is effective will further depend upon whether the results of adequate and well-controlled studies persuade experts that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. Results of a study are likely to be persuasive if the parameters selected for measurement and the measured responses reliably reflect the effectiveness of the new animal drug, the results are likely to be repeatable, and valid inferences can be drawn to the target animal population.

Persuasiveness and sufficient quality are adjectives that describe those adequate and well-controlled studies that will lead qualified experts to conclude that a new animal drug is effective. Thus, § 514.4(b)(3)(i) continues to include reference to those terms.

9. Another comment asserted that effectiveness need not be demonstrated for all conceivable variations of genetic and environmental conditions because it is the intent of the ADAA to encourage the submission of NADA's and supplemental NADA's.

The purpose of the ADAA was to build needed flexibility into FDA's animal drug review processes to enable more efficient approval and more expeditious marketing of safe and effective animal drugs. The ADAA did not eliminate the requirement that sponsors demonstrate that a new animal drug has the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling. FDA agrees that substantial evidence need not consist of a direct demonstration that a new animal drug is effective under all conceivable genetic and environmental conditions. However, a sponsor does need to demonstrate that a new animal drug is effective under genetic and environmental conditions sufficiently representative of the conditions of use suggested in the proposed labeling so that qualified experts can fairly and reasonably conclude that the new animal drug will be effective under those proposed conditions of use. If experts cannot so conclude, the evidence does not meet the statutory definition of substantial evidence.

10. One comment opposed FDA's proposal to consider how time may affect the inferential value of a particular set of data citing the fact that currently approved animal drugs in wide use today were approved on what could now be considered ''aged data.'' Another comment questioned how FDA will evaluate whether data are sufficiently ''current'' for purposes of submitting an NADA.

Approval decisions are made at a specific point in time and FDA must be able to fairly and reasonably conclude from the data available at the time it makes its approval decision whether the new animal drug is effective. The act does, however, provide that if on the basis of new information, evaluated together with the evidence available at the time the application was approved there is a lack of substantial evidence that a new animal drug is effective, FDA must take steps to withdraw the approval. Therefore, the currency of data is relevant even with respect to approved new animal drugs.

FDA only stated that time may affect the inferential value of data. FDA recognizes that not all data are equally sensitive to time. FDA will need to make determinations regarding the currency of data on a case-by-case basis. FDA agrees with the comment that the test is whether the data provide a basis on which qualified experts could fairly and reasonably conclude that the new animal drug is effective. Currency is particularly meaningful in terms of the inferences that can be drawn from data. Therefore, there may be instances in which the age of the data limit or invalidate the usefulness of data in determining the effectiveness of a new animal drug just as the discovery of new data may give FDA reason to consider withdrawing an approval.

11. One comment objected to any intent of FDA to require a demonstration of effectiveness in multiple geographic locations or under multiple management practices.

As stated previously, the act provides that in order to meet the definition of substantial evidence, the evidence provided must be such that qualified experts can fairly and reasonably conclude that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. While a sponsor generally need not demonstrate effectiveness under every condition of use suggested in the proposed labeling, a sponsor will need to demonstrate that the new animal drug is effective under conditions such that FDA will be able to fairly and reasonably conclude that the new animal drug will be effective for its intended uses under the conditions of use suggested in the proposed labeling. If a single adequate and well-controlled study can be designed, which is representative of varied conditions of use, such as varied geographic conditions and management practices, such a study would provide adequate inferential value such that experts can fairly and reasonably conclude that the drug will be effective. FDA will develop guidance on this issue, soliciting public input, and will discuss this issue on a case-by-case basis with a sponsor during a presubmission conference.

12. One comment asserted that while effectiveness must be demonstrated for each intended use, substantial evidence should not require conducting studies in every conceivable subdivision of species of animals.

FDA agrees. Adequate and well-controlled studies need only be conducted in species and subspecies that are representative of the species for which the new animal drug is intended such that qualified experts can fairly and reasonably conclude by that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. It is reasonable to expect that studies in many different subspecies or breeds will not be needed if there is a scientific basis to conclude that there will be no difference in response or safety between subspecies or breeds respectively.

D. Types of Studies (§ 514.4(b)(3)(ii))

13. Comments strongly disagreed with FDA's comments in the preamble regarding the value of published studies, peer-reviewed studies, and foreign studies. Comments asserted that such studies are useful and that the preamble to the proposed rule reflects prejudice against the use of such studies as a basis of establishing efficacy. One comment acknowledged that there may be differences in animal genetics and husbandry represented in foreign studies that may justify FDA's requiring that foreign data be confirmed but also notes that such differences may have no impact on animals' response to a drug. Another comment suggested that FDA establish guidance relating to each of these types of studies.

In the preamble to the proposed regulation, FDA clearly stated that a published study, foreign study, or a study using a model may provide substantial evidence of effectiveness if it is an adequate and well-controlled

study. Nonetheless, the utility of published studies, foreign studies, and studies using models, like studies conducted by or on behalf of sponsors, may vary because of the nature of the study. It was FDA's intent to provide in the preamble direction regarding the use of published studies, foreign studies, and studies using models.

With regard to foreign studies, the preamble noted that differences such as animal breeds, genetic composition within a breed, diseases, nutrition, and husbandry practices need to be addressed sufficiently. FDA did not preclude the use of foreign studies. Furthermore, FDA agrees that where these differences have no impact on an animal's response to a new animal drug, adequate and well-controlled foreign studies may support a finding by substantial evidence that a new animal drug is effective. FDA is willing and available to discuss with sponsors what information, if any, relating to foreign data is needed to address these kinds of differences. FDA anticipates issuing, subject to public input, guidance regarding this issue as expeditiously as resources permit.

14. One comment questioned why sponsors must disclose the source of funding for published studies asserting that the source of funding is irrelevant to the evaluation of the study.

FDA disagrees with the assertion that the source of funding is irrelevant to the evaluation of a published study. Knowledge regarding the funding of the study allows FDA to determine whether a sponsor owns, and can provide FDA access to, the study protocol, study documentation, and study data for purposes of evaluating the study. Additionally, if current and/or future funding depend upon the outcome of the study, there is a potential for bias and FDA will want to have available the study protocol, study documentation, and study data to scrutinize more closely.

Who funds the study and their purpose in sponsoring the study are also relevant because it may affect which studies are ultimately published with the result that published studies may represent a skewed subset of available information. That is, if a sponsor funds a study that supports their research, the sponsor may attempt to get the study published. But, if the study does not support their research, the sponsor may not pursue publication of the study. Thus, a search of the published literature may not accurately reflect the body of knowledge that actually exists.

15. One comment suggested that the definition of combination drugs should acknowledge that some combination drugs may be topical antibacterials which, under aquaculture conditions, might be applied in the water in which fish are raised.

Increasingly there are concerns that overuse or improper use of antibacterials may contribute unnecessarily to the development of antibacterial resistance. It is for this reason that the ADAA requires that applicants establish that nontopical antibacterials contribute to the effectiveness of a combination new animal drug. When used in aquaculture, antibacterials are applied or administered not ''topically'' in the sense that they are applied or administered to individual fish but they are applied or administered in a body of water through which fish swim. Because of the nature of the products and because of the added potential for the development and transfer of resistance in the bodies of water in which antibacterials are applied, FDA will for purposes of the application of § 514.4(c) consider aquaculture drugs administered in water to be nontopical antibacterials.

FDA has worked with the aquaculture industry to facilitate the approval of new animal drugs for use in aquaculture and recognizes that there is a vital need for the approval of more aquaculture drugs. FDA anticipates that proposals being made to facilitate the approval of new animal drugs intended for minor uses or use in minor species will provide additional tools to facilitate the approval of new animal drugs for use in aquaculture.

16. Comments relating to substantial evidence for combination drugs focused primarily on the definition of ''antibacterial.'' The comments claimed that by defining ''antibacterial'' in a way that includes classes of drugs such as anticoccidials, ionophores, and arsenicals, FDA has rendered the streamlined approval provision for certain combination drugs meaningless. The comments stated that the intent of the streamlined combination approval provision was to speed up approval of feed use combination drugs and virtually all of the economically and medicinally important combinations of drugs for food animal feeds involve an ionophore and/or arsenical and an antibacterial. Therefore, the comments urged FDA to define ''antibacterial'' in a way that ensures the exemption of anticoccidials, ionophores, and arsenicals. One comment suggested that FDA can accomplish this by exempting from the definition of ''antibacterial'' any drug use which: (1) Has been determined by FDA to have met the criteria of § 558.15 (21 CFR 558.15), or (2) was exempted by FDA from compliance with § 558.15. The comment asserted that the term ''antibacterial'' should not include chemicals that have some antibiotic activity but which are not known or speculated to contribute to the development of resistance by bacterial pathogens to antibiotics in human medicine. Another comment attempted to provide justification for excluding the ionophore class of animal drugs from the general classification of ''antibacterial'' claiming ionophores are unlikely to contribute to the development of antibacterial resistance of importance to human or veterinary medicine.

The combination new animal drug provision of section 512(d)(4) the act, added by the ADAA treats antibacterial ingredients and drugs differently from other active ingredients and animal drugs intended for use in combination because increasingly there are concerns that overuse or improper use may contribute unnecessarily to the development of antibacterial resistance. The term antibacterial does not include any new animal drug that is intended for use only to kill or suppress organisms other than bacteria. For example, the term antibacterial does not include a new animal drug which is intended to kill or suppress coccidia unless such animal drug also has an approved use in the particular species that is attributable to its antibacterial properties. Therefore, new animal drugs approved solely as anticoccidials will not fall within the definition of antibacterial.

As enacted, the ADAA did not address how specific classes of animal drugs such as arsenicals and ionophores should fit within the term antibacterial. Drugs that achieve their effect by killing or suppressing the replication of bacteria are considered to be antibacterials. If an active ingredient or animal drug intended for use in combination can be shown to act through some other mechanism to achieve its intended effect in a particular species it will not be considered an antibacterial.

On October 21, 1998, Congress, as part of the agriculture appropriations in Pub. L. 105–277, amended the act to exclude ionophores and arsenicals from the definition of antibacterial for purposes of determining whether combination new animal drugs intended for use in drinking water or animal feed qualify for the modified combination drug approval process set forth in 21 U.S.C. 512(d)(4). Therefore, FDA is revising proposed § 514.4(c)(1)(ii), final 21 CFR 514.4(c)(1)(iii), to add at the end the following: ''But, antibacterial does

not include ionophores or arsenicals intended for use in combination in animal feed or drinking water.''

17. Comments objected to the requirement in the proposed regulation that conditions treated by a combination new animal drug occur simultaneously with sufficient frequency in the intended target animal population. The comments argue that the objective of the ADAA is drug availability and, therefore, the frequency of conditions should not be considered. One comment suggested that drugs or active ingredients to be used in combination should be approved as long as there is credible medical evidence that the conditions to be treated do occur simultaneously.

As the comment suggests, the important principle that needs to be met in determining whether there is appropriate concurrent use is that there be evidence that any conditions to be treated or physiological effects intended to be achieved can occur simultaneously. Thus, FDA will find that appropriate concurrent use exists if there is credible evidence that the conditions for which the combination is intended can occur simultaneously. FDA has added a definition of appropriate concurrent use at § 514.4(c)(1)(iv) of these final rules. Because combination new animal drugs may contain animal drugs intended for therapeutic and/or production use, the definition does not adopt the comment's suggestion that there be credible ''medical'' evidence.

18. Comments objected to the provision in the proposed regulation that requires that sponsors demonstrate bioavailability as a mechanism to determine the physical compatibility and the compatibility of dosing regimens of separately approved animal drugs when used in combination. Comments assert that the ADAA clearly places the burden on FDA to make a scientifically based initial conclusion that there is reason to believe that incompatibility exists, rather than for sponsors to continue to demonstrate compatibility.

FDA has reconsidered the statutory basis for the proposed requirement that applicants demonstrate comparable bioavailability for some classes of combination new animal drugs. FDA agrees that bioavailability and compatibility are not completely correlative. However, just as the requirement to demonstrate compatibility is a recognition that under some circumstances use of an active ingredient or animal drug in a combination new animal drug may affect the effectiveness of that (or another) active ingredient or animal drug, the proposed requirement to demonstrate comparable bioavailability is a recognition that under some circumstances use of an active ingredient or animal drug in a combination new animal drug may affect the safety of that (or another) active ingredient or animal drug. Furthermore, the ADAA recognizes that this concern varies by class of combination new animal drug with dosage form new animal drugs, other than for use in drinking water, having the greatest potential to affect the effectiveness of the new animal drugs being combined, and animal drugs for use in feed having the least (see 21 U.S.C. 360b(d)(4)(C) and (d)(4)(D)). FDA believes similarly that combining dosage form new animal drugs, other than for use in drinking water, has the greatest potential to affect the safety of the new animal drugs being combined because many of these dosage form new animal drugs are indicated for serious or life-threatening conditions, have relatively narrow margins of safety, and/or have complex formulations.

Under the act, FDA may refuse to approve a combination new animal drug if there is a substantiated scientific issue specific to one or more of the animal drugs in the combination that cannot adequately be evaluated based on information in the application for the combination or there is a scientific issue raised by target animal observations contained in studies submitted to FDA as part of the application for the combination (21 U.S.C. 360b(d)(4)(B)). It is a well-accepted scientific principle that changes in formulation can affect the bioavailability and, thus, the safety and effectiveness of a new animal drug. FDA currently requires a demonstration of comparable bioavailability when a sponsor proposes to make significant formulation changes to a single active ingredient new animal drug and when a sponsor proposes to market a generic formulation of a new animal drug. In the latter case, comparable bioavailability is more formally defined as bioequivalence. Formulation changes necessitated by combining dosage form new animal drugs other than those intended for use in drinking water are considered to be significant changes that may similarly affect bioavailability and, thus, the safety of a combination new animal drug. Thus, FDA believes it is appropriate and in keeping with the spirit of the ADAA for FDA to determine that in the specific case of dosage form animal drugs intended for use in combination other than in drinking water there is a substantiated scientific issue relating to the formulation changes necessitated to combine such animal drugs that warrants the requirement for additional target animal safety data. FDA plans to issue a guidance or regulations setting forth further discussion on this issue.

Because the proposed requirement to demonstrate comparable bioavailability relates primarily to safety, FDA is eliminating proposed § 514.4(c)(2)(iv) and (c)(2)(v). New § 514.4(c)(2)(i)(C) and (c)(2)(ii)(D) will reflect that as part of demonstrating the effectiveness of certain combination new animal drugs, sponsors need only demonstrate that active ingredients or animal drugs intended for use in combination are physically compatible and/or do not have disparate dosing regimens where FDA, based on scientific information, has reason to believe there is a lack of physical compatibility or the dosing regimens are disparate.

19. One comment interpreted the preamble to the proposed regulation to require that entirely new studies with a combination new animal drug be conducted when an additional claim is added to a previously separately approved individual active ingredient or animal drug that is part of the combination new animal drug. The comment opposed such a requirement and suggested that label extensions for the combination new animal drug should be pursued at the discretion of the sponsor.

When an additional claim is approved for a single ingredient new animal drug that is part of a combination new animal drug that has been approved under the modified combination approval process provided by section 512(d)(4) of the act, the additional claim may not automatically become a claim for the combination new animal drug. A supplemental application may need to be submitted for the combination new animal drug. Otherwise, an applicant could attempt to circumvent effectiveness requirements for a combination new animal drug that qualifies for approval under the modified combination approval process by choosing to seek approval of certain claims for one of the single ingredient new animal drugs after the combination new animal drug containing it has been approved.

For example, assume that drug A is approved for indication X and drug B is approved for indication Y, and the combination new animal drug containing drug A and drug B qualifies for approval under the modified combination approval process. Because each new animal drug is intended for at least one use that is different from the

other new animal drug in the combination, the application for the combination new animal drug would primarily need to include a demonstration that combination new animal drug AB represents appropriate concurrent use to establish that the combination is effective. If drug A had been approved for indications X and Y, the application would have had to include a demonstration that drug B contributed to the labeled effectiveness of the combination new animal drug with respect to indication Y. Therefore, if drug A is subsequently approved for indication Y after the combination new animal drug AB is approved, a supplemental application is needed to demonstrate that drug B contributes to the labeled effectiveness of the combination new animal drug. In no case will FDA require any more than FDA would have required had the applicant originally sought approval of a combination new animal drug that includes the animal drug with the additional claim.

20. One comment requested confirmation regarding the application of the combination new animal drug provision of the proposed regulation. In particular, the comment sought confirmation that sponsors need only show that each antibacterial in a combination new animal drug makes a contribution to a combination's effectiveness. The comment further sought confirmation that the contribution of nonantibacterials that have no overlapping claims need not be demonstrated.

Section 514.3(c) specifies the requirements for demonstrating that a combination new animal drug is effective. Because increasingly there are concerns that overuse or improper use of antibacterials may contribute unnecessarily to the development of antibacterial resistance, there are additional, specific requirements that relate to combination new animal drugs that contain antibacterial ingredients or animal drugs.

For those combinations that contain antibacterials and qualify for the modified combination approval process provided under section 512(d) of the act, a sponsor will need to show more than that each antibacterial makes a contribution to the combination's effectiveness. The sponsor will also have to demonstrate: (1) That each nonantibacterial active ingredient or animal drug that is intended only for the same use as another active ingredient or animal drug makes a contribution to effectiveness and (2) each antibacterial and nonantibacterial active ingredient or animal drug with a unique claim provides appropriate concurrent use. Furthermore, the sponsor may, under certain circumstances, need to demonstrate that the active ingredients or animal drugs are physically compatible and/or do not have disparate dosing regimens.

If each of the active ingredients or animal drugs intended for use in a combination that qualifies for the modified approval process has a unique claim, the sponsor must demonstrate that each active ingredient or animal drug provides appropriate concurrent use. The sponsor may, under certain circumstances, also need to demonstrate that the active ingredients or animal drugs are physically compatible and/or do not have disparate dosing regimens.

21. One comment criticized the length and complexity of proposed § 514.4(c)(2), which describes the substantial evidence required for the evaluation of combination new animal drugs with active ingredients or animal drugs that have previously been separately approved.

FDA has made some revisions to proposed § 514.4(c)(2) in an attempt to make the provision more understandable. Unfortunately the combination new animal drug provision of the act, section 512(d)(4), is complex. One of the revisions includes defining ''dosage form combination new animal drug'' at § 514.4(c)(1)(ii). FDA has also tried to simplify the provision, by describing in list form for dosage form combination new animal drugs and combination new animal drugs intended for use in animal feed or drinking water separately, what substantial evidence is needed to demonstrate that a combination of previously separately approved active ingredients or animal drugs is effective. The preamble to the proposed rule provides further explanation of the substantial evidence needed to demonstrate that a combination new animal drug is effective. FDA intends to issue guidance to further assist sponsors and interested parties in interpreting this very complex provision.

E. Responses to Remaining Comments

22. One comment urged FDA to make animal testing illegal.

The act requires that manufacturers of new animal drugs demonstrate prior to marketing that a new animal drug is safe to the animals administered the drug, safe to humans who may consume food derived from animals administered the drug, and effective. This final rule describes the numbers and types of studies needed to demonstrate that a new animal drug is effective. Depending upon the nature of the intended uses, which may include the alleviation of animal pain and suffering, and conditions of use of the new animal drug, substantial evidence of effectiveness may consist of one or more studies in the target animal, studies in laboratory animals, field studies, bioequivalence studies, or in vitro studies.

As stated repeatedly, FDA intends to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective. With technological advances, the use of animals in testing has been in decline and FDA fully supports the use of alternative methodologies where appropriate. FDA balances the need for live animal testing of new animal drugs with the need to protect the welfare of the animals that would receive the new animal drug if it is approved. To the extent animal testing is used, there are in effect laws and regulations that provide for the humane care and use of animals in research, testing, and teaching environments. FDA advocates full observance of all applicable animal welfare laws, regulations, and guidelines.

23. Several comments referred to the efforts of the Center for Veterinary Medicine's ADAA Minor Use/Minor Species Working Group to propose regulatory and statutory changes to facilitate the approval of new animal drugs for minor uses or for use in minor species.

Section 2(f) of the ADAA required the Secretary of Health and Human Services to consider and announce legislative and regulatory options for facilitating the approval under section 512 of the act of animal drugs intended for minor species and for minor uses. Although the redefinition of substantial evidence by the ADAA and FDA's further definition of substantial evidence may have the indirect effect of facilitating approval of animal drugs intended for minor species and for minor uses, the charge from Congress to announce proposals for regulatory and statutory changes was not specifically addressed by FDA in redefining substantial evidence. Comments relating to proposals for facilitating the approval of animal drugs for minor use or minor species were addressed in the context of FDA's proposal for regulatory and statutory changes (63 FR 58056, October 29, 1998).

III. Conforming Changes

FDA has made conforming changes to §§ 514.1(b)(8) and 514.111.

IV. Environmental Impact

FDA has carefully considered the potential environmental impacts of this final rule. The agency has determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment (21 CFR 25.30(h)). Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant impact on a substantial number of small entities. Because this final rule will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

FDA, as directed by the ADAA, is further defining ''substantial evidence,'' the standard by which a new animal drug is determined to be effective for its intended uses under the conditions of use represented in its labeling. The purpose of the final rule is to encourage the submission of NADA's, the submission of supplemental NADA's, and the use of dose range labeling. Accordingly, the final definition of substantial evidence, while not changing the standard of effectiveness, recognizes that ''substantial evidence,'' as redefined under the ADAA, gives FDA greater flexibility to determine the number and types of studies that adequately demonstrate the effectiveness of any particular new animal drug. For example, under the new definition, sponsor companies are no longer required, in every instance, to submit a field study to establish the effectiveness of a new animal drug under investigation. Because the new definition gives FDA greater flexibility to work with sponsors to tailor the evidence needed to demonstrate effectiveness, this final rule is not expected to impose any new costs on the industry. Furthermore, because sponsors will have more options under this revised definition to design and conduct studies to demonstrate effectiveness, and because sponsors can be expected to choose the most efficient and cost effective option, the net effect of this provision will be a benefit to sponsors.

The final rule also applies to the submission and review of NADA's for new animal drugs intended for use over a dose range. The ADAA eliminated the statutory requirement to limit the use of a new animal drug to an amount no greater than that reasonably required to accomplish the physical or other technical effect of the drug for its intended use. The act, as amended by the ADAA, permits the use of a new animal drug at any level that is safe for the target animal, effective, and will not result in a residue of such drug in excess of a tolerance found to be safe. Because dose optimization will no longer be required, sponsors are no longer required to conduct adequate and well-controlled in vivo dose titration studies, but will need only to conduct such studies as may be needed to justify the dosage and characterize the critical aspects of the dose-response relationship relevant to the dose or dose range selected so that FDA can make a risk-effect assessment and ensure that the labeling for a new animal drug is not false or misleading. Because there will be greater flexibility in determining the studies needed to justify dosage and characterize the dose-response relationship, sponsors will realize a small cost savings.

Finally, the final rule further defines substantial evidence as it relates to combination new animal drugs. For certain combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved, sponsors will not be required to conduct additional studies to demonstrate that the combination new animal drug is effective. These changes will provide further cost savings to the sponsors of NADA's that meet the criteria for the streamlined approval process. Based on comments to the proposal, FDA has reconsidered and subsequently removed the requirement in this provision that would have required applicants to demonstrate comparable bioavailability as a mechanism for determining the physical compatibility and compatibility of dosing regimens of active ingredients or animal drugs intended for use in combination.

VI. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of the anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing each collection of information.

Title: Substantial Evidence of Effectiveness of New Animal Drugs.

Description: As directed by the ADAA, FDA is publishing a final rule to further define substantial evidence in a manner that encourages the submission of NADA's and supplemental NADA's and encourages dose range labeling. The final regulation implements the definition of ''substantial evidence'' in 21 U.S.C. 360b(d)(3) as amended by the ADAA. Substantial evidence is the standard that a sponsor must meet to demonstrate the effectiveness of a new animal drug for its intended uses under the conditions of use suggested in its proposed labeling. The final regulation, § 514.4, gives FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. FDA estimated that the proposed regulation would reduce by approximately 10 percent the total annual burden associated with demonstrating the effectiveness of a new animal drug as part of an NADA or supplemental NADA submission.

Description of Respondents: Persons and businesses, including small businesses. In the **Federal Register** of November 5, 1997 (62 FR 59830), FDA requested comments on the proposed collection of information annual reporting burden estimate. As a result of comments received on the proposed regulation (see comment 18 in section II.D of this document), the requirement in the proposed regulation that sponsors demonstrate comparable bioavailability as a mechanism to determine the physical compatibility and the compatibility of dosing regimens of separately approved animal drugs intended for use in a dosage form combination new animal drug has been eliminated in the final rule. The final rule reflects that as part of demonstrating effectiveness of certain combination new animal drugs sponsors need only demonstrate that active ingredients or animal drugs intended for use in combination are physically compatible and/or do not have disparate dosing regimens where FDA, based on scientific information, has reason to believe there is a lack of physical compatibility or the dosing regimens are disparate. Because combinations that qualify for the modified approval process created by the ADAA represent a small portion of all NADA's and supplemental NADA's submitted to FDA and the majority of combinations that qualify for the modified approval process are expected to be combinations intended for use in animal feed, any reduction in paperwork burden resulting from the elimination of the requirement to demonstrate comparable bioavailability would be negligible. Therefore, FDA believes that the annual reporting burden estimate of 544,036 hours should remain unchanged.

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
514.4(a)	190	4.5	860	632.6	544,036

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Individuals and organizations may submit comments on this burden estimate or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to Herman M. Schoenemann, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

The information collection provisions in this final rule have been approved under OMB control number 0910–0356. This approval expires December 31, 2000. An agency may not conduct or sponsor, and a person is not required to provide, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.1 is amended by revising paragraphs (b)(8)(ii) and (b)(8)(v) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(8) * * *

(ii) An application may be refused unless it includes substantial evidence of the effectiveness of the new animal drug as defined in § 514.4.

* * * * *

(v) If the new animal drug is a combination of active ingredients or animal drugs, an application may be refused unless it includes substantial evidence of the effectiveness of the combination new animal drug as required in § 514.4.

* * * * *

3. Section 514.4 is added to subpart A to read as follows:

§ 514.4 Substantial evidence.

(a) *Definition of substantial evidence.* Substantial evidence means evidence consisting of one or more adequate and well-controlled studies, such as a study in a target species, study in laboratory animals, field study, bioequivalence study, or an in vitro study, on the basis of which it could fairly and reasonably be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of the new animal drug involved that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. Substantial evidence shall include such adequate and well-controlled studies that are, as a matter of sound scientific judgment, necessary to establish that a new animal drug will have its intended effect.

(b) *Characteristics of substantial evidence*—(1) *Qualifications of experts.* Any study that is intended to be part of substantial evidence of the effectiveness of a new animal drug shall be conducted by experts qualified by scientific training and experience.

(2) *Intended uses and conditions of use.* Substantial evidence of effectiveness of a new animal drug shall demonstrate that the new animal drug is effective for each intended use and associated conditions of use for and under which approval is sought.

(i) *Dose range labeling.* Sponsors should, to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose. In general, substantial evidence to support dose range labeling for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for the intended use at the lowest dose of the dose range suggested in the proposed labeling for that intended use. Substantial evidence to support dose range labeling for a new animal drug intended to affect the structure or function of the body of an animal generally must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude

that the new animal drug will be effective for the intended use at all doses within the range suggested in the proposed labeling for the intended use.

(ii) [Reserved]

(3) *Studies*—(i) *Number*. Substantial evidence of the effectiveness of a new animal drug for each intended use and associated conditions of use shall consist of a sufficient number of current adequate and well-controlled studies of sufficient quality and persuasiveness to permit qualified experts:

(A) To determine that the parameters selected for measurement and the measured responses reliably reflect the effectiveness of the new animal drug;

(B) To determine that the results obtained are likely to be repeatable, and that valid inferences can be drawn to the target animal population; and

(C) To conclude that the new animal drug is effective for the intended use at the dose or dose range and associated conditions of use prescribed, recommended, or suggested in the proposed labeling.

(ii) *Types*. Adequate and well-controlled studies that are intended to provide substantial evidence of the effectiveness of a new animal drug may include, but are not limited to, published studies, foreign studies, studies using models, and studies conducted by or on behalf of the sponsor. Studies using models shall be validated to establish an adequate relationship of parameters measured and effects observed in the model with one or more significant effects of treatment.

(c) *Substantial evidence for combination new animal drugs*—(1) *Definitions*. The following definitions of terms apply to this section:

(i) *Combination new animal drug* means a new animal drug that contains more than one active ingredient or animal drug that is applied or administered simultaneously in a single dosage form or simultaneously in or on animal feed or drinking water.

(ii) *Dosage form combination new animal drug* means a combination new animal drug intended for use other than in animal feed or drinking water.

(iii) *Antibacterial* with respect to a particular target animal species means an active ingredient or animal drug: That is approved in that species for the diagnosis, cure, mitigation, treatment, or prevention of bacterial disease; or that is approved for use in that species for any other use that is attributable to its antibacterial properties. But, antibacterial does not include ionophores or arsenicals intended for use in combination in animal feed or drinking water.

(iv) *Appropriate concurrent use* exists when there is credible evidence that the conditions for which the combination new animal drug is intended can occur simultaneously.

(2) *Combination new animal drugs that contain only active ingredients or animal drugs that have previously been separately approved*.

(i) For dosage form combination new animal drugs, except for those that contain a nontopical antibacterial, that contain only active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination, a sponsor shall demonstrate:

(A) By substantial evidence, as defined in this section, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug;

(B) That each active ingredient or animal drug intended for at least one use that is different from all the other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population; and

(C) That the active ingredients or animal drugs are physically compatible and do not have disparate dosing regimens if FDA, based on scientific information, has reason to believe the active ingredients or animal drugs are physically incompatible or have disparate dosing regimens.

(ii) For combination new animal drugs intended for use in animal feed or drinking water that contain only active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination, the sponsor shall demonstrate:

(A) By substantial evidence, as defined in this section, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug;

(B) For such combination new animal drugs that contain more than one antibacterial ingredient or animal drug, by substantial evidence, as defined in this section, that each antibacterial makes a contribution to labeled effectiveness;

(C) That each active ingredient or animal drug intended for at least one use that is different from all other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population; and

(D) That the active ingredients or animal drugs intended for use in drinking water are physically compatible if FDA, based on scientific information, has reason to believe the active ingredients or animal drugs are physically incompatible.

(3) *Other combination new animal drugs*. For all other combination new animal drugs, the sponsor shall demonstrate by substantial evidence, as defined in this section, that the combination new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling and that each active ingredient or animal drug contributes to the effectiveness of the combination new animal drug.

4. Section 514.111 is amended by revising paragraph (a)(5) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence as defined in § 514.4.

* * * * *

Dated: July 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19193 Filed 7–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 1200 and 1205

[Docket No. NHTSA–99–6011]

RIN 2127–AH53

Uniform Procedures for State Highway Safety Programs

AGENCY: National Highway Traffic Safety Administration and Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule announces that amendments to the regulation establishing uniform procedures for

State highway safety programs, published in an interim final rule, will remain in effect, with minor changes for clarification in response to comments. The amendments implemented the provisions of a two-year pilot highway safety program, providing a more flexible performance-based system for States to follow in conducting their highway safety programs.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Marlene Markison, Office of State and Community Services, 202–366–2121; John Donaldson, Office of the Chief Counsel, 202–366–1834. In FHWA, Daniel Hartman, Office of Highway Safety, 202–366-2131; Raymond Cuprill, Office of the Chief Counsel, 202–366–0834.

SUPPLEMENTARY INFORMATION:

A. Background

On June 26, 1997, the National Highway Traffic Safety Administration (''NHTSA'') and the Federal Highway Administration (''FHWA'') (''the agencies'') published an interim final rule (62 FR 34397) establishing new procedures governing the implementation of State highway safety programs conducted under the authority of the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*). The new procedures changed the submission and approval requirements for State highway safety plans in the regulation at 23 CFR part 1200, Uniform Procedures for State Highway Safety Programs, and simplified certain funding requirements in the regulation at 23 CFR part 1205, Highway Safety Programs; Determinations of Effectiveness.

Under the provisions of the interim final rule, States assumed a new role in the planning and direction of their highway safety programs. In lieu of the earlier regulatory requirement that States submit comprehensive documents for Federal review and approval, States were now charged with setting their own highway safety goals, accompanied by performance measures to chart progress. These new procedures were based on almost two years of successful experience with a pilot highway safety program conducted by the agencies during fiscal years 1996 and 1997. The interim final rule incorporated most of the pilot program's provisions into its requirements.

The agencies requested comments on the interim final rule from all interested parties, and provided a 45-day comment period. Thereafter, because Congress was considering various changes to the Section 402 program in the course of reauthorizing NHTSA and FHWA programs, the agencies decided to delay responding to comments until after Congress had completed the reauthorization process. In today's notice, we respond to the comments received, and issue a final rule.

B. Statutory Requirements

The Section 402 program is authorized under the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*). It is a formula grant program that was established to improve highway safety in the States. As a condition of the grant, the Act provides that the States must meet certain requirements contained in 23 U.S.C. 402.

Section 402(a) requires each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic crashes and the deaths, injuries, and property damage resulting from those crashes. Section 402(b) sets forth the minimum requirements with which each State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other continuing requirements is entrusted to the Secretary and, by delegation, to the agencies.

When it was originally enacted in 1966, the Highway Safety Act required the agencies to establish uniform standards for State highway safety programs to assist States and local communities in implementing their highway safety programs. Eighteen such standards were established and, during the early years, the Section 402 program was directed principally toward achieving State and local compliance with these standards. Over time, State highway safety programs matured and, in 1976, the Highway Safety Act was amended to provide for more flexible implementation of the program. States were no longer required to comply with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States, and management of the program shifted from enforcing standards to using the standards as a framework for problem identification, countermeasure development, and program evaluation. In 1987, Section 402 of the Highway Safety Act was amended, formally changing the standards to guidelines.

Another amendment to the Highway Safety Act required the Secretary to determine, through a rulemaking process, those programs ''most effective'' in reducing crashes, injuries, and deaths, taking into account ''consideration of the States having a major role in establishing (such) programs.'' The Secretary was authorized to revise the rule from time to time. In accordance with this provision, the agencies have identified, over time, nine such programs, the ''National Priority Program areas'' (see discussion under Section C.2, below).

Until recently, the Act provided that only those programs established under the rule as ''most effective'' in reducing crashes, injuries and deaths (i.e., the National Priority Program areas) would be eligible for Federal financial assistance under the Section 402 program. However, the Transportation Equity Act for the 21st Century (Pub. L. 105–178) (TEA–21), enacted June 9, 1998, amended those provisions. The new requirement allows for periodic discretionary rulemaking to identify programs that are ''highly effective'' in reducing crashes, injuries, and deaths, and requires only that States ''consider'' these highly effective programs when developing their highway safety programs.

C. Regulations Prior to the Interim Final Rule

In recent years, the agencies have administered the Section 402 program in accordance with implementing regulations, the Uniform Procedures for State Highway Safety Programs (23 CFR part 1200) (''Part 1200'') and Highway Safety Programs; Determinations of Effectiveness (23 CFR part 1205) (''Part 1205''). Part 1200 sets forth requirements concerning submission and approval of State highway safety plans, apportionment and obligation of Federal funds, and financial accounting and program administration. Part 1205 identifies the National Priority Program areas and provides for the funding of program areas.

1. Part 1200

Part 1200, portions of which were amended by the interim final rule, contained detailed procedures governing the content and Federal approval of a ''Highway Safety Plan,'' to be submitted each fiscal year by the States. In particular, prior to its amendment, the regulation required

each State's highway safety plan to contain a ''problem identification summary,'' highlighting highway safety problems in the State, describing countermeasures planned to address those problems, and providing supporting statistical crash data. Additionally, in the highway safety plan, the State was required to describe and justify program areas to be funded, discuss planning and administration and training needs, and provide certain certifications and financial documentation.

Part 1200 required Federal approval for proposed expenditures within program areas, both under the State's initially submitted Highway Safety Plan and subsequently for any proposed changes in expenditures exceeding ten percent of the total amount in a given program area. Federal approval was also required, on a year-by-year basis, if a State sought to continue a NHTSA project beyond three years. Such approval was conditioned on a showing that the project had demonstrated great merit or the potential for significant long-range benefits, and was subject to increased cost assumption by the State. The regulation provided the agencies with broad discretion to approve, conditionally approve, or disapprove a highway safety plan or any portion of the document, and required the States to submit a comprehensive and detailed annual evaluation report.

2. Part 1205

Part 1205 lists each highway safety program area that the agencies have determined, in accordance with the Highway Safety Act, to be most effective in reducing crashes, injuries, and deaths. The agencies have, through a series of rulemaking actions over the years, identified these program areas as ''National Priority Program Areas.'' There are currently nine National Priority Program Areas: Alcohol and Other Drug Countermeasures; Police Traffic Services; Occupant Protection; Traffic Records; Emergency Medical Services; Motorcycle Safety; Roadway Safety; Pedestrian and Bicycle Safety; and Speed Control.

Prior to its amendment by the interim final rule, part 1205 provided for expedited funding approval of programs developed in any of the National Priority Program Areas. Part 1205 provided that programs developed under other program areas could also be funded, but they were subject to a more detailed approval process. As further described under Section E, below, the amendments that the interim final rule made to part 1205 provided States with more flexibility with regard to their ability to fund these latter programs.

D. The Pilot Program

In the years since the original enactment of Section 402, States have developed the expertise necessary to conduct effective highway safety programs. Just as Congress earlier recognized the desirability of changing the mandatory standards to more flexible guidelines, the agencies recognized that the time was right to provide the States with added flexibility to set their own goals, define their own performance measures, and determine the best means of accomplishing their goals, subject to the existing statutory parameters requiring overall program approval.

Consistent with efforts to relieve burdens on the States under the President's regulatory reform initiative, the agencies took the first step in providing more flexibility for the States by establishing a pilot program in fiscal years 1996 and 1997 for highway safety programs conducted under section 402. The pilot program was announced in the **Federal Register** on September 12, 1995 (60 FR 47418) for fiscal year 1996 and on September 6, 1996 (61 FR 46895) for fiscal year 1997.

1. Procedures

The pilot program waived the requirement for State submission and Federal approval of the Highway Safety Plan required under then-existing part 1200 for those States that chose to participate, and instead provided for a benchmarking process by which the States set their own highway safety goals and performance measures. Under the benchmarking process, participating States were required to submit a planning document and a benchmark report, rather than the previously required highway safety plan. The planning document, which described how Federal funds would be used, consistent with the guidelines, priority areas, and other requirements of Section 402, was required to be approved by the Governor's Representative for Highway Safety.

The States were required to submit the benchmark report to the agencies for approval by August 1 prior to the fiscal year for which the highway safety program was to be conducted. The benchmark report was required to contain three components: a Process Description; Performance Goals; and a Highway Safety Program Cost Summary. Under the Process Description component, States were required to describe the processes used to identify highway safety problems, establish performance goals, and develop the programs and projects in their plans. Under the Performance Goals component, States were required to identify highway safety performance goals (developed through a problem identification process) and to identify performance measures to be used to track progress toward each goal. Under the Highway Safety Program Cost Summary component, States submitted HS Form 217, a financial accounting form that has been a longstanding requirement under part 1200.

The focus of the Federal review and approval process under the pilot program shifted away from a review of the substantive details of the program, on a project-by-project basis, as required under then-existing part 1200. Instead, the process focused on verification that the State had committed itself, through a performance-based planning document approved by the Governor's Representative for Highway Safety and a benchmark report, to a highway safety program that targeted identified State highway safety concerns. The agencies waived the requirement under then-existing part 1200 that States seek approval for changes in expenditures exceeding ten percent in a given program area.

Under the pilot program, the requirements governing the annual evaluation report were changed to accommodate the shift to a performance-based process. States were required to report on their progress toward meeting goals, using performance measures identified in the benchmark report, and the steps they took toward meeting goals. States were also required to describe State and community projects funded during the year.

In other respects, the pilot program followed the requirements of then-existing part 1200 without change. Provisions concerning the submission of certifications and assurances, the apportionment and obligation of Federal funds, financial accounting (including submission of vouchers, program income, and the like), and the closeout of each year's program continued to apply to the pilot program.

2. Experience Under the Pilot Program

Over the two-year period during which the pilot program was in place prior to issuance of the interim final rule, it received increasing support from States. Sixteen States participated in the pilot program during fiscal year 1996, and 41 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands participated during fiscal year

1997. Most participating States expressed enthusiasm about the goal-setting process used in the pilot program, and felt a greater sense of ''ownership'' of their highway safety programs under the pilot procedures. Prior to their participation in the pilot program, many of these States already had adopted performance measures in their State budgeting and management processes, which eased the transition for these States to a performance-based process under the pilot program. The majority of participating States reported that the pilot program procedures resulted in reduced Federally-imposed burdens and increased State flexibility in administering their highway safety programs.

In December 1996, the 16 States that participated in the pilot program during its initial year submitted their annual reports regarding their highway safety accomplishments under the pilot program. Overall, the reports revealed improvements in data systems, goal-setting, and project selection. They also reported reductions in costs and time expended for the administration of the program, and a broadening of highway safety partnerships. In addition, the reports revealed that pilot States were making steady progress toward achieving established goals. Experience during that initial year confirmed that the pilot procedures resulted in the implementation of successful highway safety programs, consistent with national highway safety goals and Federal goals for regulatory reform, streamlining procedures, and improvements in performance.

In January 1997, during the second year of the pilot program, the agencies held a meeting that was attended by representatives of all States and territories. State representatives identified concerns and offered suggestions in an effort to make further improvements in the pilot program procedures. States generally expressed a desire for more flexibility, such as by extending the due date for submission of application documents, permitting a multi-year planning process, and accommodating short and long range goals in the goal-setting process. States generally agreed that, if progress toward meeting goals did not occur in a State, both State and Federal officials should cooperate to develop an improvement plan for the State.

E. Interim Final Rule

Based on the success of the pilot program during its first two years of operation, the agencies published an interim final rule on June 26, 1997, revising the regulations governing State highway safety programs to implement the pilot procedures. The interim final rule also addressed issues raised during the January 1997 meeting. It extended the due date for submission of application documents from August 1 to September 1 and accommodated the States' desire for flexibility to plan and set goals covering time periods that best meet State needs. It also provided for a joint effort by Federal and State officials to develop an improvement plan, where a State fails to progress to meet goals.

The interim final rule replaced the previously-existing procedures under part 1200 governing the preparation, submission, review, and approval of State Highway Safety Plans (discussed generally under Section C.1, above), with new procedures modeled after those used in the pilot program. The interim final rule required the States to submit information detailing their highway safety programs in the same format as required under the pilot program, but made some adjustments to the pilot program procedures, as noted above.

In addition, the interim final rule changed some of the terminology used in the pilot program. The more descriptive terms ''performance plan'' and ''highway safety plan'' replaced the terms ''benchmark report'' and ''planning document,'' which were used in the pilot program to describe State highway safety goals and planned activities. However, the functions of these documents remained essentially unchanged from those existing under the pilot program, as described under Section D, above. In the preamble to the interim final rule, the agencies explained that States were free to prepare their Performance Plan and Highway Safety Plan as comprehensive documents which also included goals and activities for highway safety programs other than the Section 402 program. The agencies explained that, in such cases, the Highway Safety Plan should identify those programs or activities funded from other sources in a separate section or should identify them clearly in some other manner.

The interim final rule changed the nature of the Federal approval process, consistent with the procedures used during the pilot program. Instead of approving a highway safety plan based on a project-by-project justification, the interim final rule provided for review of the State's highway safety program as a whole, to verify that the State had developed a goal-oriented highway safety program that was approved by the Governor's Representative for Highway Safety, and that identified the State's highway safety problems, established goals and performance measures to effect improvements in highway safety, and described activities designed to achieve those goals.

The interim final rule left unchanged the requirement that States must submit an annual report. However, the contents of the annual report changed from those required under the previously-existing part 1200. Under the interim final rule, the States were required to describe their progress in meeting State highway safety goals, using performance measures identified in the Performance Plan, and the projects and activities funded during the fiscal year. They also were required to include in these reports an explanation of how these projects and activities contributed to meeting the State's highway safety goals. No substantive changes were made to provisions relating to the apportionment and obligation of Federal funds, financial accounting, and the like.

Finally, the interim final rule made conforming changes to the funding procedures for National Priority Program Areas and other program areas contained in Part 1205. These changes allowed States to pursue activities in program areas identified either by the agencies as National Priority Program areas or by the States as State priorities. In pursuing activities under the latter category, States were given more flexibility in the processes they could follow to identify program areas that were State priorities, and the level of Federal oversight was reduced.

A more detailed discussion of the changes appears in the preamble to the interim final rule (62 FR 34397).

F. Comments

The interim final rule solicited comments from all interested parties, and noted that the agencies would respond to all comments and, if appropriate, amend the provisions of the rule. The agencies received comments from State agencies in Florida, Maryland, Michigan, and Washington and from two organizations, the National Association of Governors' Highway Safety Representatives and Advocates for Highway and Auto Safety.

1. In General

Many commenters expressed general approval of the interim final rule. In the State of Washington, the Traffic Safety Commission and the Department of Transportation both supported the interim final rule without change. The Traffic Safety Commission lauded the ''change in attitude and method,'' adding that it was certain to improve the already good working relationship

between NHTSA and the States. The Michigan Office of Highway Safety Planning (Michigan) identified the flexibility for quick response to changing issues, the outcome-based evaluation (which it noted was already being performed at the State level), the opportunity to offer programming flexibility to local communities, and the reduction in paperwork as welcome results of the interim final rule. The National Association of Governors' Highway Safety Representatives (NAGHSR) expressed strong support for the rule, commending the agencies for reflecting State concerns and codifying the flexibility desired by States in the interim final rule. NAGHSR was especially supportive of the change in submission date for the State's application documents from August 1 to September 1 of the fiscal year, stating that this would provide the States with time to obtain additional input from their safety constituencies and to refine their performance plans.

2. Specific Issues

Commenters raised a number of specific issues, all related to the interim final rule's changes to part 1200. The agencies received no comments concerning the interim final rule's changes to part 1205.

a. Federal Approval Procedures

The Florida Department of Transportation (Florida) sought clarification of Federal approval procedures. Noting the discussion that Federal approval of the annual Highway Safety Plan was no longer required, Florida asked why the interim final rule contained references to an ''Approving Official'' (§ 1200.3), ''delayed approval'' (§ 1200.12) if due dates are not met, and a ''letter of Approval'' (§ 1200.13).

The statute under which the Section 402 program operates requires each State to have a highway safety program ''approved by the Secretary (of Transportation),'' and further specifies certain conditions under which the Secretary may not approve a program. Consequently, some approvals continue to be required but, as the agencies explained in the preamble to the interim final rule, the nature of the Federal approval process changed. The interim final rule provided that the contents of the Highway Safety Plan no longer need to be approved on a project-by-project basis. Rather, the State's highway safety program is to be reviewed as a whole, to verify that the State has developed a goal-oriented highway safety program that is approved by the Governor's Representative for Highway Safety, and that identifies the State's highway safety problems, establishes goals and performance measures to effect improvements in highway safety, and describes activities designed to achieve those goals. The agencies believe that this new program level approval process was reflected in the interim final rule without ambiguity. Consequently, the agencies have made no change to the rule in response to this comment.

b. Financial Reporting

To effect a further reduction in paperwork burdens on State highway safety offices, Michigan recommended that changes in the allocation of funds, under § 1200.22, be reported on a quarterly basis rather than within 30 days of the change.

In the interim final rule, the agencies took the significant step of removing the requirement for prior approval of changes during program implementation. The agencies believe that removing the prior approval requirement, coupled with retention of the monthly reporting requirement, strikes the appropriate balance between alleviating burdens to the States and retaining the agencies' ability to monitor, on an ongoing basis, the expenditure of Federal funds. Consequently, the agencies have not adopted the suggestion for quarterly reporting of changes.

Florida noted that the interim final rule prescribes the use of HS Form 217 for financial reporting, despite the transition by some States (including Florida) to paperless electronic reporting through NHTSA's Grant Tracking System. Florida asked which format (i.e., hard copy or electronic) was intended by the interim final rule.

For many States, use of the electronic Grant Tracking System has replaced the use of paper forms to report grant finances. However, even with the electronic system, there is an ''HS 217'' screen for recording the information concerning allocations of federal and State funds to specific program areas, which is then transmitted electronically to NHTSA. This form, either in its electronic or hard copy format, would meet the requirements of the interim final rule. To clarify this point, the agencies have included language in appropriate places in the rule explaining that either HS Form 217 or its electronic equivalent is acceptable.

c. Goal-Setting and Program Evaluation

Advocates for Highway and Auto Safety (Advocates) submitted lengthy comments, expressing the view that the interim final rule ''devolves all essential aspects of the 402 program to state authorities.'' According to Advocates, this more flexible approach will result in the selection of highly subjective safety program goals, the inability to assess cost-effectiveness properly, and the submission of State reports based on ''anecdotal experience and generalized, amorphous information.'' Advocates questioned whether this approach satisfies the statutory requirement that State highway safety programs be based on ''uniform guidelines [which] shall be expressed in terms of performance criteria.''

In support of this concern, Advocates cited the report, ''Evaluation of the section 402 Pilot Process, NHTSA (May, 1997)'' and the separate reports submitted by the 16 original pilot States. According to Advocates, the NHTSA report elaborates only on positive information drawn from the State reports, ignoring the deficiencies. Among the deficiencies Advocates identified in the State reports are the lack of substantive information about goals and accomplishments; and the lack of data, or reliance on old or subjective data, or brushing aside of contradictory data in efforts to demonstrate progress toward meeting State goals. Advocates asserted that some State reports are ''in essence, public relations documents,'' and concluded that if this continues, most State reports will be of no use in assessing the status of the individual State programs as well as the national 402 program as a whole. Advocates also asserted that, with a unique goal-selection process for each State, States might select easily achieved goals at the expense of safety issues that need to be addressed. Advocates questioned whether the new approach met the statutory goal of improving highway safety or provided a credible means for evaluating the effectiveness of the Section 402 program.

The agencies have described, above, the evolution of the Highway Safety Act of 1966, from a framework of enforcing standards to using standards for problem identification, countermeasure development, and program evaluation, and ultimately to using guidelines as an aid in fashioning highway safety programs. We have also noted, above, that since publication of the interim final rule, Congress further amended the Highway Safety Act, allowing the States to consider highly effective programs that may from time to time be identified in a rule by the agency, in lieu of requiring adherence to only those programs specifically designated as most effective in a rule by the agency. In short, the statutory framework has moved away from requiring a centralized, uniform program, with each

State pursuing a set of common goals. Consequently, we do not agree with Advocates' criticism that a goal selection process that is unique to each State overlooks important safety issues. Rather, we believe that this new process provides States with the additional flexibility and ability to tailor their programs that was intended by the Congress.

The agencies agree with Advocates that there was variability in the quality and usefulness of data among the 16 initial annual reports submitted by the States under the pilot process. This is to be expected under any new process. However, for the first time, reports began to address performance goals in highway safety and measures of progress in reaching those goals. Under the previous procedures, this important goal-setting and tracking information was largely unavailable. The agencies fully expect that the process, the data, and the reports will improve over time (although there will always be a time-lag in the data). We believe that the annual reports under the new process will provide an effective means of evaluating progress under the Section 402 program, as more experience is developed. Should this not materialize, the agencies will consider necessary changes to the reporting process in a future action. The agencies do not believe that any change to the rule is necessary at this time to address this comment.

The agencies also do not believe that the concern that States may select only goals that are easy to achieve, overlooking other important areas of highway safety, is warranted. In the course of establishing goals and performance measures, the interim final rule requires a State to describe in its Performance Plan the problem identification process followed and the participants in that process. In addition, the State must issue a public report (the Annual Report) each year. With this public process, we do not believe that States will address only easily-achieved goals. A more likely limitation on the goal-setting process will be the initial absence of effective performance measures and data for certain problem areas. This limitation should be mitigated over time by improvement of the performance-based management process and the data upon which it depends. Consequently, we have made no change to the rule in response to this comment.

Florida questioned the value of the Annual Report (§ 1200.33). According to Florida, the requirement for an Annual Report (as well as the requirement for an Improvement Plan, discussed in the next section) assumes that projects from a Highway Safety Plan can be evaluated against the State's goals within three months of their completion, whereas data to support an evaluation are actually not likely to be available for a year or more after project completion. Florida also stated that it is unclear from § 1200.10 (Application) whether the intent is for the State to have short-term or longer-term safety goals for the program. Florida noted that short term goals exhibit data availability problems.

The agencies agree with Florida that many projects will not produce measurable results within the three-month period between the end of the fiscal year and the due date for submission of the Annual Report. However, the performance-based process implemented by the interim final rule recognizes that the Section 402 program is ongoing, as are the State highway safety programs that it supports. These State programs do not begin and end with the fiscal year, even if certain projects do. Progress toward meeting goals in major highway safety program areas will occur across fiscal years and be attributable to more than one project or activity. Therefore, in the Annual Report, States should report the most recent data available concerning each of their identified performance measures and describe the projects that have contributed to that progress. The agencies have made changes to the ''Annual Report'' section of the rule to clarify these points. With respect to Florida's concern about § 1200.10, that section specifies neither short-term nor long-term goals as requirements in the goal-setting process. Either approach or a mix of both approaches is acceptable, as deemed necessary or appropriate by the State. In all cases, the State should include the most recent and best available data in the annual report.

d. Improvement Plans

Two commenters expressed opposing views about the value of Improvement Plans. Florida recommended elimination of the interim final rule's requirement for an Improvement Plan where a State's broad goals are not met, reasoning that Federal highway safety funds provide only ''seed money'' for a few projects, and should not be assumed to have an ''immediate quantifiable effect on a statewide problem.'' In contrast, NAGHSR supported the requirement for joint development of an Improvement Plan by Federal and State officials where a State has not made sufficient progress to meet goals (§ 1200.25). NAGHSR believed this approach to be a ''reasonable and prudent one'' if a State fails to make progress or does not act in good faith in implementing its plan.

The agencies agree with NAGHSR about the value of Improvement Plans. Florida's recommendation to eliminate the requirement stems from concerns about the lack of contemporaneous data to track progress. The agencies are mindful of these data limitations, and intend to exercise appropriate restraint in the use of Improvement Plans. For example, it is not the agencies' intent to require an Improvement Plan if, in a single year, some of a State's projects or activities do not appear to ''have an immediate quantifiable effect on a statewide problem,'' based on available data. Rather, an improvement plan would be employed if a State demonstrates a pattern that indicates little or no progress toward meeting goals, taking account of all relevant circumstances. The agencies believe that this approach strikes an appropriate balance in ensuring that the expenditure of Section 402 funds ultimately results in measurable traffic safety benefits, and that no changes to the rule are necessary.

e. Use of the Term ''Highway Safety Plan'

The Office of Traffic Safety of the Maryland State Highway Administration (Maryland) objected to the agencies' ''preemption'' of the title ''Highway Safety Plan'' for the program document required under the Section 402 program. Maryland explained that States have comprehensive, multi-year plans that set forth goals and strategies for addressing highway traffic safety problems, and that these State plans typically are called Highway Safety Plans or Strategic Highway Safety Plans. In Maryland's view, the Federally-prescribed Highway Safety Plan under the interim final rule cannot serve as a State's comprehensive Highway Safety Plan because it does not include goals, objectives, strategies, and performance measures and it covers only projects and activities that are supported by Section 402 funds or other Federal funds. Maryland recommends that the interim final rule be amended to redesignate the Highway Safety Plan as the ''Implementation Plan.''

In contrast, NAGHSR supported the name changes for the application documents (i.e., from ''Benchmark Report'' and ''Planning Document'' to ''Performance Plan'' and ''Highway Safety Plan'') , finding them to be less confusing.

As noted in the preamble to the interim final rule, the familiar term ''Highway Safety Plan'' was used for convenience, and many of those most

involved in the Section 402 program continued to use it even during the pilot program. The agencies further explained that States were free to prepare both their Performance Plan and Highway Safety Plan as comprehensive documents that include goals and activities for highway safety programs other than the Section 402 Program. (In fact, since the enactment of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, implementing regulations for a number of new highway safety grant programs have included provisions requiring States to document activities related to these other grant programs in the Highway Safety Plan.) Moreover, the interim final rule does not preclude a State from combining the elements of the Performance Plan and the Highway Safety Plan into one document called a Highway Safety Plan, as long as the substantive content requirements of the interim final rule are met. The interim final rule also does not restrict the amount of information or detail included in the Highway Safety Plan, and does not preclude the identification in the plan of projects or activities that do not receive Federal funds. The only requirement is that the source of funding for other projects or activities be identified, so that the agencies are able to distinguish clearly the programs for which Section 402 funds are being sought. The agencies have added language to the rule clarifying that this is permissible. Finally, a State may, for its own administrative purposes, choose to call the Highway Safety Plan required under this rule by another name, so long as the document satisfies the requirements of the rule. In view of the flexibility afforded by this process, the agencies have made no other change to the rule in response to these comments.

f. Effect of Interim Final Rule

Florida requested clarification of the discussion in the preamble to the interim final rule, which described the material as ''guidance'' for 1998 highway safety plans, but noted that ''this regulation is fully in effect and binding upon its effective date.'' Florida believed that these statements led to confusion about the status of the interim final rule.

The Section 402 program is operated in accordance with published regulations, so that all States will have a clear understanding of the procedures and requirements that accompany the grant funds. When referring to the procedures of the interim final rule as providing ''guidance'' to the States, the agencies did not intend to convey that these procedures were optional or otherwise not fully in effect. As noted in the preamble to the interim final rule, that document (and hence the provisions contained therein) became effective and binding upon publication.

Advocates objected to the publication of an interim final rule to implement the new process, arguing that dispensing with prior public notice and comment is permissible only under the most extreme circumstances, and that no such circumstances existed here.

The agencies previously explained the need to provide prompt guidance to the States about impending grant procedures. We explained that States needed this information well in advance of the start of the fiscal year to which the highway safety program applied in order to comply with application procedures and to allow sufficient time for program planning activities. For these reasons, the agencies concluded that there was good cause for finding that providing notice and comment in connection with this action was impracticable, unnecessary, and contrary to the public interest. The agencies noted that the amendments made by the interim final rule were consistent with the provisions of a pilot program whose procedures were already known to the States. During the two years covered by the pilot programs, these procedures were also announced to the public, in two **Federal Register** notices (60 FR 47418 and 61 FR 46895). The agencies believe that the decision to issue an interim final rule was appropriate and in the public interest.

G. Regulatory Analyses and Notices

Executive Order 12612 (Federalism)

We have analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This action increases the flexibility of the States by implementing a performance-based process under which the States bear the responsibility for setting highway safety goals, in accordance with their individual needs.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any preemptive or retroactive effect. It merely revises existing requirements imposed on States to afford States more flexibility in implementing a grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This rule does not impose any additional burden on the public, but rather reduces burdens and improves the flexibility afforded to States in implementing highway safety programs. This action does not affect the level of funding available in the highway safety program. Accordingly, neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 402 program. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs us to use voluntary consensus standards (i.e., technical standard concerning materials specifications, test methods, sampling procedures, and business practices) in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impracticable. We have determined that no voluntary consensus standards apply to this action.

Unfunded Mandates Reform Act

This action does not impose any unfunded mandates under the Unfunded Mandates Reform Act of

1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Accordingly, neither a written assessment of its costs, benefits, and other effects nor a consideration of regulatory alternatives is required.

Paperwork Reduction Act

The requirement relating to this action, that each State must submit certain documents to receive Section 402 grant funds, is considered to be an information collection requirement, as that term is defined by OMB. This information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through September 30, 2001; OMB Control No. 2127–0003.

National Environmental Policy Act

We have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 23 CFR Parts 1200 and 1205

Grant programs—transportation, Highway safety.

Accordingly, the interim final rule amending part 1205 of title 23 of the Code of Federal Regulations, published at 62 FR 34397, June 26, 1997, is adopted as final without change and the interim final rule amending part 1200 of title 23 of the Code of Federal Regulations, published at 62 FR 34397, June 26, 1997, is adopted as final with the following changes:

1. The authority citation for part 1200 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. In § 1200.10, paragraphs (b) and (d) are revised to read as follows:

§ 1200.10 Application.

* * * * *

(b) A Highway Safety Plan, approved by the Governor's Representative for Highway Safety, describing the projects and activities the State plans to implement to reach the goals identified in the Performance Plan. The Highway Safety Plan must, at a minimum, describe one year of Section 402 program activities (and may include activities funded from other sources, so long as the source of funding is clearly distinguished).

* * * * *

(d) A Program Cost Summary (HS Form 217 or its electronic equivalent), completed to reflect the State's proposed allocations of funds (including carry-forward funds) by program area, based on the goals identified in the Performance Plan and the projects and activities identified in the Highway Safety Plan. The funding level used shall be an estimate of available funding for the upcoming fiscal year.

* * * * *

3. In § 1200.13, paragraph (b) is revised to read as follows:

§ 1200.13 Approval

* * * * *

(b) The approval letter identified in paragraph (a) of this section will contain the following statement:

We have reviewed (STATE)'s _____ fiscal year 19__ Performance Plan, Highway Safety Plan, Certification Statement, and Cost Summary (HS Form 217), as received on (DATE) _____. Based on these submissions, we find your State's highway safety program to be in compliance with the requirements of the Section 402 program. This determination does not constitute an obligation of Federal funds for the fiscal year identified above or an authorization to incur costs against those funds. The obligation of Section 402 program funds will be effected in writing by the NHTSA Administrator at the commencement of the fiscal year identified above. However, Federal funds reprogrammed from the prior-year Highway Safety Program (carry-forward funds) will be available for immediate use by the State on October 1. Reimbursement will be contingent upon the submission of an updated HS Form 217 (or its electronic equivalent), consistent with the requirements of 23 CFR 1200.14(d), within 30 days after either the beginning of the fiscal year identified above or the date of this letter, whichever is later.

* * * * *

4. In § 1200.33, paragraphs (a) and (b) are revised to read as follows:

§ 1200.33 Annual Report.

* * * * *

(a) The State's progress in meeting its highway safety goals, using performance measures identified in the Performance Plan. Both Baseline and most current level of performance under each measure will be given for each goal.

(b) How the projects and activities funded during the fiscal year contributed to meeting the State's highway safety goals. Where data becomes available, a State should report progress from prior year projects that have contributed to meeting current State highway safety goals.

§§ 1200.14 and 1200.22 [Amended]

In addition to the amendments set forth above, in 23 CFR part 1200, remove the words ''HS Form 217'' and add, in their place, the words ''HS Form 217 (or its electronic equivalent)'' in the following places:

(a) Section 1200.14(d)(1) and (d)(2); and

(b) Section 1200.22.

Issued on: July 23, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 99–19321 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AC49

Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Bonus Payments With Bids

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule gives MMS the authority to require Federal offshore Outer Continental Shelf (OCS) lands lease bidders to use any single method for submitting ⅕ bonus payments with OCS bids.

EFFECTIVE DATE: The rule is effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jan Arbegast, Program Analyst, at (703) 787–1227.

SUPPLEMENTARY INFORMATION: On March 31, 1999, we published a Notice of Proposed Rulemaking (64 FR 15320), titled ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Bonus Payments with Bids,'' revising 30 CFR 256.46(b). Our 30-day comment period closed on April 30, 1999. We received four comments. This final rule

amends the regulation at 30 CFR 256.46(b).

Since the mid-1950s, the Federal Government has received bonus bid payments to acquire leases offered at OCS lease sales. Prospective bidders submit the required ⅕ bonus payment in the form of a check or bank draft, which accompanies a sealed bid on a specific offshore tract of submerged land. Since August 1997, we have offered prospective bidders the option of using electronic funds transfer (EFT) to submit their ⅕ bonus payment rather than a check or bank draft. As technology has progressed and as banking transactions become routinely automated, we need to have in place a rule that allows us to require automated payment such as EFT or other methods that may be more efficient. This revision allows flexibility so that we can require the specific method of bonus payment that is most efficient and administratively advantageous to the Government and industry.

Comments on the Rule

We received comments from Pogo Producing Company, Murphy Exploration & Production Company, Texaco Exploration and Production, Inc., and the American Petroleum Institute. Generally, those who commented favored EFT as a method of submitting the ⅕ bonus bid amount.

Comments and Responses to Issues

• *Comment:* Concerning timing of the ⅕ bonus payment, prefer payment by the apparent high bidder on the day following the sale (as currently done) rather than a prepayment on or before the day of the sale.

Response: At this time, we have no plans to change the timing of the EFT bonus payment.

• *Comment:* The mandated use of EFT could cause problems for some companies under some circumstances. Request that MMS maintain highest level of confidentiality of bids and address any potential transmission and receipt problems.

Response: Regarding confidentiality, the bid submission process has not changed. The EFT transaction is completed only after public bid opening. A bidder needs only to complete one EFT transaction for all of its high bids instead of submitting separate cashier's checks for each bid. For a few companies, there may be initial start-up costs and problems, but the benefit to the Government and long-term benefit to the bidder outweigh any initial problems. We have used EFT as an optional method of bid submission in the last four Gulf of Mexico (GOM) OCS lease sales (since August 1997). Companies of various sizes have bid via EFT. The EFT transaction system has worked very efficiently with administrative savings for both bidders and the Government. In the two most recent GOM lease sales, over 90 percent of the ⅕ high bonus bid amounts were transmitted via EFT. The MMS continues to treat all submitted bids with appropriate security and will continue to assist bidders who experience any transmission problems.

• *Comment:* Because all companies may not find EFT convenient or always possible, EFT should remain an option for such payments.

Response: The final rule gives MMS the flexibility to specify the method of payment for bonus bids in the notice of sale. The MMS will carefully monitor each sale and will determine which method(s) of payment for bid submission is most advantageous to both the Government and industry for that particular sale. In certain circumstances, having EFT as a ⅕ bonus bid submission option may be desirable. However, maintaining EFT ⅕ bonus bid submission as an optional form of payment negates much of the administrative savings to the Government since a separate process and infrastructure must be in place to accept paper transactions. Eliminating this paper transaction process produces most of the cost savings to the Government.

• *Comment:* MMS should codify general guidelines for EFT payments in the regulations rather than publish them in each notice of sale.

Response: The MMS believes that the proposed and final sale notice packages are better vehicles for detailed administrative guidance for submitting bids via EFT or for other bid submission guidance, which may change as technology and business practices evolve.

Procedural Matters

Federalism (Executive Order (E.O.) 12612)

According to E.O. 12612, the rule does not have significant Federalism implications. A Federalism assessment is not required.

Takings Implications Assessment (E.O. 12630)

According to E.O. 12630, the rule does not have significant Takings Implications. A Takings Implication Assessment is not required.

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 E.O. 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.

Ultimately, this rule is administratively advantageous to prospective bidders on the OCS. It will save time and administrative burden in their bid-preparation paperwork process and will also use current technology, improving efficiency both for industry and the Government.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Using EFT is common practice in private industry. Through the use of electronic commerce, we reduce the number of transactions required by bidders. A bidder can initiate one EFT transaction for all of its high bids rather than individual checks for each high bid. This does not interfere with other agencies' actions.

(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. This rule has no effect on these programs or rights of the programs' recipients.

(4) This rule does not raise novel legal or policy issues. As previously stated, the intent of this rule is to give the Government flexibility in requiring a specific form of bonus payment, including EFT. It is commonplace in private industry and creates no novel policy issues.

Civil Justice Reform (E.O. 12988)

According to E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

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

Paperwork Reduction Act (PRA) of 1995

This regulation does not require information collection, and a submission under the PRA is not required.

Regulatory Flexibility Act (RFA)

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This revised rule does not have a significant effect on a substantial number of small entities. We are revising this rule to allow us the flexibility to select the method for a prospective bidder at an OCS lease sale to submit a bonus payment. If we select EFT for the method of submitting bonus payments, it will be easy for small companies to submit bonus payments because any small company has access to a commercial bank that routinely uses EFT. All current lessees must transmit the remaining 80 percent of their bonus payment and their first year rental payment via EFT. The regulation has been effective since 1984. This should not be a significant burden. The cost for establishing an account for a small company should be nominal. The bank will charge a fee per wire transfer which may be as high as $30, but if a company has a large volume of wire transfers, the bank may only charge about a dollar or less per wire transfer. In the worst case scenario, if 30 small companies (average for recent sales) submit a bid during a lease sale, at $30 per EFT wire transfer, the total cost for *all* small companies for a typical sale is $900.

This rule only affects lessees on the OCS. We use Standard Industry Code 1381, Drilling Oil and Gas Wells, to characterize this group. There are 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies who are offshore lessees/operators need to follow our rule. According to Small Business Administration (SBA) estimates, 39 companies qualify as large firms and 91 as small firms. The SBA defines a small business as having either (a) annual revenues of $5 million or less for exploration service and field service companies, or (b) less than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The rule gives us the flexibility to make adjustments to determine which method of bid submission is preferable (based on technological advances) for a bidder at an OCS lease sale to submit a bonus payment. We believe both bidders and MMS realize this efficiency. When using EFT, which is now commonplace, a bidder will need to advise its commercial bank to submit its bonus payment via EFT. When using EFT, the bidder will contact the MMS Royalty Management Office designated in the final sale notice for the proposed lease sale.

If EFT is used, overall lessee (prospective bidder's) costs will decrease as well as bid preparation time. This is not a major rule. The cost of implementation should be minimal, regardless of company size. Since *one* EFT transaction can be used per sale, and it costs $30 for the wire transfer compared to the administrative costs (e.g., fees charged to the companies by the bank to prepare cashier's check, staff time to cancel checks on bids a company does not win, and committing and estimating funds needed for cashier's check earlier in the bidding process compared to the immediacy of EFT transactions) of preparing a cashier's check for *each* individual bid, there is little doubt that using EFT is more cost effective and more efficient than writing a separate check for each high bid.

The rule should not affect the price that a company will charge for its product or service. It should increase efficiency and decrease administrative burden. The rule should not cause any company to go out of business. In fact, this rule will give MMS the ability to establish on a sale-by-sale basis, the most efficient and effective payment method for both MMS and industry. If EFT is used, hundreds of dollars in staff time may be saved by MMS and industry.

Some small companies may consider a change in the method by which they submit bids at lease sales to be significant (from paper check to EFT). Other companies may think the change is trivial. Several small companies may experience a short-term effect as they revise current business practices. The rule should not have a significant economic effect on any company qualified to participate in OCS lease sales.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. This rule will increase the efficiency and reduce the administrative burden of both the Government and private industry.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will decrease costs and time for prospective bidders preparing for bid submission. It will reduce the Government's administrative burden as well. If EFT is used, the Government and industry will save potentially hundreds of dollars in bid preparation time and administrative costs. Since *one* EFT transaction can be used per sale, and it costs $30 for the wire transfer compared to the administrative costs of preparing a cashier's check for *each* bid, there is little doubt that using EFT is more cost effective and more efficient.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule will increase productivity, innovation, and ability of U.S.-based enterprises.

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

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 12, 1999.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 256.46, revise paragraph (b) to read as follows:

§ 256.46 Submission of bids.

* * * * *

(b) MMS requires a deposit for each bid. The notice of sale will specify the bid deposit amount and method of payment.

* * * * *

[FR Doc. 99–19262 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Tracking No. MO–076–1076; FRL–6408–3]

Finding of Failure To Submit a Revised State Implementation Plan (SIP) for Lead; Missouri; Doe Run-Herculaneum Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is taking final action to find that the state of Missouri failed to submit a revised SIP required for the Doe Run-Herculaneum lead nonattainment area. The deadline for these SIP revisions was August 15, 1998.

The failure-to-submit finding triggers the 18-month time clock for the mandatory application of sanctions and a 2-year time clock for a Federal Implementation Plan (FIP) under the Clean Air Act (CAA). This action is consistent with the mechanism of the CAA for ensuring timely SIP submissions.

EFFECTIVE DATE: July 14, 1999.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7787.

SUPPLEMENTARY INFORMATION:

I. Background

What Is the Doe Run-Herculaneum Lead Nonattainment Area?

The Doe Run-Herculaneum lead nonattainment area is the area within the vicinity of the Doe Run primary lead smelter which fails to meet the national ambient air quality standards (NAAQS or standard) for lead. In 1991 the area was designated as nonattainment for lead pursuant to section 107(d) of the CAA. The nonattainment designation was codified in 40 CFR part 81 and became effective on January 6, 1992. See 56 FR 56694 (November 6, 1991). The nonattainment designation applies to that part of Jefferson County, Missouri, which is within the city limits of the town of Herculaneum. The Doe Run Company has operated a primary lead smelter in Herculaneum since 1892.

In response to the nonattainment designation for Doe Run-Herculaneum, the State of Missouri submitted a SIP intended to control lead emissions in the area and thereby attain compliance with the lead standard. The plan established June 30, 1995, as the date by which the Doe Run-Herculaneum area was to have attained compliance with the lead standard. However, the plan failed to provide for attainment of the standard, and observed lead concentrations in the Herculaneum area continue to violate the standard.

What Is the Air Quality Standard for Lead?

EPA established the NAAQS for lead on October 5, 1978 (43 FR 46246). The standard for lead is set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), averaged over a calendar quarter. In setting the standard, EPA considered that for a population of young children, the maximum safe blood lead level (as a geometric mean) was 15 micrograms per deciliter ($\mu g/dl$) and that of this amount, as much as 12 $\mu g/dl$ may be attributable to nonair sources. Therefore, the difference of 3 $\mu g/dl$ was estimated to be the maximum safe contribution to mean blood levels from lead in the air. Furthermore, EPA considered epidemiological evidence that the general relationship between air lead ($\mu g\ Pb/m^3$) and blood lead ($\mu g\ Pb/dl$) is 1 to 2; that is, every 1 $\mu g/m^3$ lead in the air results in an increase of 2 $\mu g/dl$ in blood lead for children. As a result, EPA determined that the lead standard should be 1.5 $\mu g/m^3$.

What Are the Adverse Health Effects of Lead?

Exposure to lead occurs mainly through the inhalation of air and the ingestion of lead in food, water, soil, or dust. It accumulates in the blood, bones, and soft tissues. Because it is not readily excreted, lead can also adversely affect the kidneys, liver, nervous system, and other organs. Excessive exposure to lead may cause neurological impairments such as seizures, mental retardation, and/or behavioral disorders. Even at low doses, lead exposure is associated with damage to the nervous systems of fetuses and young children, resulting in learning deficits and lowered IQ. Recent studies also show that lead may be a factor in high blood pressure and subsequent heart disease.

More detailed information on the adverse health effects of lead can be found in the rulemaking promulgating the lead standard.

Why Has EPA Made a Finding of Failure To Submit?

On August 15, 1997, after taking and responding to public comments, EPA published a document in the **Federal Register** providing notification that the Doe Run-Herculaneum nonattainment area had failed to attain the lead standard by the June 30, 1995, deadline (62 FR 43647). Pursuant to section 179(d) of the CAA, within 12 months of the publication of the failure-to-attain finding (i.e, by August 15, 1998), the state of Missouri was required to submit a revised SIP providing for attainment of the lead standard in the area. However, the state of Missouri failed to submit the required SIP revision by the deadline, and EPA is therefore making a finding of failure to submit. The Governor of Missouri was notified of the state's deficiency on February 25, 1999.

What Are the Consequences of Failure To Submit?

The Missouri Department of Natural Resources is currently working on a revised SIP to attain the lead standard in Herculaneum. If the state fails to submit a complete SIP revision within 18 months of July 14, 1999, then pursuant to section 179(a) of the CAA and 40 CFR 52.31, the offset sanction identified in section 179(b) of the CAA will be applied. If the state still has not made a complete submission six months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area in accordance with 40 CFR 52.31. In addition, section 110(c) of the CAA provides that EPA promulgate a FIP no later than two years after a finding under section 179(a) if prior to that time EPA has not approved the submission correcting the deficiency.

The 18-month clock will stop, and the section 179(b) sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the state has made a complete submittal. In addition, EPA will not promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of the effective date of EPA's finding.

II. Final Action

What Action Is EPA Taking?

We find that the State of Missouri failed to submit SIP revisions for the

Doe Run-Herculaneum lead nonattainment area as required by section 179(d) of the CAA for areas which fail to attain. The revised SIP for the Doe Run-Herculaneum lead nonattainment area was due by August 15, 1998.

This finding of failure to submit initiates the sanctions clock as described in section I of this document. The sanctions clock begins on the effective date of this rulemaking.

What Is the Effective Date for This Rule?

The effective date for this rule is July 14, 1999, the date this action was signed.

EPA is treating this action as a ''rule.'' Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rulemakings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns implementation plan submittals that are already overdue. On February 25, 1999, we sent a letter to the Governor of Missouri stating that we were planning to take the action we are taking today. Consequently, the state has been on notice that today's action was pending. The state and general public are aware of applicable provisions of the CAA that relate to failure to submit a required implementation plan. In addition, this action simply starts a sanctions clock that will not result in offset sanctions for 18 months and that the state may stop by submitting a revised SIP that is found complete by EPA under section 110(k) of the CAA. Furthermore, the FIP clock may be stopped if the revised SIP is found approvable under section 110 and part D of the CAA. These reasons support an effective date prior to 30 days after the date of publication.

Why Is EPA Taking This Action Without Proposing and Taking Comments First?

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). We believe that, because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception in the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure-to-submit elements of an implementation plan required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the CAA for making such determinations.

Finally, notice and comment would be contrary to the public interest because it would divert our resources from the critical substantive review of submitted implementation plans. See 58 FR 51270, 51272, note 17 (October 1, 1993) and 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on any of these entities. This action implements EPA's requirements to review SIPs for completeness under 40 CFR part 51, appendix V. The SIP submission requirements for stopping clocks are not judicially enforceable. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 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 Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health-or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the 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.

E. Regulatory Flexibility Act (RFA)

The RFA, 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. Since this final rule is not subject to notice-and-comment requirements under the APA, or any other statutes, it is not subject to sections 603 or 604 of the RFA. Furthermore, this action will not have a significant impact on a substantial number of small entities because these findings under section 110 and Subchapter I, Part D of the CAA do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FEC*, 773 F.2nd 327 (D.C. Cir. 1985) (agency's certification need only consider the impact of the rule on entities subject to the requirements of the rule). Instead, this action makes findings of failure to submit and establishes a schedule for Missouri to stop the clocks and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to this action because the findings that Missouri failed to submit the required SIP for the Doe Run'Herculaneum area do not, in and of themselves, constitute a Federal mandate because they do not impose any enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the type of analyses described in section 205 in determining whether a state has failed to submit a required SIP. Finally, section 203 does not apply to the action because the SIP submittal schedule to stop the clocks would only affect the state of Missouri, which is not a small government.

G. Paperwork Reduction Act (PRA)

This rule does not contain any information requirements which require OMB approval under the PRA (44 U.S.C. 3501 *et seq.*).

H. 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 14, 1999, the date of signature. 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 U.S. Comptroller General 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).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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, Intergovernmental relations, Lead.

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

Dated: July 14, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–19158 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300893; FRL–6090–9]

RIN 2070–AB78

Zinc Phosphide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy, alfalfa, and clover at 0.1 part per million (ppm) for an additional 1½ –year period. This tolerance will expire and is revoked on August 1, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on timothy, alfalfa, and clover. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective July 28, 1999. Objections and requests for hearings must be received by EPA, on or before September 27, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300893], 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–300893], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300893]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, 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. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 25, 1998 (63 FR 45176) (FRL–6021–6), which announced that on its own initiative under 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) it established time-limited tolerances for the residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 ppm, with an expiration date of February 1, 2000. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of the rodenticide zinc phosphide on timothy, alfalfa, and clover for this year's growing season due to a continued emergency situation. The potential vole population would result in significant economic loss. The currently available methods of control are inadequate and impractical. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of the rodenticide zinc phosphide on timothy, alfalfa, and clover for control of voles in Nevada.

EPA assessed the potential risks presented by residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay). In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 25, 1998 (63 FR 45176). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although these tolerance will expire and are revoked on August 1, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. 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 27, 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 rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). 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, CM #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.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300893] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

IV. 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: July 15, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.284 [Amended]

2. In § 180.284, by amending paragraph (b) by revising the date ''02/01/00'' wherever it appears to read ''8/1/01''.

[FR Doc. 99–19001 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42 and 101–43

[FPMR Amendment H–204]

RIN 3090–AG80

Excess Personal Property Reporting Requirements

AGENCY: Office of Governmentwide Policy, GSA

ACTION: Final rule.

SUMMARY: This final rule revises the Federal Property Management Regulations (FPMR) to remove the prohibition on donation of surplus Federal firearms to allow donations to State and local law enforcement activities. This rule also revises the FPMR to streamline and simplify the assignment of the disposal condition codes which Federal agencies use to report their excess personal property for utilization and donation.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule combines two proposed rules:

- Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities, published in the **Federal Register** on December 9, 1998 (63 FR 68136). Four comments were received and considered in the formulation of this final rule.
- Excess Personal Property Reporting Requirements, published in the **Federal Register** on December 29, 1998 (63 FR 71686). No comments were received.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects

41 CFR Part 101–42

Government property management, Hazardous materials, Reporting and recordkeeping requirements, Surplus Government property.

41 CFR Part 101–43

Government property management, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Parts 101–42 and 101–43 are amended as follows:

1. The authority citation for parts 101–42 and 101–43 continues to read as follows:

Authority: Sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486(c).

PART 101–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

2. Section 101–42.1102–10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–42.1102–10 Firearms.

(a) *Utilization requirements.* (1) In accordance with § 101–43.4801(c) of this chapter, reports of excess reportable firearms and requests for their transfer must be submitted to the:

General Services Administration (7FP–8), Denver, CO 80225–0506.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers must be executed under § 101–43.309–5 of this chapter and, when applicable, § 101–42.1102–8(b). Additional written justification from the requesting agency may be required.

(b) *Donation requirements.* (1) Only handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber in FSC 1005, and rifle and shoulder fired grenade launchers in FSC 1010, assigned a disposal condition code of 4 or better, as defined in § 101–43.4801(e) of this chapter, may be offered by GSA (7FP–8) to State agencies for donation to eligible law enforcement entities for law enforcement purposes only. Donations are limited to only those eligible law enforcement entities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest. Such donations must be executed under § 101–42.1102–8(c) as applicable.

(2) Each SF 123 submitted to GSA must be accompanied by a conditional transfer document, signed by both the intended donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA, and any other required forms or information.

(3) The restrictions on donated firearms shall be in perpetuity, and they may not be released by the State agency without prior written approval from GSA. The donee must notify the State agency when donated firearms are no longer needed. The State agency may, with GSA approval, reassign firearms from one donee to another donee within the state or to another SASP (see § 101–44.205(f) of this chapter); otherwise, firearms must be delivered directly to the place of destruction to be destroyed by either the donee or the State agency. Destruction must be such that each

complete firearm is rendered completely inoperable and incapable of being made operable for any purpose except for the recovery of basic material content in accordance with paragraph (c) of this section. The donee and a representative from the State agency, or designee, must both state in writing that the firearms were so destroyed and the original signed statement must be maintained by the State agency.

(4) Surplus firearms approved for donation must be shipped or transported directly from the holding Federal agency to the donee, and may not be stored in the State agency warehouse; or, arrangements may be made by the State agency for the designated donee to make a direct pickup at the holding agency.

(5) Firearm ammunition may not be donated.

* * * * *

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

3. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b)(1) The SF 120 and SF 120A must be submitted in an original and three copies. Electronic reporting must be as specified and approved by GSA. Reports must be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft must be submitted to the:

General Services Administration (9FB), San Francisco, CA 94015.

(2) Reports of excess firearms must be submitted to the:

General Services Administration (7FP–8), Denver, CO 80225–0506.

4. Section 101–43.305 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 101–43.305 Nonreportable property and property not subject to GSA screening.

* * * * *

(b) * * *

(2) Property dangerous to public health and safety, except the firearms identified in § 101–43.4801(c);

* * * * *

5. Section 101–43.4801 is revised to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal supply groups (FSG) and classes (FSC) comprising reportable property. Property in these groups and classes must be reported to GSA when the following disposal condition code and dollar threshold criteria are met:

(1) With the exception of aircraft and firearms as described in paragraphs (b) and (c) of this section, the disposal condition code as defined in paragraph (e) of this section, is X or better; and

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) In accordance with § 101–43.304–2, and as indicated in the table in paragraph (d) of this section, line items in Federal supply classes 1510, 1520, 1560, 2810, 2840, or any class in FSG 16 must be reported regardless of disposal condition code. In agencies other than the Department of Defense (DOD), all line items in these classes must be reported regardless of disposal condition code when the dollar criteria in paragraph (a)(2) of this section are met. For the DOD, aircraft in FSC 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC 1520, and line items in other classes which are components of these aircraft must be reported regardless of condition code when the dollar criteria in paragraph (a)(2) of this section are met.

(2) Items in Federal supply classes 1510 and 1520 held by DOD or other agencies must be reported to the:

General Services Administration (9FB), San Francisco, California 94102.

(c) With respect to firearms, executive agencies must report the following firearms, regardless of unit cost when assigned a disposal condition code of 4 or better as defined in paragraph (e) of this section, to the General Services Administration (7FP–8), Denver, CO 80225–0506:

(1) Handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber in FSC 1005; and

(2) Rifle and shoulder fired grenade launchers in FSC 1010.

(d) The following table shows Federal supply groups and classes which comprise reportable property:

FSG	FSC	Noun name
10	1005	Guns, through 30mm (Handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber only).
	1010	Guns, over 30 mm up to 75 mm (Rifle and shoulder fired grenade launchers only).
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe structural components.
16	All	Aircraft component and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels 1500 gross tons and over).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline reciprocating engines, except aircraft; and components.
	2810	Gasoline reciprocating engines, aircraft prime mover; and components.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines, aircraft, prime moving; and components.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery.
35	All	Service and trade equipment.
36	All	Special industry machinery (All but 3690 Specialized ammunition and ordnance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining, excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.

FSG	FSC	Noun name
	4920	Aircraft maintenance and repair shops specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire, and power and distribution equipment.
66	All	Instruments and laboratory equipment.
70	All	Information technology equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

(e) The appropriate disposal condition code from the following table must be assigned to each item record, report, or listing of excess personal property:

Disposal condition code	Expanded definition
1	Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
4	Property which shows some wear, but can be used without significant repair.
7	Property which is unusable in its current condition but can be economically repaired.
X	Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
S	Property which has no value except for its basic material content.

Dated: July 20, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–19098 Filed 7–27–99; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, FCC 99–150]

Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document further streamlines the authorization and regulation of privately owned accounting authorities that settle accounts for maritime mobile, maritime satellite, aircraft and hand-held terminal radio services. The Commission concluded that there is no need for the Commission to act as an accounts clearinghouse for maritime and satellite communications and that the private authorities that the Commission has certified, acting under regulations prescribed by the Commission and under its oversight, can successfully settle all accounts for U.S. users of these radio services. The Commission also concluded that Commission withdrawal as an accounting authority will promote competition among private authorities. The Commission initiated this proceeding pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's R&O, FCC 99–150, adopted on June 21, 1999, and released on July 13, 1999. The full text of this R&O is available for inspection and copying during normal business hours in the Federal Communications Commission, Reference Information Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554 The complete text of the R&O may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW, Washington, DC 20036, (202) 857–3800.

Summary of R&O

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 39800, July 24, 1998) (NPRM) to streamline further the regulations and authorization of privately owned accounting authorities that settle accounts in the maritime mobile and maritime mobile-satellite radio services. Maritime mobile satellites are also used to provide satellite-based aviation services and services to hand-held radio terminals. In that connection the Commission proposed to withdraw from performing the functions of an accounting authority and, instead, to rely solely upon the private accounting authorities to settle accounts for U.S. users of maritime and satellite communications. The Commission also proposed to amend its rules to make explicit the fact that certified accounting authorities are required, in settling accounts, to deal with the public on a reasonable and nondiscriminatory basis. The Commission also inquired into whether it should designate a new entity to perform the function of ''accounting authority of last resort'' the Commission has traditionally performed whereby it settles accounts for all users who have not designated an accounting authority at the time they made the radio communication.

2. On June 21, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 99–150) to make final the proposals in its July 1999 NPRM and to institute a transition period leading to the handing over of its functions to private accounting authorities. A proposed rule relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the R&O portion of the document, the Commission affirmed its proposal to withdraw from performing the functions of an accounting authority and to rely solely upon the private accounting authorities to provide account-settlement services for maritime and satellite communications. The Commission made clear that it will continue to operate as administrator of all U.S.-certified accounting authorities and the basic rules and procedures for certifying accounting authorities and will continue to oversee the operation of all certified accounting authorities.

3. The Commission has also made final its proposal to amend section 3.10(e) of its rules (47 CFR 3.10(e)) to make clear that private accounting authorities are required to serve the public on a reasonable and

nondiscriminatory basis in their performance of their accounts-settlement services. The rules had already required private accounting authorities to deal with their customers in a reasonable manner. The Commission concluded, however, that it would be desirable upon its withdrawal as an accounting authority to make explicit the fact that such reasonable treatment requires accounting authorities to offer their services to the public upon a reasonable request therefore, without undue discrimination against any customer or class of customer, and to charge reasonable and nondiscriminatory fees for service.

4. The Commission, however, concluded that, notwithstanding the general requirement for nondiscriminatory treatment, it should continue to exempt one ''grandfathered'' entity from the requirement to serve all comers. Prior to 1996, when the Commission adopted formal rules governing the certification and authorization of private accounting authorities, the Commission had certified a variety of such entities on an interim basis. Under those interim certification procedures, the Commission had allowed one entity to become an accounting authority to provide account-settlements services solely for its own ships. At the time the Commission adopted formal certification rules that imposed upon private authorities the requirement to treat all users in a reasonable manner (section 3.10(e)), the Commission decided to exempt that entity from the obligation of section 3.10(e) to allow it to continue to provide services only for its own ships. The Commission noted that the grandfathered entity had become an accounting authority solely to serve its own ships and had stated that it has no interest in providing account-settlement services as a business. The Commission concluded that, because it had become an accounting authority before there was a requirement to serve all users, it would be a hardship to require the entity to change its operation under the 1996 rules. Because it believes that the amendment of Section 3.10(e) does not substantively alter the obligations contained in the prior wording of Section 3.10(e), the Commission had proposed to continue the exemption under the amended rule section.

Regulatory Flexibility Act

5. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, we prepared an Initial Regulatory Flexibility Analysis (IRA) of the possible impact on small entities of the proposals contained in the July 1999 NPRM in this proceeding. We received no comments on the IRFA. After reviewing comments on the proposals in the NPRM, we have prepared a Final Regulatory Flexibility Analysis (FRFA) on the rules adopted by the R&O. The FRFA is contained in Attachment B.

6. Accordingly, *it is ordered*, pursuant to Sections 4(i), 4(j), 11, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201–205 and 303(r), that this R&O *is hereby adopted*.

7. *It is further ordered* that section 3.10(e) is amended to read as shown in Attachment A.

8. *It is further ordered* that the Office of Public Affairs, Reference Operations Division, *shall send* a Copy of this R&O, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

9. As required by the RFA, 5 U.S.C, 603, the Commission included an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rule Adopted Here

10. This R&O adopts an amendment to Section 3.10 of the Commission's Rules and Regulations to clarify that the section obligates private accounting authorities certified by the Federal Communications Commission to deal with the public on a non-discriminatory basis. We do not believe that this amendment changes the substance of the rule that the Commission adopted in 1996, which implicitly required such non-discriminatory treatment, but believe that it is desirable to make private accounting authorities' obligations as clear as possible.

11. The R&O also adopts the proposal in the NPRM to continue the exemption for one entity that had previously been certified as a private accounting authority on an interim basis that allows it to provide account-settlement services only for its own vessels. This entity had obtained interim certification before the Commission imposed an obligation for private accounting authorities to provide service to all customers requesting it, and the Commission believes that it would work an undue hardship to require it to change the scope of its operations. We believe that the public has adequate opportunity to obtain service from other private accounting authorities the Commission has certified and that there is no reason at this time to require this entity to serve all comers.

12. Finally, this R&O adopts the proposal in the NPRM that the Commission will cease to act as an accounting authority, leaving the settlement of maritime and satellite accounts to the private accounting authorities the Commission has certified. We believe that withdrawal of the Commission as an accounting authority will strengthen the system of private accounting authorities the Commission has created over the years and allow such private authorities to become more competitive. We do not see a need for a governmental body to perform account-settlement functions, because these functions have been performed without difficulty by a variety of private authorities, operating under FCC rules for many years. The Commission has concluded that there is no reason for the FCC to continue to settle the accounts for other U.S. government agencies. We find that the agencies have not argued that they have any special needs with respect to the settlement of their radio accounts that cannot be met by private accounting authorities. The Commission did, however, note that the agencies have relied upon the Commission to settle their accounts and conclude that the immediate withdrawal of the Commission as an accounting authority could cause some temporary disruption or curtailment of service to government users. The Commission, therefore, concluded to delay its departure and to institute a transition period. The Commission believes that such transition period will give that agencies time to make all preparations, including any budgetary adjustments, for shift to a private accounting authority. The nature of the transition period will be addressed by the FNPRM.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. There were no comments submitted in response to the IRFA. Because the proposed amendment of Section 3.10 made no substantive change to the current obligation of private accounting authorities, the adoption of the proposed amendment will have no significant impact upon any small business entities. Similarly, the proposal to continue to exempt one entity from the obligation to provide service to all users on a non-discriminatory basis does not make a change from the present situation, adoption of the proposal will not have

a significant impact upon a small business. The entity that was exempted is not itself a small business. Because there are many other private accounting authorities who are obligated to serve users on a non-discriminatory basis, allowing the one entity to provide services only to its own vessels will not adversely affect any small businesses that are customers of private accounting authorities. Finally, the decision for the FCC to withdraw as an accounting authority should not have any significant impact upon small business entities. Even without the FCC to settle accounts for users, there will be a sizeable number of private accounting authorities to take over FCC functions.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.

15. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data. The rules proposed in this Notice of Proposed Rulemaking, however, apply only to entities providing account-settlement services for maritime mobile and maritime mobile-satellite radio services. As noted, there are currently only 17 such entities. Small businesses may be able to become accounting clearinghouses, as the establishment of such a function does not appear to involve high implementation costs.

D. Description of Projected Recordkeeping and Other Compliance Requirements

16. The rule amendment adopted in this R&O merely clarifies an existing requirement imposed on accounting authorities. It, therefore, does not alter the reporting, recordkeeping or other compliance requirements of certified accounting authorities in the maritime mobile, maritime mobile-satellite, aeronautical and other satellite-based radio services. The decision to continue the exemption of one currently certified accounting authority from the requirement to serve the public on a non-discriminatory basis affects only that entity. Further, because it continues the current exemption, it will not alter that entity's recordkeeping or compliance activities. The decision of the Commission to withdraw as an accounting authority will affect both those now certified as accounting authorities and those who may apply for certification in the future. The withdrawal of the Commission will result in the transfer of the accounts that the Commission now settles to the private accounting authorities. This should give each such accounting authority the opportunity to compete for increased business. The withdrawal of the Commission , however, should not increase the recordkeeping and compliance efforts of private accounting authorities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. Because the rule amendment adopted in this R&O did not alter the obligations of any present or future certified private accounting authority, there was no need to take any steps to minimize the impact of the rule. Similarly, the decision of the Commission to continue the exemption for one entity from the obligation to serve the public on a non-discriminatory basis did not change that entity's current obligations, there was no need to take steps to minimize the impact of the exemption on small entities. The decision of the Commission to withdraw as an accounting authority will increase the potential business of currently certified accounting authorities. It also may make additional entities decide that they would like to seek certification as a private accounting authority. Commission withdrawal as an accounting authority will require those who currently rely upon the FCC to settle their maritime and satellite radio accounts will be required to select new accounting authority from among certified accounting authorities. It is conceivable that selection of such an accounting authority may be more difficult for some small entities than others. Because the Commission has delayed the effectiveness of its withdrawal as an accounting authority until the completion of a transition plan, small entities will not have to choose a new authority immediately. Small entities will be able to bring any special needs to the attention of the Commission during the preparation of the transition plan that will be undertaken pursuant to the FNPRM.

Report to Congress

18. The Commission will send a copy of this R&O, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the R&O, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the R&O and FRFA (or summaries thereof) will be Published in the **Federal Register**. See 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 3

Accounting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

Part 3 of the Commission's Rules and Regulations Title 47 of the Code of Federal Regulations is amended as follows:

PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES

1. The authority citation for Part 3 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

2. Section 3.10 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 3.10 Basic requirements.

* * * * *

(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and fees charged for providing such services shall be reasonable and non-discriminatory. * * *

* * * * *

[FR Doc. 99–19065 Filed 7–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2095; Amdt. 195–66]

RIN 2137-AC 11

Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks; Correction

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

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date of the final rule published on April 2, 1999, to comply with requirements of the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: The effective date of the April 2, 1999 rule is corrected to July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, OPS, (202) 366–4595.

SUPPLEMENTARY INFORMATION: RSPA published a final rule in the **Federal Register** on April 2, 1999 (63 FR 15926) to incorporate by reference various consensus standards for aboveground steel storage tanks used in the transportation of hazardous liquids by pipeline. The final rule amended the hazardous liquid pipeline safety regulations and specified an effective date of May 3, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 specifies that no rule can take effect until each house of Congress and the Comptroller General are provided a copy of the rule. A copy of this rule was not provided to these parties prior to publication of the final rule. Therefore the effective date for the final rule is now corrected to allow the final rule to be delivered to Congress and the Comptroller General. No other dates contained in the April 2, 1999 document are affected by publication of this document.

Correction of Publication

In the **Federal Register** issue of April 2, 1999 (63 FR 15926) make the following correction. On page 15926, in the third column, under the caption ''DATES'', correct the first sentence to read: ''This final rule takes effect July 28, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of Federal Register July 28, 1999.''

Issued in Washington, DC, on July 19, 1999.

Kelly S. Coyner,

Administrator.

[FR Doc. 99–19143 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. NHTSA–98–5064, Notice 2]

RIN 2127–AH33

Motor Vehicle Content Labeling

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulation we issued to implement the American Automobile Labeling Act. That Act requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content. Congress amended that Act last year to make a number of changes in the labeling requirement. This final rule makes the regulation consistent with those changes.

DATES: *Effective date:* The amendments made in this rule are effective June 1, 2000. Manufacturers may voluntarily comply with the amendments before that time.

Petitions for reconsideration: Petitions for reconsideration must be received not later than September 27, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Henrietta Spinner, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–4802).

For legal issues: Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a new regulation, 49 CFR part 583, Automobile Parts Content Labeling, to implement the American Automobile Labeling Act (AALA). That Act, which is codified at 49 U.S.C. 32304, requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content.

As part of the NHTSA Reauthorization Act of 1998,[1] Congress amended the AALA to make a number of changes in the labeling requirement. The changes are set forth in section 7106(d) of the NHTSA Reauthorization Act.

On February 8, 1999, we published in the **Federal Register** (64 FR 6021) a notice of proposed rulemaking (NPRM) to amend Part 583 to conform it to the amended AALA. We discussed each of the changes made by the Congress and the conforming amendments proposed for part 583.

Three of the changes made by Congress were of particular significance. One of these concerned the ''roll-up, roll-down'' provision. The original Act specified that, for purposes of determining percentage U.S./Canadian parts content, any equipment from outside suppliers that was at least 70 percent U.S./Canadian was rolled-up and treated as though it were 100 percent U.S./Canadian. Any equipment under 70 percent was rolled-down and treated by the Act as though it were zero percent U.S./Canadian.

The 1998 amendments eliminated the ''roll-down'' aspect of this provision. While equipment from an outside supplier that is at least 70 percent U.S./Canadian is still to be valued at 100 percent U.S./Canadian, any equipment under 70 percent is now valued to the nearest five percent. Thus, equipment whose calculated U.S./Canadian content is 63 percent is now to be valued at 65 percent, instead of zero percent.

The second of these changes concerned the origin of the engine and transmission. The original Act specified that the label must state the names of the countries of origin for the engine and for the transmission. The Act provided that the determinations of country of origin were to be based on the purchase price of materials received at individual engine/transmission plants, but were to exclude engine/transmission assembly costs. The 1998 amendments specified that assembly and labor costs incurred for the assembly of engines and transmissions are now to be included in making these country of origin determinations.

The third of these changes made permanent a limited, temporary

[1] This Act was part of the Transportation Equity Act for the 21st Century (TEA–21). The full text of TEA–21 and the conference report is available on the Web at http://www.fhwa.dot.gov/tea21/.

provision in the part 583 content calculation procedures giving a vehicle manufacturer added flexibility in making content determinations in those instances in which outside suppliers have not responded to the manufacturer's requests for content information.

In addition to proposing specific changes to conform Part 583 to the amended AALA, we also proposed a change in the format of the messages on the label to make them easier to understand. Part 583 currently requires a brief explanatory note concerning parts content to be provided at the end of the label. We proposed to require that this note be moved to the middle of the label, directly below the items of information for which the note is relevant, i.e., below the specified U.S./Canadian Parts Content and Major Sources of Foreign Parts Content.

We proposed to apply the new requirements to all model year 2000 carlines that were first offered for sale to ultimate purchasers on or after June 1, 1999. Since the changes were relatively straightforward and the statutory amendments left us little discretion, we believed the vehicle manufacturers could implement the changes needed to comply with the new requirements quickly.

Public Comments

We received public comments from several vehicle manufacturers and their associations, and from the National Automobile Dealers Association (NADA). Also, pursuant to the Agreement on Technical Barriers to Trade, the World Trade Organization (WTO) Secretariat was notified of the proposed rule. The European Commission sent comments to the WTO Enquiry Point for the United States, which forwarded the comments to our Docket. A summary of the more significant comments follows.

Several of the commenters reraised previous criticisms of the basic program established by the AALA. However, these comments were not within the scope of the NPRM. Moreover, the criticisms were directed to the AALA itself.

Commenters representing nearly all motor vehicle manufacturers stated that the proposed effective date of June 1, 1999 provided insufficient lead time. The Alliance of Automobile Manufacturers (Alliance) stated that its members would face extreme difficulties in implementing the proposed changes in such a short period. It stated that the elimination of the ''roll-down'' provision will require new, detailed certifications from outside suppliers which cannot reasonably be prepared and obtained in such a short time frame. The Alliance also stated that its member companies may need to adapt their computer systems supporting the AALA parts content calculation. The Alliance recommended an effective date of June 1, 2000.

The Association of International Automobile Manufacturers, Inc. (AIAM) similarly stated that the proposed effective date was neither reasonable nor practicable. That organization stated that auto manufacturers and their suppliers require considerable lead time to prepare an AALA label. AIAM stated that these preparations can often require up to seven months lead time to complete. AIAM provided a chart showing a typical AALA compliance schedule, including specific details of activities manufacturers must undertake.

Commenters also made several recommendations to reduce costs. The Japan Automobile Manufacturers Association (JAMA) stated that while elimination of the ''roll-down'' provision will result in a more accurate picture of actual parts content, it will do so at increased cost to the outside supplier, and hence to the vehicle manufacturer and ultimately the consumer. JAMA stated that one means of addressing this cost burden would be to permit suppliers of parts with low U.S./Canadian content to report that such content is ''minimal'' or ''negligible'' without the burdensome certification requirements otherwise required.

JAMA noted that the agency had previously stated that it did not have authority to permit manufacturers to label vehicles with low U.S./Canadian content as ''minimal,'' given the statutory requirement for manufacturers to provide a specific percentage. That organization stated that it believes the agency placed too much emphasis on its estimate on Congressional intent with respect to the issue.

JAMA stated that, at the very least, the agency should permit outside suppliers to employ the ''minimal'' concept, allowing vehicle manufacturers the option to state that all parts imported from a given overseas supplier are all ''non-U.S./Canadian,'' without keeping records by the individual part. That organization stated that this would serve to reduce the burden and simplify the calculation without compromising the integrity of the statute.

AIAM and Volkswagen made a recommendation with respect to a change to the AALA which specifies that the costs of miscellaneous parts (e.g., nuts, bolts, windshield wiper fluid, etc.) are now allocated to the country where final assembly of the vehicle takes place. These parts previously were not considered in making parts content calculations. AIAM and Volkswagen stated that it is difficult to identify the value of the miscellaneous parts on a particular carline and asked that an averaging concept be permitted, e.g., permit manufacturers to calculate a total value for all of the miscellaneous parts used to produce vehicles at a particular assembly plant and then divide that total by the number of vehicles produced.

One commenter, DaimlerChrysler, objected to the proposal to move the explanatory note to the middle of the label. That company stated that any change to the content label involves a good deal of coordination and programming effort and substantial lead time, and that the change would add additional cost and burden with little or no tangible benefit.

Agency Decision

After carefully considering the comments, we have decided to make the proposed rule final, but with a later effective date.

We have decided to establish an effective date of June 1, 2000, as recommended by the Alliance, while permitting optional early compliance. The proposed effective date of June 1, 1999 was based on an assumption that vehicle manufacturers and suppliers had already begun to collect the information needed to make the revised calculations required by the NHTSA Reauthorization Act of 1998. However, since the comments indicated that this was not true in many cases, the agency has concluded that a significantly longer leadtime is needed.

By permitting optional early compliance, vehicle manufacturers which are able to comply with the new requirements earlier, including for some or all of their model year 2000 vehicles, can do so. We recognize that consumers comparing the labels on different model year 2000 vehicles may sometimes be faced with differing labels. However, the changes are sufficiently minor that we do not believe this will cause any significant confusion.

We note that the AALA and part 583 contemplate that U.S./Canadian parts content and major sources of foreign parts content are determined on a once-a-model-year basis for a particular carline. The June 1, 2000 effective date means that new model year carlines introduced to the public on or after that date must bear the revised labels. New model year carlines introduced before

that date may continue to bear the old labels for the balance of the model year, even for vehicles manufactured after June 1, 2000.

While we have considered JAMA's request to permit suppliers of parts with low U.S./Canadian content to report such content as ''minimal'' or ''negligible'' rather than as a percentage (to the nearest five percent), we do not believe that such an exception from the express statutory requirements has been justified. Most significantly, JAMA has not shown that such an exception would not result in a loss of non-trivial benefits. The agency would not have authority to create such an exception, absent such a showing. Moreover, JAMA has not provided support for its contention that the requirement to provide a percentage is burdensome.

As to the AIAM/Volkswagen request that an averaging concept be permitted for calculating the value of miscellaneous parts, we note that the proposed rule did not include a procedure for calculating the value of these parts. It is our opinion that manufacturers need not identify the individual cost of each nut and bolt, but may simply make a good faith estimate of the overall value of miscellaneous parts. We do not believe it is necessary to state this in the regulatory text itself. One way of making such a good faith estimate might be to calculate a total value for all of the miscellaneous parts used to produce vehicles at a particular assembly plant and then divide that total by the number of vehicles produced. However, if substantially different vehicles were produced at the same plant, the vehicle manufacturer might need to make an adjustment so that the estimated value was reasonable for each individual carline.

While we have considered DaimlerChrysler's arguments against moving the explanatory note, we have decided to adopt this proposed change. As discussed in the NPRM, we believe that moving the note to the middle of the label, directly below the items of information for which the note is relevant, will make the label easier to read. While DaimlerChrysler stated that there is a cost to making any format change, it did not quantify the cost. Given that the label will have to be changed in other ways anyway, we believe that any cost impacts for moving the note will be negligible.

As noted earlier, several of the commenters criticized the basic requirements of the AALA. NADA stated that the rule is of little value to most consumers. AIAM stated that while Congress addressed some of its concerns in last year's amendments, it believes the law continues to provide misleading and inaccurate information. JAMA argued that the statute is costly to implement, burdensome to vehicle manufacturers and outside suppliers, and of little interest or use to vehicle purchasers in their buying decisions.

The EC submitted a comment stating:

> The EC thinks that the label is superfluous, it is getting harder and harder to determine the real origin of details. Many companies manufacture in several countries and they can also be owned by several large owners. The new procedure makes it even more cumbersome when additional details such as screws and clips must be taken into account when determining the origin. The vehicle manufacturers must also get a certificate from each large supplier.

While we understand that a number of parties continue to have objections to the current content labeling program, we note that the objections are with the underlying statute. Since most of the details of the content labeling program are set forth in the AALA, any significant changes could only come from the Congress. We do note, however, that the extended leadtime provided for today's rule and our interpretation that good faith estimates may be made concerning the value of miscellaneous parts will help minimize costs.

We also note that this agency is in the process of conducting an evaluation of the AALA. This evaluation is being conducted pursuant to Executive Order 12866, Regulatory Planning and Review, which requires agencies to conduct periodic evaluations of the effectiveness of its existing regulations and programs. This evaluation is listed in the April 1999 Semiannual Regulatory Agenda. See 64 FR 21706, April 26, 1999. We plan to publish the evaluation of the AALA in the summer of 2000 in the **Federal Register** and will solicit comments from all parties.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This final rule amends 49 CFR part 583 to conform the agency's content labeling requirements and calculation procedures to recent statutory changes. The changes are so minor that they will not have any measurable effect on vehicle prices.

The change most likely to result in any cost impacts is the one requiring outside suppliers to make calculations of U.S./Canadian content, to the nearest five percent, for equipment with U.S./Canadian content below 70 percent. This will increase compliance costs for some outside suppliers. The agency notes that there are about 15,000 suppliers to vehicle manufacturers. However, many small suppliers procure all their materials and components from the same country, and will experience negligible costs. NHTSA believes that cost impacts for other suppliers will be small and will diminish over time. Somewhat higher costs are likely to be experienced the first year as suppliers become familiar with the new calculation procedures and incorporate them into their programming or other systems. While the agency has concluded that the cost impacts will be small, it does not have sufficient information to quantify such costs. No commenter quantified any of the cost impacts. Because the economic impacts of this proposal are so minimal, preparation of a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor. The requirements are strictly informational and, as discussed above, cost impacts small.

C. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

We have analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612. We have determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

Information collection requirements established in this final rule differ from those approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511) and assigned OMB Control Number 2127–0573. The current approval will expire on June 30, 2001. Since NHTSA believes that the changes will result in a small increase in the paperwork burden of this reporting requirement, NHTSA will ask OMB for approval to amend OMB Control Number 2127–0573 to account for any additional information collection burdens imposed on the public.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Imports, Motor vehicles, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 40 CFR 1.50, 501.2(f).

2. Section 583.4 is amended by revising paragraph (b)(7) to read as follows:

§ 583.4 Definitions.

* * * * *

(b) * * *

(7) *Passenger motor vehicle equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from an outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

* * * * *

3. Section 583.5 is amended by revising paragraph (a)(4), (a)(5), (b), and (i) to read as follows:

§ 583.5 Label requirements.

(a) * * *

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (the procedure for making this country of origin determination is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (the procedure for making this country of origin determination is set forth in § 583.8);

* * * * *

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows, with the specified information inserted in the places indicated (except that if there are no major sources of foreign parts content, omit the section ''Major Sources of Foreign Parts Content''):

Parts Content Information

For vehicles in this carline:

U.S./Canadian Parts Content: (insert number) %

Major Sources of Foreign Parts Content:

(Name of country with highest percentage): (insert number) %

(Name of country with second highest percentage): (insert number) %

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

For this vehicle:

Final Assembly Point: (city, state, country)

Country of Origin:

Engine: (name of country)

Transmission: (name of country)

* * * * *

(i) *Carlines assembled in more than one assembly plant.* (1) If a carline is assembled in more than one assembly plant, the manufacturer may, at its option, add the following additional information at the end of the explanatory note specified in paragraph (a)(6) of this section, with the specified information inserted in the places indicated:

Two or more assembly plants produce the vehicles in this carline. The vehicles assembled at the plant where this vehicle was assembled have a U.S./Canadian parts content of [__]%.

(2) A manufacturer selecting this option shall divide the carline for purposes of this additional information into portions representing each assembly plant.

(3) A manufacturer selecting this option for a particular carline shall provide the specified additional information on the labels of all vehicles within the carline.

4. Section 583.6 is amended by revising paragraphs (a), (c)(1)(ii), (c)(3)(ii), and (c)(6) to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis. This determination shall be made before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, is excluded from the calculation of U.S./Canadian parts content. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

(c) * * *

(1) * * *

(ii) to otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(3) * * *

(ii) to otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(6) If a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the U.S./Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following provisions:

(i) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier;

(ii) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider;

(iii) The manufacturer or allied supplier may determine that particular value is added in the United States and/

or Canada only if it has a good faith basis to make that determination;

(iv) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline's total parts content from outside suppliers;

(v) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier;

(vi) This provision does not affect the obligation of outside suppliers to provide the requested information.

* * * * *

5. Section 583.7 is amended by revising paragraph (a) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

6. Section 583.8 is amended by revising paragraphs (b) and (d) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

* * * * *

(b) The value of an engine or transmission is determined by first adding the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. The assembly and labor costs incurred for the final assembly of the engine/transmission are then added to determine the value of the engine or transmission.

* * * * *

(d) *Determination of the total value of an engine/transmission which is attributable to individual countries.* The value of an engine/transmission that is attributable to each country is determined by adding the total value of all of the components installed in that engine/transmission which originated in that country. For the country where final assembly of the engine/transmission takes place, the assembly and labor costs incurred for such final assembly are also added.

* * * * *

7. Section 583.10 is amended by revising paragraph (a)(5) to read as follows:

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) * * *

(5) For equipment which has less than 70 percent of its value added in the United States and Canada,

(i) The country of origin of the equipment, determined under § 583.7(c); and

(ii) The percent of its value added in the United States and Canada, to the nearest 5 percent, determined under § 583.6(c).

* * * * *

Issued on: July 21, 1999.

Frank Seales, Jr.,

Acting Deputy Administrator.

[FR Doc. 99–19318 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980519132–9004–02; I.D. 022498F]

RIN 0648–AK49

Magnuson-Stevens Act Provisions; List of Fisheries and Gear, and Notification Guidelines

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

ACTION: Final rule; delay of effectiveness.

SUMMARY: NMFS delays the effective date of a section of a final rule published January 27, 1999, from July 26, 1999, until December 1, 1999. The section dealt with the prohibitions on the use of nonauthorized fishing gear under the Magnuson-Stevens Act provisions. The delay will allow for revision of the section to add fishing gear currently in use in fisheries in the exclusive economic zone.

DATES: Effective July 23, 1999, the effective date of 50 CFR 600.725(v) that was published on January 27, 1999 (64 FR 4030) is delayed until December 1, 1999. Public comments are invited through September 13, 1999.

ADDRESSES: Submit comments on the final rule to Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Millikin, NMFS, (301) 713–2344.

SUPPLEMENTARY INFORMATION: On January 27, 1999, NMFS issued a final rule, in accordance with section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Act), listing fisheries and fishing gear used in those fisheries. After the effective date of § 600.725(v), no person or vessel may employ fishing gear or participate in a fishery not included in this list without giving 90 days' notice to the appropriate Regional Fishery Management Council, or to the Secretary of Commerce with respect to Atlantic highly migratory species within the U.S. exclusive economic zone (EEZ). Section 600.725(v) was to take effect on July 26, 1999.

NMFS has received information within the past few days that the January 27 list does not include all gears currently used in a number of EEZ fisheries. NMFS is therefore delaying until December 1, 1999, the effective date of § 600.725(v), and expects to revise the rule before that date to add other authorized gear to the list. NMFS welcomes suggestions for revisions to the list of authorized fisheries and gears (see **ADDRESSES**). After the effective date of the revised final rule, changes to the revised list may be made only by following the procedures specified in section 305(a)(4) and (5) of the Act.

Dated: July 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19324 Filed 7–23–99; 4:53 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 071399A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Harpoon category closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Harpoon category annual quota for 1999 will be attained by July 23, 1999. Therefore, the 1999 Harpoon category fishery will be closed effective at 11:30 p.m. on July 23, 1999. This action is being taken to prevent overharvest of the Harpoon category quota.

DATES: Effective 11:30 p.m. local time on July 23, 1999, through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(a) subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Harpoon Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota, is reached, or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The 1999 BFT quota specifications issued pursuant to § 635.27 set a quota of 54 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the Harpoon category during the 1999 fishing year (64 FR 29806, June 3, 1999). Based on reported landings and effort, NMFS projects that this quota will be reached by July 23, 1999. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the Harpoon category must cease at 11:30 p.m. local time July 23, 1999.

The intent of this closure is to prevent overharvest of the quota established for the Harpoon category.

Classification

This action is taken under §§ 635.27(a) and 635.28 (a)(1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 22, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–19282 Filed 7–23–99; 4:23 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–98–007]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would specify in the regulations requirements concerning paying and collecting feeder pig and market hog assessments. This proposed action would add a section to the regulations which implement the Order to provide that the producer who sells the animal must remit to the National Pork Board (Board) the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

DATES: Written comments must be received by September 27, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW; Washington, DC 20250–0251. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS–98–007.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988 and Regulatory Flexibility Act and the Paperwork Reduction Act

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that such Order, a provision of such Order or an obligation imposed in connection with such Order is not in accordance with law; and requesting a modification of the Order or an exemption from the Order. Such person is afforded the opportunity for a hearing on the petition. After the Hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the December 29, 1998, issue of ''Hogs and Pigs,'' USDA's National Agricultural Statistics Service estimates that in 1998 the number of operations with hogs in the United States totaled 114,380. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration. The proposed rule imposes no new burden on the industry. The Act and Order have payment and collection provisions for assessments. This rule further specifies the responsibility for the collection and remittance of assessments on feeder pigs and market hogs in the regulations. This rule would add a section to the regulations to provide that the producer who sells the animal must remit to the Board the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this part have been previously approved by OMB and were assigned OMB control number 0851–0093.

Background and Proposed Change

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383, and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, and 62 FR 26205). Assessments began on November 1, 1986.

For purposes of paying, collecting, and remitting assessments under the Order, porcine animals are divided into three categories: (1) Feeder pigs, (2) market hogs, and (3) breeding stock. Section 1230.71(a) provides that producers producing in the United States a porcine animal raised as a feeder pig, market hog, or for breeding stock, that is sold are to pay an assessment on that animal unless the

producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal in the same category. Section 1230.71(b)(1) provides that purchasers of feeder pigs and market hogs collect assessments on these animals from the producer. Under § 1230.71 producers selling their own breeding stock must remit assessments to the Board. The Order further provides that for the purpose of collecting and remitting assessments on feeder pigs and market hogs, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer are deemed to be the purchaser. Commission merchants, auction markets, or livestock markets who sell breeding stock on behalf of producers are required to collect and remit assessments.

Collection and remittance of assessments from sales transactions involving market hogs and breeding stock have been highly successful since the assessment collections became effective in 1986. For example, according to the Board's records, assessments are being collected and remitted on 99 percent of all market hogs slaughtered commercially in the United States each year.

Assessment collection and remittance on market hogs has been efficient and successful primarily because of the limited number of purchasers, i.e. meat packers, who purchase hogs from all sizes of production units. This centralization of collection points and their limited number facilitates remittance of assessments to the Board and reduces or eliminates compliance problems. However, in the marketing of feeder pigs, there are significantly greater numbers of purchasers which tend to complicate the collection and remittance process and increase the potential for compliance problems.

The Order contemplates that the producer (seller) will pay the assessment on feeder pigs and the purchaser, who also may be a producer, will collect the assessment due and remit it to the Board. For market hogs, the Order contemplates that the producer (seller) will pay the assessment and the purchaser will collect the assessment due and remit it to the Board.

Due to production and marketing changes within the feeder pig industry, an increasing number of high volume feeder pig production units (producers) are selling feeder pigs to large numbers of producers. Pursuant to § 1230.71(b)(1) each of these producers must collect assessments from the seller and remit them to the Board. According to the Board, many feeder pig producers, regardless of the size of their operation, simplify payment by remitting the assessment on all feeder pigs they sell to facilitate the collection and remittance of assessments. However, the large number of purchasers involved in feeder pig sales complicates the collection and remittance process and makes compliance difficult.

The primary focus concerning collection and remittance problems on feeder pigs are transactions commonly referred to as farm-to-farm sales of feeder pigs. These sales transactions typically involve two producers. Frequently, producers who purchase feeder pigs may not consider themselves to be purchasers under the Act and Order and consequently neither the seller nor the purchaser collects and/or remits assessments due. This is particularly the case in farm-to-farm feeder pig sales where producer purchasers may not consider themselves as purchasers in such transactions and therefore do not believe they are required to collect and remit assessments to the Board.

To clarify the meaning of a purchaser for the purpose of collection and remittance of assessments for the sale of feeder pigs and also for market hogs and to specify that each producer who sells an animal for the first time as a feeder pig or market hog is obligated to pay the required assessment, this proposed rule would add a new section § 1230.113 to the rules and regulations titled ''Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs.'' That section would provide that purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board pursuant to the provisions of § 1230.71. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111. This proposed change would facilitate enforcement of assessment collection in the Pork Promotion, Research, and Consumer Information Program.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Paragraph § 1230.113 would be added to read as follows:

§ 1230.113 Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

Dated: July 20, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–19291 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–26]

Chromalloy Tallahassee, a Division of Chromalloy Gas Turbine Corporation; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–40–26) submitted by Chromalloy Tallahassee, a division of Chromalloy Gas Turbine Corporation. The petitioner requested that the NRC amend its regulations regarding the exemption from licensing of source material found in 10 CFR 40.13(c)(8), so that the exemption would include finished parts containing nickel-thoria

alloy from both aircraft engines and battle tank engines. However, after performing a regulatory analysis, no benefits of granting this petition could be identified. Also, it has not been persuasively shown that denying the petition would have a negative impact on Chromalloy since, as a Florida general licensee, Chromalloy currently could repair battle tank engines containing nickel-thoria alloy parts provided two possession limits are observed. Further, Chromalloy now indicates it has no definite plans to begin such repairs in the foreseeable future. But, to grant this petition the NRC would incur the cost of conducting a rulemaking. Moreover, before this action could have an effect on Chromalloy, the cost of an additional rulemaking to change the Florida Administrative Code would need to be incurred by the State of Florida. Thus, when viewed in terms of regulatory effectiveness and efficiency, the NRC can not justify the expenditure of resources to grant this petition.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington DC. No public comments on this petition for rulemaking were received.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Telford, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6229, e-mail JLT@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

The petition was submitted by Chromalloy Tallahassee (Chromalloy), a Federal Aviation Administration approved Overhaul and Repair facility located in Florida, a NRC Agreement State.[1] Chromalloy overhauls and repairs jet aircraft engine combustors (e.g., for the JT9D jet engine). These combustors are made of nickel-thoria. This use of thorium source material falls under the exemption from licensing found in 10 CFR 40.13(c)(8), and in the Florida Administrative Code in Paragraph 64E–5.202(3)(i).

Chromalloy stated that it was interested in overhauling and repairing the engine of the M1A1 ABRAMS Main Battle Tank. This tank's engine is the AGT 1500 gas turbine engine. The combustor of the AGT 1500 contains 15 splash rings and 15 fuel nozzles made of nickel-thoria alloy. The thorium content of this nickel-thoria alloy is less than 2% by weight. Moreover, the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (i.e., thorium dioxide). Chromalloy stated that these splash rings and fuel nozzles meet all the technical requirements of the current licensing exemption, except that the exemption is limited to finished aircraft engine parts. Chromalloy requested that the NRC establish an exemption from licensing to include the AGT 1500 tank gas turbine engine.

In support of its petition, Chromalloy referenced a petition for rulemaking submitted to the Commission by E. I. du Pont de Nemours & Company (PRM–40–6) dated February 13, 1963. That petition requested that the Commission amend its regulations to establish an exemption from licensing for persons receiving, possessing, using, transferring, or importing any finished products containing nickel-thorium alloys with up to 4 percent thorium by weight. Chromalloy pointed out that the Commission's response had been:

> the Commission has found that the possession and use in the United States of thorium contained in thorium metal alloys in which the thorium does not exceed 4 percent by weight is not of significance to the common defense and security, and that such activities can be conducted without unreasonable hazard to life or property.

The proposed exemption was for ''any finished product or part;'' nowhere in PRM–40–6 do the words ''aircraft engine parts'' appear.

Chromalloy stated that the final exemption was not published until November 18, 1967 (32 FR 15872) and that the expression ''jet aircraft engines'' is mentioned for the first time in that notice.

After consulting with the NRC staff, Chromalloy believes that the material used for the experimental tests for the final exemption must have been from jet aircraft engines. At that time, the only use of nickel-thoria components was in aircraft engines. Chromalloy stated that this is possibly the reason the exemption specifies only finished aircraft engine parts. The production of the M1A1 Abrams Main Battle Tank was begun in 1985. This tank's engine, the AGT 1500, contains the same nickel-thoria alloy as is used in the JT9D jet aircraft engine. Therefore, Chromalloy stated that the alloy material in the AGT 1500 gas turbine engine would produce the same results, if put to the same experimental tests the Commission conducted in 1963–1967.

Chromalloy observed that in a **Federal Register** notice published by the Atomic Energy Commission on November 18, 1967 (32 FR 15872), the Commission considered that jet aircraft engine parts are not intended for public use.

> The Commission considers that finished aircraft engine parts containing nickel-thoria alloy are not products intended for use by the general public within the purview of § 150.15(a)(6) of 10 CFR Part 150, * * *

Finally, Chromalloy asserted that if the Commission does not view the presence of nickel-thoria in aircraft engine parts to be unsafe to the public, then the presence of nickel-thoria in tank engine parts should be viewed in the same light. Moreover, the public's exposure to tank engine parts is far less than the public's exposure to jet aircraft engine parts. Therefore, Chromalloy stated that the exemption in § 40.13(c)(8) should be applicable to both the JT9D aircraft gas turbine engine and the AGT 1500 tank gas turbine engine.

Public Comments on the Petition

The Notice of Receipt of the Petition was published in the **Federal Register** on December 10, 1997 (62 FR 65039). The comment period closed on February 23, 1998. No comments were received.

Reasons for Denial

In order to determine whether this petition should be granted or denied, the NRC performed a regulatory analysis. The details of the analysis are provided below.

Benefit

The NRC was unable to identify any benefits of granting this petition. Granting the petition would not improve the level of protection of public health and safety. If the petition were granted, radiation exposure of workers would be expected to either remain the same or increase modestly. Moreover, granting the petition would neither address a generic issue nor improve regulatory effectiveness and efficiency for either the NRC or the State of Florida. The NRC has a mechanism in § 40.14 to address a non-generic issue by providing a specific exemption, upon review of a request to possess additional source material. If Chromalloy desired to make such a request, the same mechanism exists in the Florida Administrative Code in Subsection 64E-5.102(1). In addition, granting the petition would not provide any practical benefits to Chromalloy since, it currently may overhaul and repair the AGT 1500 tank gas turbine engine as a general licensee under the Florida Administrative Code Subsection 64E–

[1] An Agreement State is one which has entered into an Agreement with NRC to assume regulatory authority over byproduct, source, and small quantities of special nuclear material.

5.205(1), provided two possession limits are observed. Chromalloy may use and transfer up to 15 pounds of source material at any given time, and may receive up to 150 pounds of source material in any one calendar year. Since the 15 splash rings and 15 fuel nozzles in the AGT 1500 tank engine are 2 percent thorium by weight, Chromalloy could possess up to 750 pounds of such nickel-thoria alloy parts at any given time, and up to 7,500 pounds of such parts in any calendar year.

Impact

Denying the petition would have no negative impact on Chromalloy. As a Florida general licensee, Chromalloy could repair AGT 1500 tank gas turbine engines. However, contrary to its stated desires in the petition, Chromalloy now indicates it has no definite plans to begin such repairs in the foreseeable future. But, to grant this petition the NRC would incur the cost of conducting a rulemaking. Moreover, before this action could have an effect on Chromalloy, the cost of an additional rulemaking to change the Florida Administrative Code would need to be incurred by the State of Florida. Whether Florida would decide to change its Administrative Code is uncertain.

In summary, this petition is being denied because no benefits of granting the petition could be identified and the cost of granting the petition would include two rulemakings. Thus, when viewed in terms of regulatory effectiveness and efficiency, the NRC can not justify the expenditure of resources to grant this petition. For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 16th day of July, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 99–19258 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA is proposing to amend its regulation regarding secondary capital accounts in low-income designated credit unions to specify that interest on these accounts may be accrued in the account, paid directly to the investor, or paid into a separate account from which an investor may make withdrawals. The NCUA believes that the proposed changes will clarify the permissible alternatives and provide additional flexibility for low-income designated credit unions.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: Federal credit unions that serve predominantly low-income members may be designated by NCUA as low-income credit unions (LICUs). LICUs play an important role in providing financial services to low-income individuals and communities for whom these services are often unavailable. LICUs often find it difficult, however, to accumulate capital due to the limited resources of their members. In response to this, NCUA promulgated rules in 1996 to enhance LICUs' ability to build capital. 61 FR 3788 (February 2, 1996); 61 FR 50696 (September 27, 1996). Specifically, § 701.34 of NCUA's regulations permits LICUs to offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers.

Section 701.34 provides that funds in the secondary capital account must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings. This includes accrued interest that has been paid into the account. NCUA wishes to clarify, however, that although interest paid into the secondary capital account must remain there until account maturity, there are other permissible alternatives for disposing of accrued interest. Specifically, in addition to depositing accrued interest into the secondary capital account, a credit union may pay the interest directly to the investor or deposit it into a separate account from which the investor could make withdrawals.

Section 701.34 specifies that net available reserves and undivided earnings, as described above, are reserves and undivided earnings exclusive of allowance accounts for loan and investment losses. Allowance accounts for investment losses are no longer recognized by generally accepted accounting principles or NCUA's regulatory accounting practices. Accordingly, the proposed rule makes no reference to these accounts. Language in the rule pertaining to allowance accounts for loan losses remains unchanged.

Regulatory Procedures

Regulatory Flexibility Act

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

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: ''Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope.'' This rule will not have a direct effect 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. NCUA has determined that this rule does not constitute a significant regulatory action for purposes of the executive order.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, it is proposed that 12 CFR part 701 be amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.34 is amended by revising paragraph (b)(7) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(7) Funds deposited into the secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (*i.e.*, reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

* * * * *

3. The appendix to § 701.34 is amended by revising the second to last paragraph to read as follows:

Appendix to § 701.34

* * * * *

The funds committed to the secondary capital account and any interest paid into the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's net available reserves and undivided earnings exclusive of allowance accounts for loan losses, and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (organization).

* * * * *

[FR Doc. 99–19252 Filed 7–27–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NCUA requests public comment on revisions to the rule governing corporate credit unions (corporates). As part of its regulatory review process, NCUA has identified provisions for further clarification or revision. Comments from interested parties on these issues will assist NCUA in its regulatory review process.

DATES: Comments must be received on or before November 26, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Director, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6640; or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On March 7, 1997, NCUA issued a final rule that completely revised part 704 of its regulations, the provisions governing corporates. 62 FR 12929 (March 19, 1997). The final rule noted that ''[a] number of commenters strongly suggested that NCUA review the corporate regulation on an annual basis.'' *Id.* NCUA agreed that a periodic review was necessary, but that the frequency should be determined by circumstances and need. The NCUA Board directed the Office of Corporate Credit Unions (OCCU) to present a report on the rule within 18 months of publication. When the final regulation's compliance date was extended from January 1, 1998, to May 1, 1998, the completion date for the report to the NCUA Board was extended to provide adequate time to assess the impact of the rule.

In February 1999, OCCU provided its report to the NCUA Board. The report identified the major areas of the rule for revision or clarification. The report was based on informal comments from 12 corporates, the Association of Corporate Credit Unions, the National Association of State Credit Union Supervisors, OCCU staff, and Office of Investment Services staff.

This advance notice of proposed rulemaking requests comment on several issues raised as a result of OCCU's 18 month review. While NCUA welcomes comment on other sections of Part 704 not addressed in this advance notice, a proposed rule will be issued providing another opportunity to provide comments on all sections of Part 704.

B. Specific Areas for Review

Section 704.2 Definitions

Asset-Backed Securities

NCUA seeks comment on the definition of asset-backed security. There has been some confusion as to the types of securities that are permissible under the current, broad definition. For example, the definition does not specifically prohibit securities with foreign collateral. However, corporates are only permitted to make foreign investments if they have Part III Expanded Authority. NCUA is seeking recommendations on how to address this issue.

Membership Capital

A number of issues have been raised regarding the various capital accounts in part 704. Membership capital has been the most utilized source of additional capital for corporates.

The regulation allows for an adjustment period during which the membership capital account can be adjusted in relation to a specific measure. Although the regulation does not dictate the measure, many corporates utilize a member's asset size. NCUA seeks comment on whether the regulation should require a specific measure, such as, requiring the membership capital account to be adjusted in order to remain equivalent to at least one percent of the member credit union's assets as of December 31st of the prior year.

Additionally, the regulation does not state the frequency of the adjustment

period. NCUA staff believes that either an annual or semi-annual adjustment period is appropriate. There have been suggestions that a more frequent adjustment period (such as monthly or quarterly) would be more appropriate due to the often significant fluctuation in corporate assets over a short period of time. NCUA invites comment on whether the regulation should require specific allowable adjustment periods (annually, quarterly, monthly, daily) or if this should be left to the corporate to establish as long as the adjustment period is fully disclosed to the member when the account is opened.

NCUA also seeks comment on whether a minimum capital level should be prescribed that, once reached, would prohibit readjusting downward an adjusted balance membership capital account.

Paid-In Capital

NCUA believes that the credit union system is adequately capitalized. The highest concentration of capital currently rests with natural person credit unions, while corporate credit unions are somewhat less capitalized. The current regulation differentiates between member and nonmember paid-in capital by requiring nonmember paid-in capital be approved by NCUA. Should the nonmember paid-in capital requirements apply if the nonmember is a credit union? NCUA welcomes comments on the benefits or disadvantages of this proposal, how the process might best be implemented, and the treatment of such accounts under Generally Accepted Accounting Principles (GAAP).

The current regulation provides that paid-in capital cannot exceed reserves and undivided earnings. NCUA seeks comment on whether this limitation should be eliminated or revised. If the limitation on paid-in capital is eliminated, should the various regulatory limitations that are tied to reserves and undivided earnings (RUDE) and paid-in capital be revisited?

Unmatched Embedded Options

Section 704.8(d)(2) requires corporates with unmatched embedded options in excess of 200 percent of reserves, undivided earnings, and paid-in capital to perform additional tests. NCUA believes a definition of unmatched embedded options may be necessary and welcomes comment on this issue.

Section 704.7 Lending

Section 704.7(g) permits a corporate to enter into a loan participation agreement only with another corporate. NCUA seeks comments on the expansion of loan participation authority for corporates. Issues to be considered include: (1) should participation loans with entities other than corporates be permitted; (2) the impact of participation loans with entities other than corporates on a corporate's banker's bank exemption from the Federal Reserve Board's Regulation D reserve requirements; (3) the impact of loan participations on a corporate's liquidity position; (4) whether making participation loans should require corporates to establish additional reserves; (5) should corporates be allowed to participate in business and/or consumer loans; and (6) whether corporates have the expertise to underwrite and participate in business and consumer loans.

Section 704.12 Services

NCUA requests comment on the advantages and disadvantages of eliminating this section of the regulation. If § 704.12 is eliminated, as a result, defined fields of membership would also be eliminated for federal corporates. NCUA encourages commenters to address any concerns or benefits to the credit union system from such an action.

A number of corporates have indicated the need for a clearer definition of what constitutes ''correspondent services.'' NCUA believes clarification is warranted, and encourages commenters to provide specific examples of appropriate correspondent services and definition terminology.

Section 704.15 Audit Requirements

Statement of Auditing Standard (SAS) No. 70, Reports on the Processing of Transactions by Service Organizations, provides guidance: (1) on the factors an independent auditor should consider when auditing the financial statements of a corporate credit union that uses a service organization to process certain transactions; and (2) for independent service auditors who issue reports for a corporate credit union that functions as service organization for others. This report is primarily intended for the user organization's auditors.

NCUA is seeking comment on a number of specific questions regarding requirements for SAS 70 reports under the latter situation noted above. Should a corporate credit union, when processing transactions for others as a service organization, be required to obtain a SAS 70 report. NCUA is aware that user organization auditors, in seeking to comply with auditing standards, routinely appeal to the service organization to provide a SAS 70 report through its service auditor.

If regulation requires a SAS 70 report, should it only apply to corporate credit unions above a particular asset size?

Additionally, the Board seeks comment on the two types of SAS 70 reports a service auditor can provide the corporate credit union that functions as a service organization processing transaction for others. These are: (1) a report on controls placed in operation; and (2) a report on controls placed in operation and tests of operating effectiveness. Generally, the service organization determines which type of engagement needs to be performed. Should the regulation specify which type of report the corporate must obtain?

Section 704.18 Fidelity Bond Coverage

NCUA seeks public comment on whether fidelity bond coverage should be made optional for corporates. In lieu of a fidelity bond, what types of criteria (such as maintaining a specific capital level) should be utilized to determine appropriate protection exists for the corporate and its members?

Section 704.19 Wholesale Corporate Credit Unions

NCUA questions the need for separate regulatory requirements for wholesale corporates. NCUA invites comment on whether there is a need for separate regulatory requirements for wholesale corporates and, if such a need exists, whether the existing regulatory requirements are appropriate.

Appendix B—Expanded Authorities and Requirements

NCUA asks for comment on the existing investment authorities under each expanded authority section and recommendations for any additional investment powers. Any recommendations for additional investment authority should be consistent with the infrastructure and personnel expertise required by each of the four specific expanded authority levels.

NCUA believes it is necessary to review the permissible minimum credit ratings allowed under each authority level. For example, Part I and II provide authority to acquire asset-backed securities (ABS) rated no lower than AA. NCUA seeks comment on the existing minimum credit ratings allowed for Part I, Part II, and Part III expanded authority levels.

Part III

Part III authority allows corporates to make limited foreign investments.

NCUA has been asked to expand the types of foreign investments that corporates with Part III authority can make. NCUA seeks comments on the advisability of allowing corporates with Part III expanded authority to invest specifically in foreign ABS and foreign corporate debt obligations. NCUA invites commenters to provide additional recommendations for foreign investments that should be considered for Part III corporates.

Part IV

Part IV expanded authority allows corporates to engage in derivatives transactions. NCUA is cognizant that the derivative market is complex and seeks comment on the need for additional guidance in this area. Further, it has been proposed to allow corporates without Part IV authority to utilize derivatives as a means of risk reduction. This would be accomplished through a contractual arrangement with a corporate that has Part IV authority. NCUA invites commenters to address this proposal.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–19253 Filed 7–27–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain AlliedSignal Inc. high pressure compressor (HPC) impellers installed on TFE731 series turbofan engines. This proposal would require replacing the HPC impeller with a serviceable impeller that has been eddy-current inspected. This proposal is prompted by an incident of an uncontained impeller failure due to cracking in the seal relief area of the HPC impeller. The actions specified by the proposed AD are intended to prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane.

DATES: Comments must be received by September 27, 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–10–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. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–10–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has determined that on May 10, 1998, a high pressure compressor (HPC) impeller, part number (P/N) 3073394–1, separated and exited from an AlliedSignal Inc. TFE731–3R–1D turbofan engine. This impeller had accumulated 9,080 engine cycles since new (CSN) and 5,829 engine cycles since rework of the seal relief area in November, 1982, performed in accordance with AlliedSignal Service Bulletin (SB) TFE731–72–3239 RWK. Fracture analysis revealed a subsurface primary origin in the area of the seal relief and that the crack propagated through the bore for about 1.0 inch. No melt or forging related discrepancies were found at the fatigue origin; however, localized alpha grain colonies with an unfavorable fracture plane orientation were present. Recent low-temperature fatigue testing with a sustained peak hold time (dwell) at higher than engine-operating stresses indicate that normal cyclic fatigue lives may be influenced by dwell times and an unfavorable titanium macrostructure. The FAA has determined that low-cycle fatigue (LCF) cracking in high stressed areas of the HPC impeller may lead to an uncontained impeller separation. This condition, if not corrected, could result in fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A72–3641, dated November 24, 1998, that describes procedures for replacing the HPC impellers, P/Ns 3073393–1, 3073394–1, 3073433–1, and 3073434–1 with impellers that have been inspected using a specialized eddy

current inspection. At present, only AlliedSignal is properly trained and equipped to perform this inspection that requires specialized training and tooling. Within the near future, the FAA expects to approve a revision to ASB TFE731–A72–3641 which will include a reference to the eddy-current procedure document and additional facilities that are properly trained and equipped to perform this specialized inspection. The Final Rule will incorporate the revised ASB.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane. This AD requires replacing the HPC impeller with a serviceable impeller, which has been eddy-current inspected, at the next core zone inspection (CZI) or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC impeller for cause if the impeller has more than 1,000 cycles since the last eddy current inspection. These replacements must be done in accordance with the SB described previously.

There are approximately 2,105 engines of the affected design in the worldwide fleet. The FAA estimates that 1,537 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The FAA also estimates that some of the impellers will be replaced, and that the impeller will cost about $45,000. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $996,660.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AlliedSignal Inc.: Docket No. 99–NE–10–AD.

Applicability: AlliedSignal Inc. TFE731 series turbofan engines with high pressure compressor (HPC) impeller part numbers (P/Ns) 3073393–1, 3073394–1, 3073433–1, and 3073434–1 installed on, but not limited to Avions Marcel Dassault—Breguet Aviation (AMD/BA) Falcon 10, Dassault-Aviation Mystere-Falcon 50, and 900 series airplanes; Dassault Aviation Mystere-Falcon 20 series airplanes, Learjet Inc. Models 31, 35, 36, and 55 series airplanes; Lockheed-Georgia Corporation 1329–23 and -25 series airplanes; Israel Aircraft Industries Ltd. 1124 series and 1125 Westwind series airplanes; Cessna Aircraft Co. Model 650 Citation III, VI, and VII series airplanes; Raytheon Aircraft Co. HS–125 series airplanes; and Sabreliner Corporation NA–265–65 airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane, accomplish the following:

(a) Replace the HPC impeller, P/N's 3073393–1, 3073394–1, 3073433–1, and 3073434–1, in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal Alert Service Bulletin (ASB) TFE731–A72–3641, dated November 24, 1998, at the earlier of the following:

(1) At the next core zone inspection (CZI) after the effective date of this AD, or

(2) At the next access to the HPC module after the effective date of this AD.

(b) Thereafter, replace the HPC impeller, P/N's 3073393–1, 3073394–1, 3073433–1, and 3073434–1, in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal SB TFE731–A72–3641, dated November 24, 1998, whenever either of the following conditions are met:

(1) At every CZI, or

(2) When accessing the HPC module and the impeller has accumulated more than 1,000 cycles since the last ECI.

(c) This AD defines access to the HPC module as whenever the low pressure compressor case is removed from the compressor interstage diffuser.

(d) Installation of HPC impellers having P/N's 3073398–X, 3073435–X, and 3075171–X, where ''X'' represents any dash number, constitutes terminating action for the inspection requirements of this AD.

Note 2: Installation of HPC impellers having P/N's 3070274–1 and 3072639–1, which are subject to AD 82–23–03 R1, are not considered eligible parts for terminating action.

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

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

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

Issued in Burlington, Massachusetts, on July 22, 1999.

David A. Downey,

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

[FR Doc. 99–19322 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91

[Docket No. FAA–1999–5925; Notice No. 99–15]

RIN 2120–AG82

Reduced Vertical Separation Minimum; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on July 8, 1999 (64 FR 37018). That proposed rulemaking to enable the implementation of Reduced Vertical Separation Minimum (RVSM) in Pacific oceanic 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.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, 202–267–3734.

Correction of Publication

In proposed rule FR Doc. 99–17360, beginning on page 37018 in the **Federal Register** issue of July 18, 1999, make the following correction:

1. On page 37018, in column 1, in the heading section, beginning in line 4, correct the ''Notice No. 99–10'' to read ''Notice No. 99–15''.

Issued in Washington, DC on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19179 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; Notice No. 99–13]

RIN 2120–AG83

Year 2000 Airport Safety Inspections; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking published in the **Federal Register** on July 8, 1999 (64 FR 37026). That NPRM proposed rulemaking to require certain airports 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, that proposal temporarily revised the time period these airport operators have to repair or replace certain emergency equipment.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operators Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

Correction of Publication

In proposed rule FR Doc. 99–17359 beginning on page 37026 in the **Federal Register** issue of July 8, 1999, make the following corrections:

1. On page 37026, in column 1, in the heading, beginning in line 4, ''SFAR No. 85–]'' should read ''Notice No. 99–13]''.

2. In the **SUPPLEMENTARY INFORMATION:** Availability of NPRMs'' section on page 37026, in column 2, the first paragraph, beginning in line 9, remove the last phrase'', or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322–2722 or (202) 267–5948)''.

3. On page 37029, in column 1, 9 lines from top of column, add the following language ''And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rulemaking does not meet the standards for a 'significant regulatory action' under section 3(f) of Executive Order 12866 and under the Department of Transportation's Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11034, February 26, 1979) and, therefore, is not subject to review by the Office of Management and Budget. Additionally, this proposed rule would not have a significant impact on a substantial number of small entities; would not constitute a barrier to international trade, and does not contain a significant intergovernmental or private sector mandate.''.

Issued in Washington, DC, on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19042 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT–001–0007, MT 001–0008, MT–001–0009 and MT–001–0010; FRL–6408–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve, conditionally approve and partially disapprove the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA is also proposing a regulatory scheme for sanctions. The SIP revisions establish, and require seven sources to meet and monitor compliance with, emission limitations for SO2 emissions in the Billings/Laurel area. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to approve, to conditionally approve those provisions that the State has committed to correct, to disapprove those provisions that are not approvable, and to establish the sequence of sanctions if EPA's proposed disapproval becomes a final action. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: Written comments must be received by August 27, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202.

Docket: You can inspect the official docket concerning this action, docket #R8–99–01, at the Air Program Office, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202 (call Laurie Ostrand to make an appointment at (303) 312–6437). You also can review materials concerning this action (although not the official docket) at EPA

Region VIII's Montana Office, Federal Building, 301 S. Park, Helena, Montana 59620 (call Betsy Wahl to make an appointment at (406) 441–1130, ext. 234) and at the Parmly Billings Library, 510 N. Broadway, Billings, Montana (406) 657–8391. Note that the materials at EPA's Montana Office and the Parmly Billings Library may not be as complete as the official docket at EPA's Denver Office.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437 or Dawn Tesorero, EPA, Region VIII, (303) 312–6883.

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I. Summary of EPA's Proposed Actions

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the Billings/Laurel SO2 SIP, which the State of Montana submitted in response to our SIP Call. See Background section V.D. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on the Montana Department of Environmental Quality's (MDEQ's) enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A), our approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A).

We are proposing to disapprove the following provisions of the Billings/Laurel SO2 SIP:

- The escape clause (paragraph 22 in the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 20 in the Cenex, Conoco, Montana Power, Yellowstone Energy Limited Partnership (YELP), and Western Sugar stipulations).
- The MSCC stack height credit and emission limitations on the sulfur recovery unit (SRU) 100-meter stack (paragraph 1 of the Exxon stipulation, paragraphs 1 and 2 of the MSCC stipulation, and section 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit [1]).
- The emission limitation on MSCC's auxiliary vent stacks, section 3(A)(4) of MSCC's exhibit.
- The attainment demonstration because of the improper stack height credit and emission limitations at MSCC.
- The attainment demonstration for lack of flare emission limitations at Cenex, Conoco, Exxon, and MSCC.
- The attainment demonstration because of the proposed disapproval of the emission limitation for MSCC's auxiliary vent stacks.
- The Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) and Reasonable Further Progress (RFP) requirements for Cenex.
- The provisions that allow sour water stripper emissions to be burned in the flare at Cenex and Exxon (sections 3(E)(4) and 4(E) of Exxon's exhibit and sections 3(B)(2) and 4(D) of Cenex's exhibit, only as they apply to flares).

We are proposing to conditionally approve the following provisions of the Billings/Laurel SO2 SIP based on the State of Montana's commitment to adopt and submit adequate compliance monitoring methods:

- YELP's emission limitations (in sections 3(A)(1) through (3) of YELP's exhibit).
- Exxon's coker carbon monoxide (CO)-boiler emission limitation (in section 3(B)(1) of Exxon's exhibit).
- Exxon's F–2 crude/vacuum heater stack emission limitations and attendant compliance monitoring methods (in sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit).

[1] The SIP was submitted in the form of stipulations, exhibits and attachments for each source covered by the plan. The majority of the requirements are contained in the exhibits. Throughout this document when we refer to an exhibit, we mean the exhibit A to the stipulation for the specified source.

• Exxon's fuel gas combustion emission limitations and attendant compliance monitoring methods (in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit).

• Cenex's combustion sources emission limitations and attendant compliance monitoring methods (in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit).

Finally, we are proposing that the regulatory scheme issued for sanctions generally, under 40 CFR 52.31, should also apply here if our proposed partial disapproval of the SIP becomes a final action or if EPA adopts final conditional approvals that later convert to disapprovals. We are also proposing to apply the sanction rule's provisions regarding the timing of sanctions to this action. We also ask for comment on whether we should impose sanctions under section 110(m) of the Act so that they become effective immediately upon the effective date of our partial disapproval or of a conversion from conditional approval to disapproval, and on the geographic scope of such discretionary sanctions should the Agency decide to impose them.

II. EPA's Action on the State of Montana's Submittals

Definitions

For the purpose of this document, we are giving meanings to certain words as follows:

(a) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(b) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

Technical Support Document (TSD)

Our TSD for this action discusses our criteria for deciding whether to approve or disapprove the SIP and whether or not the State of Montana's submittals satisfy those criteria. The TSD also discusses most of the issues we raised on various drafts and final submittals of the Billings/Laurel SIP for SO2 and how the State of Montana addressed these issues. (See document #III.B–1.[2])

A. Why Is EPA Proposing To Approve Parts of the State of Montana's Plan?

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the SIP. We are proposing to approve these other aspects of the SIP because we believe they meet our SIP approval criteria and provide enforceable emission limitations on sources in the Billings/Laurel area. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on MDEQ's enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. Also, we caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A), our approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our approval of the SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A).

We evaluated the SIP submittals against the following provisions in sections 110(a)(2) and 172(c) of the Act that SIPs are required to meet:

• Notice and public hearing.
• Enforceable emission limitations.
• Ambient air quality data.
• Enforcement program and stationary source regulations.
• Interference with any other state.
• Assurance of adequacy of personnel, funding, authority.
• Emission monitoring.
• Emergency powers.
• SIP revisions.

Unless identified below in ''Why Is EPA Proposing to Disapprove or Conditionally Approve Parts of the State of Montana's Plan,'' all other requirements of sections 110(a)(2) and 172(c) have been met. We are proposing to approve the SIP as satisfying those requirements or finding that no action is required because certain provisions have previously been approved into the Montana SIP. Refer to our TSD for a detailed discussion of the Act's requirements, how they have been satisfied, and our proposed actions.

Following is a discussion of the major issues we raised concerning the Billings/Laurel SIP for SO2 and how the State of Montana addressed those issues.

1. Quarterly Data Recovery Rate (QDRR)

In earlier SIP submittals (i.e., those submitted prior to the July 29, 1998 submittal), the exhibits required most sources to meet only a 90% QDRR for the continuous emission monitoring system (CEMS), or limited the number of hours in a calendar quarter when valid hourly SO2 emission rate data were unavailable to 192 hours. QDRR means the percentage of time in each quarter that the CEMS is up and running and generating data about SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that the exhibits do not preclude the MDEQ from taking enforcement action for a QDRR that is less than 100% but equal to or greater than 90%, and unless the State of Montana deleted the section of the exhibits pertaining to 192 hours. With the July 29, 1998 submittal of the SIP, the State of Montana has revised the QDRR requirements as we requested. Specifically, the exhibits now indicate that notwithstanding the numerical QDRR requirements, sources are to use best efforts to achieve the highest QDRR that is technically feasible. The State of Montana deleted the reference to the 192-hour short quarters. Instead, the exhibits now indicate that, for quarters in which operating hours are reduced (short quarters), a determination of whether a source violated the QDRR shall include consideration of whether the reduced operating hours made compliance with the numerical QDRR unreasonable.

The July 29, 1998 submittal of the SIP addresses our prior concerns. We interpret the submittal as requiring sources to achieve the highest data recovery that's technically feasible. Any loss of CEMS data will need to be adequately documented and justified by sources. We interpret the July 1998 submittal to allow the MDEQ, us, and citizens to take enforcement action for QDRR's that are between 90 and 100%, if CEMS data loss is not adequately documented and justified. We believe that the MDEQ shares our interpretation of the QDRR requirements. See transcripts of the June 12, 1998 hearing before the Board of Environmental Review, page 6, starting on line 14 where an MDEQ representative indicated ''[W]e have revised that control plan such [that] it is clear now that obtaining data 100 percent of the time is indeed a requirement of the control plan.'' These transcripts are part

[2] All referenced documents are contained in the docket for this action, docket #R8–99–01.

of the ''Record of Adoption'' material that was submitted by the Governor with the SIP revision on July 29, 1998. (See document #II.E–3.)

Based on the July 1998 submittal and our interpretation above, we are proposing to approve the SIP as it applies to the QDRR provisions in all the exhibits for all seven sources.

2. Hydrogen Sulfide (H2S) Continuous Emission Monitoring Systems (CEMS) at Cenex

H2S CEMS are used at some sources to monitor compliance with the SO2 emission limitations on fuel gas-fired units. H2S concentrations above 300 ppm would exceed the level at which the monitors could record (i.e., be off-scale) and would result in errors in estimating SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the earlier exhibits (i.e., those submitted prior to the July 29, 1998 submittal) to restrict the H2S concentration to a value that could be monitored by the H2S CEMS. We believed the limitation must be established such that the CEMS used to monitor compliance with the limitation will meet the required performance specifications.

In lieu of restricting H2S concentrations to a range the CEMS can record, the July 29, 1998 submittal of the SIP requires Cenex to use an alternative method to monitor compliance when the CEMS are off-scale.

We believe the Cenex exhibit, submitted on July 29, 1998, provides an acceptable approach to determine H2S concentrations in the refinery fuel gas at Cenex. We are proposing to approve the SIP as it applies to Cenex's method for determining H2S in the refinery fuel gas.

3. Combined Emission Limitations

Several sources have combined emission limitations for heaters and boilers. We believed we could not propose to approve the SIP as written unless these limitations were justified under our Economic Incentive Program (EIP) or Emissions Trading Policy Statement. In our June 3, 1997 letter to MDEQ, we completed an evaluation of the stipulations in comparison with the discretionary EIP requirements contained in 40 CFR part 51, subpart U, which we promulgated on April 7, 1994 (59 FR 16690). (See document #II.C–8.) We believed the stipulations and exhibits met the discretionary EIP requirements. However, since our initial evaluation of the combined emission limitations under the discretionary EIP, we have come to believe that the compliance monitoring method for Exxon's refinery fuel-gas combustion emissions limitation (combined emission limitation) is not acceptable. See discussion below under section II.C.4., ''Exxon's fuel gas combustion emission limitations and attendant compliance monitoring method'' and in section III.C.(2)(d) of our TSD. In addition, we raised concerns with Cenex's method for measuring sour water stripper emissions when burned in the main crude heater. See discussion below under section II.C.5., ''Cenex Sour Water Stripper (SWS)'' and in section III.C(2)(l) of our TSD. The Governor has committed to address our concerns. (See document #II.E–5.) Therefore, we are proposing to conditionally approve Exxon and Cenex's combined emission limitation and proposing to fully approve the combined emission limitations for heaters and boilers at Conoco and Western Sugar as meeting the discretionary EIP requirements.

4. Montana Sulphur & Chemical Company (MSCC) 30-Meter Stack

We believe the earlier version of the MSCC exhibit (i.e., the exhibit submitted prior to the July 29, 1998 submittal) did not provide an adequate means to monitor compliance with the 30-meter stack emission limitation. With the July 29, 1998 submittal of the SIP, the MSCC exhibit now restricts the units that can exhaust to the SRU 30-meter stack. Specifically, MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas and only those units/boilers listed in MSCC's exhibit can be exhausted through the SRU 30-meter stack. MSCC's exhibit also provides that other units/boilers could be vented to the SRU 30-meter stack only if (1) they are ''like-kind'' boilers or simply replace the fuel burning potential of the listed boilers; (2) MSCC obtains the necessary permits or a determination by the MDEQ that a permit isn't necessary and the additional unit is fired exclusively on pipeline-quality natural gas, ''LP'' gas, or the equivalent in pounds of sulfur per BTU; or (3) the SO2 emissions from the SRU 30-meter stack are being monitored by parametric methods approved by the MDEQ and EPA, or by a CEMS. We confirmed with the MDEQ that the expression '' 'like-kind' boilers or simply replaces the fuel burning potential of the listed boilers'' means that any replacement boiler must have the same or lower potential to emit SO2 as the boiler being replaced. A boiler having a greater potential to emit SO2 than an existing boiler could not be used to replace it.

MSCC's exhibit, contained in the July 1998 submittal of the SIP, does not provide any new means to determine compliance with the 12 lb/3-hr SO2 emission limitation for the SRU 30-meter stack. MSCC's exhibit requires MSCC to report the date and time period when emissions are exhausted through the SRU 30-meter stack, report which operating units are exhausted from the stack, and include engineering estimates of three-hour emissions and daily emissions from the stack.

MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas be exhausted through the 30-meter stack. MSCC's exhibit does not define ''low sulfur fuel gas.'' We interpret ''low sulfur fuel gas'' to be properly sweetened fuel gas. Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of the stipulation and SIP. MDEQ's September 3, 1998 letter indicates that MDEQ believes MSCC does not need further emissions monitoring for the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon, and when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted ''low sulfur fuel gas'' to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret ''low sulfur fuel gas'' to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.)

Because of our interpretations discussed above and MDEQ's confirmation of our interpretation in the letter dated May 20, 1999, we are proposing to approve the SIP as it applies to the emission limitation for the 30-meter stack at MSCC. Note, however, that we are concerned that there is no definition of ''low sulfur fuel gas'' in MSCC's exhibit. We may consider creating such a definition when we complete a Federal implementation plan (FIP) to fill in the gaps for the SIP provisions that we are proposing to disapprove.

5. Variable Emission Limitations [3]

Novel Control Strategy. The State of Montana has adopted a novel control

[3] We believe that the variable emission limitations are not a dispersion technique, as defined by 40 CFR 51.100(hh)(1), for the following reasons: First,

strategy for three of the seven sources in the Billings/Laurel area. For MSCC and Montana Power, emission limitations vary depending on the ''buoyancy flux'' of the SO2 gas plume as it exits the stack. Buoyancy flux is a function of gas flow rate and gas temperature in the stack, which vary within certain parameters. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, MSCC and Montana Power rely on data from continuous flow-rate monitors and in-stack thermometers. For the fluid catalytic cracking (FCC) unit at Exxon, emission limitations vary depending on the feed rate to the FCC unit. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, Exxon relies on data from a continuous feed rate meter. To determine whether a unit is meeting the particular emission limitation for the relevant time period, actual emissions of SO2 will be monitored by continuous emission monitors located in the stacks.

This strategy is both complex and flexible. The strategy is complex, in that it is based on computer dispersion modeling involving many variables and it requires constant attention by plant operators not only to keep pollution within allowable limitations but also to determine what those limitations may be. The strategy is flexible, in that it allows sources to maximize emissions when favorable stack conditions enable the gas plume to rise and thus have less impact on ambient concentrations of SO2 near the ground. Our proposed approval of this novel strategy was carefully considered. It is based on MDEQ's assurances that the variable limitations can be enforced and that MDEQ has adequate resources to monitor compliance, including review of monitoring data.

Our Initial Concern. Our initial concern about the concept of a variable emission limitation focused on MDEQ's ability to model and enforce the limitation. After consulting with other Regional Offices and EPA's Office of Air Quality Planning and Standards (OAQPS), we believe that, while technically more difficult, it is feasible to model all the inputs and determine whether or not the NAAQS can be attained with variable emission limitations. With respect to whether variable limitations can be enforced, we believe they can be because all the stacks with variable limitations have continuous emission monitoring systems (CEMS). CEMS provide MDEQ and us with the level of information necessary to make a compliance determination at all times. However, we realize that enforcing a variable emission limitation may be more difficult than enforcing a fixed emission limitation. Since the State of Montana wants to pursue this innovative strategy, we are willing to propose approval of the SIP as it applies to these provisions. However, as discussed below, if variable limitations were to prove too difficult for MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

Our Follow-up Concern. Our follow-up concern about the variable emission limitations was how to determine the appropriate emission limitation if continuous monitors were not functioning (the variable emission limitations at MSCC and Montana Power are based on the stack flow rate and temperature; at Exxon, on the FCC feed rate). We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that when data needed to determine the appropriate emission limitation are missing, the most stringent limitation applicable to the source would apply. Additionally, we indicated that for those variable limitations that rely on temperature probes, the MDEQ needed to provide assurances that they were adequate.

To address our concerns about establishing emission limitations when data are missing, the State of Montana submitted a SIP revision on July 29, 1998. In the July 29, 1998 submittal, the exhibits require sources to install and maintain back-up monitoring systems. However, the back-up systems are not completely redundant. If the back-up system fails or fails to measure and record flow and temperature data, the exhibits specify a data substitution method to determine the applicable emission limitation.

We believe that the back-up monitoring systems should assure that data are available to determine the emission limitations and only in rare cases should the data substitution method be needed to determine the appropriate emission limitation. However, if we were to find that the back-up monitoring systems were not functioning properly and not assuring on a regular basis that data were available to determine the emission limitations, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

In a letter dated May 20, 1999, MDEQ assured us that the temperature probes used to determine the buoyancy flux emission limitation are located in a representative location in the stack and that there are proper Quality Assurance/Quality Control (QA/QC) requirements for the temperature probes. (See document #II.E–14.)

Our Proposed Approval. Because the State of Montana has addressed our concerns about determining emission limitations when CEMS data are not available, we are proposing to approve the SIP as it applies to the variable emission limitations at Montana Power and Exxon. We are not proposing to approve the SIP as it applies to the variable emission limitation at MSCC due to the stack height issue discussed in section II.B.(2) below and in section III.C.(2)(q) of our TSD. Our proposed approval for Montana Power and Exxon has several caveats. As mentioned previously, we realize that the variable emission limitations may be more difficult to enforce than a fixed emission limitation. We believe that the back-up monitoring methods should generally assure that data will be available to determine the emissions limitations. However, we will perform close oversight as MDEQ implements this SIP, particularly the variable emission limitation control strategy. If we were to find that the variable limitations are not practically enforceable by the MDEQ or us, that the back-up monitoring systems are not sufficient to assure on a regular basis that data are available to determine the emission limitations, or that MDEQ is unable to adequately review and assure the quality of the monitoring data on which both limitations and compliance are based, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of

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the variable emission limitations are not based on atmospheric conditions or ambient concentrations of a pollutant, and are thus not dispersion techniques under 40 CFR 51.100(hh)(1)(ii). Second, with respect to Montana Power and MSCC, the SO2 emissions for each source are limited to 5,000 tons per year or less. Therefore, 40 CFR 51.100(hh)(1)(iii) does not apply. See 40 CFR 51.100(hh)(2)(v). With respect to Exxon, the emission limitation varies as throughput to the FCC unit varies. The variable emission limitation is based on historical source operations and stack data, not on manipulating process or exhaust gas parameters to increase final exhaust gas plume rise. Therefore, the variable emission limitation is not a dispersion technique as defined in 40 CFR 51.100(hh) and thus is not prohibited by section 123 of the Act.

the Act or take other appropriate action under the Act.

6. Department Discretion

In our June 3, 1997 letter to MDEQ (see document #II.C–8), we raised a concern about places in the stipulations, exhibits and attachments where the Department has the discretion to modify existing provisions in the SIP, approve into the SIP future documents or compliance monitoring methods, or make other determinations that affect the SIP without obtaining our approval. The stipulations, exhibits and attachments were not clear whether any of these changes would be submitted as SIP revisions or through any other process for us to review and approve. We indicated that certain revisions to the SIP could occur through the Title V significant permit modification process if the SIP contained enabling language that would allow it to be revised through that process. We referenced our March 5, 1996 ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' as guidance the State of Montana should follow when using the Title V permit process to revise the SIP.

Finally, we indicated that in places where the stipulations, attachments and exhibits allowed the Department to make certain decisions, the words ''and EPA,'' must be added.

In our March 6, 1998 letter to MDEQ (see document #II.C–10), we provided further guidance on how the stipulations, exhibits and attachments must be revised to address the department discretion concerns.

With the July 29, 1998 submittal of the SIP, the State of Montana has revised the stipulations, exhibits and attachments to address our concerns. The stipulations describe a process that the State of Montana will follow when modifying the SIP by implementing alternative requirements or making text changes to the stipulations, exhibits and attachments.

We believe that the July 1998 submittal addresses our concern about department discretion to change the SIP. The stipulations contain the following language: ''To the extent allowed under federal requirements, minor and clerical corrections may be made by mutual agreement of the parties, without the necessity for formal approval by EPA.'' We want to make clear that, once we approve the SIP, the federally approved SIP may only be revised with our approval. See section 110(i) of the Act, 42 U.S.C. 7410(i). The one exception is through the Title V permitting process consistent with EPA's March 5, 1996 ''White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program.'' Thus, in proposing approval of portions of the SIP, we want to clarify that the ''parties'' to the stipulations may not make minor and clerical corrections to the federally effective SIP without our approval, or without following the Title V procedures described below.

Consistent with the foregoing, we interpret the stipulations to require the following process for modifying the SIP text and approving alternative requirements and methodologies: the State of Montana must submit to us all modifications to SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to text or alternative requirement or methodology is proposed as a ''minor modification'' (or clerical correction) we will inform the State of Montana within 45 days from the date of submittal of our determination whether the modification or alternative is major or minor, and if it is minor, of our approval of the modification or alternative. (We caution that our failure to make such determination within 45 days does not mean that the modification or alternative is minor and is approved.) If we do not approve the modification of text or alternative requirement or methodology as minor, the State of Montana must adopt the modification as a SIP revision in accordance with section 110(a)(2) of the Act and submit it to us for approval. We will then act on the SIP revision in accordance with the provisions of Title I of the Act, pursuant to notice and comment rulemaking under the Administrative Procedure Act.

The stipulations provide for the possible use of Title V permit revision procedures to achieve certain types of SIP text modifications or approvals of alternative requirements or methodologies. Specifically, the modification or approval must pertain to testing, monitoring, recordkeeping, calculation, reporting, or operating requirements or methodologies. 40 CFR 70.6(a)(1)(iii) provides that the State of Montana may use Title V significant permit revision procedures to achieve the SIP revision if the following conditions have been met: the MDEQ has issued a Title V permit to the source, the State of Montana has adopted enabling regulatory language for making SIP changes through Title V procedures, we have approved such language in the Montana SIP, and we do not object to the specific modification at issue. In our March 5, 1996 ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program,'' we have described various criteria for such enabling regulatory language; in particular, such SIP language must require that any alternative SIP requirements established through a Title V permit be at least as stringent as the otherwise-applicable SIP requirement.

All changes to the SIP, whether minor or significant, must be reflected in the Title V permit for the source as ''applicable requirements'' under 40 CFR 70.2. Therefore, as changes are made to the SIP, MDEQ will need to modify the Title V permit through appropriate permit revision procedures.

Based on the July 1998 submittal of the SIP and our interpretation of the modification process, we are proposing to approve these provisions of the stipulations, exhibits and attachments.

7. Clarifying Interpretations

In a June 5, 1998 letter to MDEQ (see document #II.E–7), we identified several places where the State of Montana could make the stipulations and exhibits clearer. In a September 3, 1998 letter to us (see document II.E–9), the MDEQ agreed that, while it would be helpful to make the suggested changes, the stipulations had already been signed without the modifications we suggested. In the future the MDEQ will evaluate whether to make the suggested changes.

Because the SIP has not been modified as we had suggested in our June 5, 1998 letter to the MDEQ, we are providing our interpretations of several provisions in the stipulations. Based on the MDEQ's September 3, 1998 letter, we believe that the MDEQ agrees with our interpretations.

(a) Paragraph 16 of the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 14 of the other sources' stipulations contain this statement: ''The Stipulation Requirements shall supersede any less stringent corresponding conditions pertaining to SO2 sources in any currently existing permit.'' The term ''Stipulation Requirements'' was defined and used in several places in prior versions of the stipulations. It appears to have been replaced by the phrase, ''requirements in the Stipulation, Exhibit A, and Attachments,'' everywhere in the current stipulations except in paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources. Additionally, paragraph (B) of section 9 of exhibit A appears to define ''Stipulation Requirements'' as a ''limitation, condition, or other requirement contained herein.'' Therefore, we interpret ''Stipulation Requirements'' in

paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources to mean any ''requirement in the Stipulation, Exhibit A, and Attachments.''

(b) Paragraph 12 of the Exxon and MSCC stipulations and paragraph 10 of the other sources' stipulations use the word ''revision'' to describe a change made to an attachment. We understand that changes to attachments, like all other changes to SIP documents, are subject to the procedures for modification set forth in Paragraph 19 of the Exxon and MSCC stipulations and paragraph 17 of the other sources' stipulations.

(c) In Montana Power's exhibit, we interpret the reporting requirements of section 7(B)(1)(f), which read, ''The electronic report shall contain daily calibration data from the CEMS required by section 6(B)(1) and (2), or if applicable, section 6(B)(3),'' to mean, ''The electronic report shall contain daily calibration data from CEMS required by section 6(B)(1) and (2), *and* if applicable, section 6(B)(3).''

In addition to (a), (b) and (c) above, in a January 15, 1999 letter to MDEQ, we requested that the MDEQ confirm our interpretations on several issues. (See document #II.E–10.) The MDEQ responded on May 20, 1999. (See document #II.E–14.) These issues are discussed below.

(d) We interpret the February 7, 1998 date in section 3(E)(3) of Exxon's exhibit to be February 7, 1997. This paragraph is referencing an order signed by the Montana Board of Environmental Review (MBER). Earlier information submitted by MDEQ indicates that the order referenced was dated February 7, 1997. We believe the February 7, 1998 date to be a typographical error. MDEQ confirmed this in its May 20, 1999 letter.

(e) We interpreted a parenthetical in section 3(A)(1) of the Exxon exhibit to mean that Exxon is prohibited from exhausting coker unit flue gas from the coker CO-boiler stack at the same time either or both of YELP's boilers are operating (except during startup and shutdown of YELP).[4] This prohibition does not appear in the exhibit, however, but in an air quality permit issued to Exxon by MDEQ on June 17, 1996, which states: ''Exxon shall, *any time* the Yellowstone Energy Limited Partnership (YELP) facility is operating, send *all* of its coker process gas to either or both of YELP's boilers. During startup and shutdown conditions at YELP, Exxon shall supply the maximum amount of coker process gas that YELP can accept'' (see document #II.F–12, paragraph A of Section II: Limitations and Conditions). We asked MDEQ to clarify this prohibition.

In the May 20, 1999 letter to us, MDEQ responded that ''pursuant to the attainment demonstration modeling it is not necessary to prohibit coker unit flue gases from being exhausted from the coker CO-boiler stack at the same time that YELP is operating. The prohibition against simultaneous emissions was developed during prevention of significant deterioration of air quality (PSD) permitting of the YELP facility, and was necessary to obtain offsets allowing YELP into the airshed under PSD. Since the prohibition is not necessary for attainment of the NAAQS, it is the Department's position that the prohibition does not belong in Exxon's exhibit A, and the parenthetical should be deleted.''

Because simultaneous emission from Exxon and YELP have been shown by modeling to demonstrate attainment of the NAAQS, we agree with the MDEQ that the prohibition in the parenthetical is not necessary for the Billings/Laurel SO2 SIP. However, if Exxon is subject to more stringent requirements under other provisions of the Act, such as the permit condition quoted above which appears in a permit issued under Montana's state-wide SIP, then our approval of this SIP would not excuse Exxon from meeting those other more stringent requirements.

(f) MSCC's exhibit indicates that units burning low sulfur fuel gas or natural gas can be exhausted through the 30-meter stack. MSCC's exhibit does not define ''low sulfur fuel gas.'' We interpret ''low sulfur fuel gas'' to be properly sweetened fuel gas (e.g., fuel gas which has been treated in an amine unit to remove H2S). Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of MSCC's exhibit and the SIP. The MDEQ's September 3, 1998, letter indicates that the Department believes MSCC does not need further emissions monitoring on the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon and that when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted ''low sulfur fuel gas'' to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret ''low sulfur fuel gas'' to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.) Note, however, that we are concerned that there is no definition of ''low sulfur fuel gas'' in MSCC's exhibit. We may consider creating such a definition when we complete a FIP to fill in the gaps for the SIP provisions that we are proposing to disapprove.

(g) Finally, we interpret our approval of the SIP, including emission limitations and other requirements, as not excusing sources from meeting other potentially more stringent requirements under other provisions of the Act (e.g., section 111, part C or SIP-approved permit program under part A). In a conversation on April 28, 1999, the MDEQ agreed with our interpretation. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C or SIP-approved permit program under part A).

B. Why Is EPA Proposing to Disapprove Parts of the State of Montana's Plan?

Certain provisions of the Billings/Laurel SO2 SIP do not satisfy our requirements for SIPS. In addition, the SIP lacks certain enforceable requirements necessary to demonstrate attainment and maintenance of the NAAQS. The parts of the Plan proposed for disapproval are the following:

1. Escape Clause

Each stipulation contains a paragraph which allows a source to withdraw its consent to the stipulation. The ''escape clause'' reads as follows:

> Notwithstanding any other provision of this Stipulation, [the named source's] and the Department's consent to be bound by the terms of this Stipulation is conditioned upon the adoption of SO2 emission control strategies, for all the affected industries in this matter, which are in their common terms substantially similar to one another. This condition of substantial similarity extends only to the initial control strategies, adopted by the Board or by the U.S. EPA as a Federal Implementation Plan, and which are adopted in response to the EPA letter of March 4, 1993 calling for revision of the Billings/Laurel SO2 SIP. This condition of substantial similarity does not extend to subsequent revisions of such initial emissions control strategies, but does extend to and include any revisions of such initial emissions control strategies resulting from any challenge or appeal of the initial adopted emissions control strategies. In the event that an initial control strategy is finally adopted by the Board or EPA, for any of the affected industries in this matter, which is not

[4] The parenthetical states, ''(fuel gas combustion emissions only since under this configuration coker unit flue gas is prohibited from exhausting through the stack)''.

substantially similar in its common terms to this Stipulation or Exhibit A, either [the named source] or the Department may, in writing delivered to the other party and to the other affected industries in this matter within 60 days of receiving written notice of the adoption, withdraw its consent to this Stipulation.

We are proposing to disapprove the SIP as it applies to the escape clause because, if sources invoke the escape clause, the MDEQ would no longer have a plan to implement. Specifically, we are proposing to disapprove the following: paragraph 22 in the Exxon and MSCC stipulations; paragraph 20 in the Cenex, Conoco, Montana Power, YELP, and Western Sugar stipulations. If sources invoke the escape clause after our final action on the SIP, we expect to address this scenario by issuing another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or taking other appropriate action under the Act. Additionally, if we disapprove the escape clause, the provisions of the SIP that we approve will remain federally enforceable even if one or more of the sources invoke the escape clause. While our proposed disapproval of the escape clause eliminates the risk of a source's future attempt to nullify the SIP, we do not believe our disapproval would render the SIP more stringent than the State of Montana intends, since it does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP.

2. MSCC Stack Height Credit and Emission Limitations on the Sulfur Recovery Unit (SRU) 100-Meter Stack

We are proposing to disapprove MSCC's stack height credit and emission limitations (paragraph 2 of the MSCC stipulation and sections 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit) used in the attainment demonstration modeling for the Billings/Laurel area. We believe it is necessary to propose to disapprove MSCC's emission limitations because the State of Montana has set limits based on an amount of stack height credit for MSCC that is not supportable under section 123 of the Act or our stack height regulations.

(a) Introduction

In enacting section 123 of the Act, Congress recognized that stationary sources could reduce local concentrations of pollutants in the air either through source controls or through the use of tall stacks to disperse the pollutants. Congress chose to restrict the extent to which sources could use dispersion as a means to meet the NAAQS, because Congress was concerned with the potential negative impacts on downwind areas associated with long-range transport of pollutants.

To effect this restriction, Congress did not limit the height of stacks that sources may build, but instead limited the height that may be credited to stacks in dispersion modeling used to demonstrate attainment and maintenance of the NAAQS. Our regulations implement Congress's decision. By crediting too much of MSCC's stack height in the Billings attainment demonstration, the State of Montana is allowing MSCC to substitute dispersion for emissions reduction as a means to attain the SO2 NAAQS, in contravention of Congressional intent and our regulations.

(b) Stack Height Requirements

Section 123 of the Act provides that the ''degree of emission limitation required for control of any air pollutant under an applicable implementation plan * * * shall not be affected in any manner by * * * so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator) * * * [G]ood engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles * * *''

Section 123 of the Act required us to promulgate regulations to carry out the purposes of section 123. We first promulgated stack height regulations in February 1982. These regulations were challenged in *Sierra Club* v. *Environmental Protection Agency,* 719 F.2d 436 (D.C. Cir. 1983). In that case, the U.S. Court of Appeals for the D. C. Circuit reversed certain provisions, upheld other provisions, and ordered us to reconsider still other provisions of the stack height regulations.

We promulgated revised stack height regulations on July 8, 1985 (50 FR 27892). These revised regulations were challenged in *NRDC* v. *Thomas,* 838 F.2d 1224 (D.C. Cir. 1988). The court's opinion affirmed the regulations in large part. The court remanded three provisions that are not relevant to this action.

Our stack height regulations, codified at 40 CFR 51.100 and 51.118, provide that the degree of emission limitation required for pollutant control under an applicable SIP shall not be affected by stack height in excess of good engineering practice (GEP) stack height. The central component of the regulations consists of a definition of the term ''good engineering practice stack height.'' GEP stack height is the greater of (1) 65 meters (known as ''de minimis'' stack height), (2) the height calculated using a formula specified by the regulations (''formula height''), or (3) the height demonstrated using fluid modeling or a field study (''non-formula height'' or ''above-formula height''). 40 CFR 51.100(ii)(1)–(3).

We issued our SIP Call to the State of Montana to revise the Billings/Laurel SIP in 1993. Following the SIP Call, MSCC constructed its 100 meter stack and sought to gain credit in the Billings/Laurel SIP for the full height of the stack.

MSCC asserted various theories for gaining a 100 meter stack height credit. Among other things, MSCC argued that the 100 meter stack was grandfathered, that 100 meters represented the formula height based on the stack support structure, and that 100 meters represented the formula height based on nearby structures. The State of Montana rejected all of these arguments and they are therefore not relevant to this proposal.

Ultimately, MSCC performed fluid modeling to attempt to justify an above-formula stack height credit. *See* CPP Report 95–1235, entitled ''Fluid Modeling for Good Engineering Practice Stack Height for the Montana Sulphur and Chemical Company Main Stack (SRU),'' dated February 22, 1996 (document # II.F–1). Our stack height regulations, at 40 CFR 51.100(ii)(3), define GEP stack height for fluid modeling purposes as:

The height demonstrated by a fluid model * * * approved by the EPA, State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

The regulations, at 40 CFR 51.100(kk)(1), go on to define ''excessive concentrations'' for purposes of above-formula fluid modeling demonstrations as follows:

[A] maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard.

The regulations further specify that, ''the allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard (NSPS) that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible.'' If the source successfully demonstrates that the applicable NSPS is infeasible, the regulations then provide that ''an alternative emission rate shall be established in consultation with the source owner or operator.'' 40 CFR 51.100(kk)(1). The preamble to the regulations indicates that such an alternative emission rate is to be established under our Best Available Retrofit Technology guidance. *See* 50 FR 27898, fn. 6, July 8, 1985. (See document #II.A–16.)

We have consistently read the language of the regulations to require sources that wish to obtain above-formula stack height credit to actually adhere to the NSPS or alternative emission limit used in the fluid modeling demonstration. Sources must be well-controlled as a condition of obtaining above-formula stack height credit. *See, e.g.,* 50 FR 27898 (document #II.A–16); memorandum dated November 27, 1990 from John Calcagni to Irwin L. Dickstein regarding ''Stack Height Questions'' (document #II.F–13); letter dated April 20, 1989 from Gerald A. Emison to John P. Proctor (document #II.A–7); memorandum dated October 28, 1985 from Darryl D. Tyler, Director, Control Program Development Division, OAQPS, to Air Management Division Directors, Regions I–X, regarding ''Implementation of Stack Height Regulations—Presumptive NSPS Emission Limit for Fluid Modeling Stacks Above Formula GEP Height'' (document #II.A–3); Response to Comments on the November 9, 1984, Proposed Stack Height Rules, prepared July 1985 by EPA's Office of Air Quality Planning and Standards, at 29, 37, 61 (document #II.A–8); our Notice of denial of petitions for reconsideration of the stack height regulations, 51 FR 15885, at 15886 (document #II.A–9); Support Document for Response to Petitions for Reconsideration of the Stack Height Regulations, March 1986 (document #II.A–11); memorandum from Assistant Administrator for Air and Radiation to The Administrator regarding ''Denial of Petitions for Reconsideration of the Stack Height Regulations—Action Memorandum'' (document #II.A–10); Guideline for Determination of Good Engineering Practice Stack Height (Revised) (Technical Support Document For the Stack Height Regulations), EPA–450/4–80–023R, June 1985, Table 3.1, item G (document #II.A–12); memorandum dated June 19, 1985 from Eric O. Ginsburg, Policy Development Section, OAQPS, to Files, entitled ''Conference Call With OMB to Discuss Concerns about the Stack Height Regulations,'' which was included in the docket for our stack height regulations (document #II.A–13); memorandum dated June 26, 1985 from D. H. Stonefield, Chief, Policy Development Section, OAQPS, to Docket A–83–49, entitled ''Stack Height Regulation Discussions OMB'' (document #II.A–14).

(c) MSCC's Fluid Modeling Analysis

Based on MSCC's fluid modeling demonstration, the State of Montana adopted SO2 emission limitations [5] for MSCC's main stack based on a stack height credit of 97.5 meters. *See* August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur & Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (document #II.C–2).

While MSCC's contractor, CPP, used a scaled NSPS emission rate in the MSCC fluid modeling demonstration, the State of Montana's SIP revision does not require MSCC to meet the NSPS SO2 emission rate as an operating limit for its main stack. Instead, the SIP submission contains different SO2 limits for the main stack that are unrelated to, and significantly higher than, the NSPS emission rate.

In establishing MSCC's SIP limits for the main stack, the State of Montana did not follow 40 CFR 51.100(kk)(1)'s requirements for establishing an alternative to the NSPS limit: MSCC did not show the infeasibility of the NSPS limit, the State of Montana did not establish an alternative limit in accordance with our BART guidelines, MSCC did not use such BART limit in fluid modeling, and the State of Montana did not use such BART limit as an upper bound for MSCC's SIP emission limit. Thus, the SIP revision is inconsistent with section 123 of the Act and our stack height regulations. The TSD for this action discusses this more fully. (See document #III.B–1.)

In addition, the State of Montana approved the 97.5 meter stack height credit based on a flawed fluid modeling demonstration.

First, for purposes of its fluid modeling demonstration, MSCC's contractor treated the support structure for the stack as a ''nearby structure.'' The fluid modeling demonstration evaluates the effect of the source, nearby structures, and nearby terrain (''nearby'' is defined at 40 CFR 51.100(jj)) on downwash from the stack through a set of paired model runs, one in which the source and all nearby structures and terrain features are included, and one in which the source and all nearby structures and terrain features are removed from the scale mockup of the facility. The stack itself is included in both sets of model runs. Results of the two sets are then compared to determine the amount of downwash that is being created by the source, nearby structures, and nearby terrain features.

For the model runs in which nearby structures were removed from the scale mockup, MSCC's contractor also removed the stack's support structure from the scale mockup; i.e., MSCC's contractor modeled downwash from the support structure. The support structure is like a tin can, approximately eight feet in diameter, that surrounds the stack tube and supports it. MSCC has asserted that the support structure creates downwash and that it is appropriate to model for such downwash because the support structure is ''nearby.''

While the support structure is clearly within the distance that 40 CFR 51.100(jj) defines as ''nearby'' with respect to separate structures, our position is that the stack's support structure is integral to the stack itself, and that it is inappropriate to use part of the stack structure to justify a greater stack height credit. Otherwise, sources might purposefully design their stacks with support structures that create downwash as a means to avoid emissions control, in essence using a tall stack to justify itself.

To the extent MSCC designed a stack that creates excessive downwash, MSCC is obligated to address such effects through emissions control rather than dispersion. Thus, in conducting its fluid modeling, MSCC's contractor should have included the support structure as part of the scale mockup of the stack in both sets of model runs. We informed the MDEQ of our position on this issue in letters dated January 31, 1996, March 15, 1996, and July 18, 1996 [6] (see

[5] The State of Montana developed multiple SO2 limits for MSCC's main stack. The limit at any point in time is dependent on the temperature and flow rate of the gases in the stack.

[6] In a June 27, 1994 letter to Jeffrey T. Chaffee, we indicated that the support structure could not be used to determine formula stack height credit, but that its effects could be considered in a fluid modeling demonstration. That letter was issued without full consideration of regulatory

Continued

document #'s II.F–19, II.F–20 and II.C–5, respectively).

Put another way, before MSCC erected the 100 meter stack, the support structure did not exist; it was creating no downwash, wakes, or eddy effects that necessitated the construction of the 100 meter stack. The construction of a new structure near a stack may allow a source to seek greater stack height credit, but it is contrary to Congressional intent to allow the construction of a new stack to create a downwash situation that did not previously exist and justify its own stack height credit.

Second, the portion of MSCC's fluid modeling that the State of Montana approved [7] only showed an exceedance of the annual Montana Ambient Air Quality Standard (MAAQS) for SO2, but not the annual NAAQS. *See* memorandum from John Coefield, Technical Services Unit, Montana Air Quality Division, to Files, regarding ''Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration,'' dated March 1, 1996 (document #II.C–4); the State's Record of Adoption for the Billings/Laurel SO2 SIP, Transcript of Proceedings, August 9, 1996, pages 5, 6, Testimony of Bob Raisch (see document #II.C–3); August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur and Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (see document #II.C–2). The annual MAAQS for SO2 is a more stringent standard (lower number) than the annual NAAQS for SO_2 (52 μg/m^3 rather than 80 μg/m^3). In a fluid modeling demonstration, use of a lower number makes it easier to show an exceedance and, thus, makes it easier to show an excessive concentration and justify a higher stack height credit.

We do not believe it is proper to use a MAAQS exceedance to justify above-formula stack height credit. This is because we interpret the stack height regulations to require a showing of an exceedance of the NAAQS. This is consistent with Congressional intent that above-formula stack height credit only be given in rare circumstances.

Furthermore, even assuming for the sake of argument that it may sometimes be appropriate to use a standard in a fluid modeling demonstration that is more stringent than the NAAQS, the fluid modeling demonstration must at least show an exceedance of an ambient air quality standard that the SIP addresses and that is otherwise cognizable under the Act. The 52 μg/m^3 SO_2 MAAQS is not addressed by the State of Montana's Billings/Laurel SO2 SIP revision and is not otherwise cognizable under the Act. For purposes of the Billings/Laurel SO_2 SIP, the MDEQ conducted dispersion modeling to show attainment of the 80 μg/m^3 SO2 NAAQS only, not the lower MAAQS. In addition, assuming the MAAQS is exceeded in the Billings/Laurel area, we are unaware of any mechanism that would permit us to require additional source controls to ensure attainment or maintenance of the MAAQS.

The MDEQ's approach is logically inconsistent—in effect, the MDEQ has deemed the MAAQS important to protect when MSCC is seeking above-formula stack height credit, but has deemed the MAAQS irrelevant when MSCC's and other sources' emissions limitations are set in the SIP. We do not believe Congress intended sources to gain greater stack height credit and thereby avoid emissions controls in the SIP through such an artificial reduction in the benchmark used in fluid modeling, especially where the rest of the SIP is not designed in order to attain or maintain that benchmark. Therefore, although the MAAQS may in theory be a more protective standard, by allowing the use of the MAAQS for purposes of MSCC's fluid modeling demonstration, the MDEQ has applied the stack height requirements in a way that renders them less stringent than Congress intended.

(d) Conclusion

For the foregoing reasons, we are proposing to disapprove the 97.5 meter stack height credit the State of Montana has allowed MSCC for its 100-meter stack (paragraph 2 of the MSCC stipulation), the SO2 emissions limitations the State of Montana has included in the SIP for such stack (section 3(A)(1)(a) and (b) and section 3(A)(3) of MSCC's exhibit), and, consequently, the State of Montana's attainment demonstration.

3. Language in Exxon and MSCC's Stipulations Related to Incorporation of Earlier Stipulations and Apportionment of the Airshed

Paragraph 1 of the Exxon and MSCC stipulations discusses a contested case hearing and resultant February 2, 1996 stipulation and incorporates the February 2, 1996 stipulation by reference. We don't believe it is appropriate to incorporate the February 2, 1996 stipulation into the SIP because it discusses procedures and schedules for developing emission limitations for Exxon and MSCC which have subsequently been developed and which, for MSCC, are not approvable (see discussion on stack height issue at MSCC in section III.B.2, above, and in section III.C.(2)(q) of our TSD). Paragraph 1 of the Exxon and MSCC stipulations also contains a statement that the company enters into the stipulation ''in part, to preserve [the company's] rights to apportionment of the airshed resulting from the present SIP revision.'' Insofar as this statement implies that the companies or other air pollution sources are entitled to a property interest in the ambient air in the Billings/Laurel area or enjoy a right to pollute the ambient air, this statement conflicts with the purpose and statutory obligations of the Act and has no basis under federal law. Therefore, we are proposing to disapprove paragraph 1 of the Exxon and MSCC stipulations.

4. MSCC Auxiliary Vent Stacks

It came to our attention that the Railroad Boiler and H–1, H1–A, H1–1 and H1–2 units (heaters) at MSCC all had auxiliary vent stacks to exhaust emissions. It was unclear whether these auxiliary vent stacks were still functional and allowed to be used under the stipulation; sections 3(B)(3) and (4) of the MSCC exhibit appear to provide an exemption for minor sources, which these sources could be considered to be.

The July 29, 1998 submittal of the SIP provided additional modeling showing that emissions from the auxiliary vent stacks would not impact the attainment demonstration when the emissions are limited to 12 lbs of SO2/3-hours. The July 29, 1998 submittal of the SIP includes the 12 lbs of SO2/3-hours limitation on the auxiliary vent stacks.

We were concerned, however, that this emission limitation might not be enforceable. There is no CEMS for these emission points. Instead, MSCC's exhibit requires MSCC to report the date

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requirements and was superseded by our later letters to the State of Montana. It is inappropriate to consider the effects of the support structure in determining stack height credit, whether it is through application of the formula or through fluid modeling, because part of the stack cannot be used to justify the need for the stack.

[7] MSCC used a number of approaches in its fluid modeling study to attempt to demonstrate above-formula stack height credit. The State of Montana approved only one of those approaches, and rejected the others. Because the State of Montana rejected MSCC's other approaches to fluid modeling, those other approaches are not before us as part of the Billings/Laurel SO_2 SIP revision and are not relevant to this proposal. Even for the approach the State of Montana approved, MDEQ had to redo a portion of the analysis because CPP, MSCC's contractor, did not follow the guidance MDEQ provided. *See* letter from John A. Coefield, Supervisor, Technical Services Unit, to Larry Zink, MSCC, and memorandum from John Coefield, Technical Services Unit, to Files, regarding ''Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration,'' both documents dated March 1, 1996 (document #II.C–4).

and time period that emissions are exhausted from the auxiliary vent stacks, report the operating units whose emissions are exhausted from the auxiliary vent stacks, and include engineering estimates of the three-hour emissions and daily emissions from the auxiliary vent stacks. Based on discussions with MDEQ staff, we understand that there could be situations in which, if the fuel gas burned were high in H2S concentration and some or all of the boilers were exhausting from the auxiliary vent stacks, MSCC could not meet the emission limitation. See discussion of the 30-meter stack at MSCC in section II.A.4 above.

We are proposing to disapprove the MSCC auxiliary vent stacks emission limitation (section 3(A)(4) of MSCC's exhibit). We believe it is necessary to propose to disapprove this emission limitation because, unlike the 30-meter stack emission limitation, the exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. Without a restriction on the fuel burned in the boilers and heaters when they are exhausting from auxiliary vent stacks, there is the potential for the emission limitation to be exceeded.

5. Attainment Demonstration [8]

For us to fully approve a SIP, the SIP must show that the NAAQS will not be violated, *i.e.*, that the area demonstrates attainment. Attainment demonstrations are usually carried out with computer models that are approved by us. The computer models take numerous factors into consideration to predict the effects that emissions from various sources will have on levels of pollutants in the air. Models consider the typical meteorology and topography of the area, as well as physical parameters at a plant site, *e.g.*, the height, temperature, and velocity at which pollutants are emitted. Based on these factors, as well as restrictions placed on sources to control their emissions, models are used to predict the highest pollution levels that can be expected to occur in the future.

a. Improper Stack Height Credit and Emission Limitation at MSCC

The MDEQ used EPA-approved dispersion models to demonstrate attainment of the SO2 NAAQS in the Billings/Laurel area. However, the modeling for the July 29, 1998 submittal of the SIP relied on emission limitations at MSCC that were established with a stack height credit that exceeded the good engineering practice (GEP) stack height. As discussed above, we are proposing to disapprove the emission limitations and stack height credit for the 100-meter stack at MSCC. We are also proposing to disapprove the attainment demonstration because it relies on improper emission limitations and stack height credit.

b. Lack of Flare Emission Limitations

With the July 29, 1998 submittal of the SIP, the State of Montana removed all reference to flare emission limitations from the exhibits submitted for Federal approval. In June 1998, the MBER adopted ''Additional State Requirements'' (hereinafter referred to as ''State-only provisions'') for each of the seven sources in the Billings/Laurel area. The State-only provisions include flare emission limitations and reporting requirements for the four sources that have flares (Exxon, Conoco, Cenex, and MSCC). Because the State-only provisions were not submitted for inclusion in the Billings/Laurel SO2 SIP, they may be enforced only by the MDEQ. We believe we cannot propose to approve the SIP as it applies to the attainment demonstration without federally enforceable emission limitations on flares, for several reasons.

First, the attainment demonstration is based on limited emissions from flares. To account for non-emergency use of flares, the computer modeling assumed a limit of 150 pounds of SO2/3 hours for each source for flaring. Our SIP requirements, 40 CFR part 51, subpart G, discuss control strategy requirements for SIPs. ''Control strategy,'' defined at 40 CFR 51.100(n), ''means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards * * *.'' Subpart G, at section 51.112, indicates that each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for timely attainment and maintenance of the national standards that it implements. These demonstrations are usually performed through modeling. Further, 40 CFR 51.281 indicates that all emission limitations and other measures necessary for attainment and maintenance of any national standard must be adopted as rules and regulations enforceable by the State agency. Finally, copies of all such rules and regulations must be submitted with the plan. Therefore, because attainment of the NAAQS in the Billings/Laurel area, as demonstrated through modeling, assumes that flare emissions are limited, we believe that the SIP must include enforceable emission limitations for flares.

Second, based on MDEQ correspondence and ongoing discussions, we understand that emissions other than emissions from upsets and malfunctions (i.e., otherwise routine emissions) occur at the flares. (See document #'s II.B–18 and II.E–9.) Because routine emissions occur at the flares, we believe it is appropriate to establish enforceable emission limitations for flares.

Finally, without emission limitations on flares, it appears that sources could direct emissions from other process units to the flares to avoid violating an emission limitation or other requirement. It does not appear that sources could be penalized through the SIP if such circumvention occurred.

Since flare emissions were considered part of the attainment demonstration and since there appear to be routine emissions from flares, we believe the SIP should contain enforceable emission limitations for these emission points. Therefore, we are proposing to disapprove the SIP as it applies to the attainment demonstration for lack of enforceable emission limitations for flares.

c. Proposed Disapproval of MSCC Auxiliary Vent Stacks Emission Limitation

As indicated above, we are proposing to disapprove the emission limitation on the auxiliary vent stacks in MSCC's exhibit because MSCC's exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. The attainment demonstration relies on the auxiliary vent stacks emission limitation at MSCC. Since we are proposing to disapprove the limit, we believe it is also necessary to propose to disapprove the attainment demonstration.

[8] We recently learned that an improper stack height was used for the flare stack at Exxon for both the State of Montana's and our modeling. These modeling efforts used a stack height of 60.4 meters when in fact the actual stack height is 50.3 meters. Any future modeling done for the Billings/Laurel airshed, including modeling for the FIP, should use the correct flare stack height at Exxon. Finally, we have learned that there may be some other minor emission points at sources that were not considered in the MDEQ's attainment demonstration modeling (or our confirmation of the modeling) or that were not limited by the SIP. We may evaluate the need to model and/or limit these other minor emission points when we complete our FIP. We believe it is appropriate to proceed with the actions laid out in this document in spite of the recently discovered concerns with the Exxon flare height and other minor sources because we are proposing to disapprove the attainment demonstration.

6. Burning of Sour Water Stripper (SWS) Emissions in the Flare at Cenex and Exxon

With the July 29, 1998 submittal of the SIP, Cenex and Exxon's exhibits now allow SWS emissions to be burned in the flare. As discussed above, flare emission limitations were deleted from the July 1998 submittal. Therefore, SWS emissions, if burned in the flare, are unregulated. We believe that unless flares have an enforceable emission limitation, it is unacceptable to allow SWS emissions to be burned in the flare. Because we believe that allowing SWS emissions to be burned in the unregulated flare is not an acceptable approach, we are proposing to disapprove the SIP as it applies to those provisions of the Cenex exhibit (i.e, sections 3(B)(2) and 4(D), only as they apply to flares) and the Exxon exhibit (i.e., sections 3(E)(4) and 4(E), only as they apply to flares).

7. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at Cenex

As indicated earlier, we are proposing to disapprove the attainment demonstration for the SIP. Because we are proposing to disapprove the attainment demonstration, we are proposing to conclude that the RACM (including RACT) and RFP requirements have not been met in the Laurel SO2 nonattainment area. See discussion in sections III.C.(15) and (16) of our TSD for further information.

C. Why Is EPA Proposing To Conditionally Approve Parts of the State of Montana's Plan?

Under section 110(k)(4) of the Act, we may conditionally approve a plan based on a commitment from the State of Montana to adopt specific enforceable measures by a specified date certain that does not exceed one year from our final conditional approval. If the State of Montana fails to meets its commitment, the approval is automatically converted to a disapproval. Specifically, if the State of Montana fails to adopt and submit any of the provisions for the commitments identified below, we will issue a letter to the State of Montana which informs the State that the conditional approval, for the specific provisions identified below, will automatically convert to a limited approval/limited disapproval. We will not institute notice-and-comment rulemaking before issuing the letter because we are now notifying the public that our conditional approval of any of the SIP provisions identified below will convert to limited approval/limited disapproval if the State of Montana fails to meet a commitment for a specified provision. Subsequently, a notice to that effect will be published in the **Federal Register** and appropriate language will be inserted into the Code of Federal Regulations.

If the State of Montana makes a complete submittal by the specified timeframe or before we finalize this conditional approval, we will evaluate that submittal to determine if it may be approved and take final rulemaking action on that submittal.

1. YELP's Emission Limitations

a. Re-written Emission Limitation

With the exhibits submitted by the State of Montana in 1995, 1996 and 1997, several emission limitations varied at Exxon during the startup and shutdown of YELP. Basically, Exxon is subject to a higher emission limitation (at the FCC Coker CO-boiler stack and the FCC CO-boiler stack) when YELP is starting up, shutting down, or not operating than when YELP is operating. We were concerned that the initial attainment demonstration modeling did not accurately represent the relationship between Exxon and YELP.

With the July 29, 1998 submittal of the SIP, the MDEQ remodeled and revised YELP's exhibit to address this issue. The modeling showed that there could be simultaneous emissions at Exxon and YELP without exceeding the NAAQS, except during the hours between 9:00 pm and 6:00 am. Therefore, the YELP exhibit contains time-of-day restricted emission limitations that YELP must achieve during periods when the Exxon coker CO-boiler is burning coker gas. See discussion under modeling, section III.C.12 of our TSD.

We believe the revised strategy is acceptable for the following reasons:

- The MDEQ's dispersion modeling and our confirmation of the modeling (see modeling discussion in section III.C.12 of our TSD) show that with the time-of-day restrictions the area can still show attainment of the NAAQS. We believe that the modeling was performed appropriately. The modeling report, entitled ''Simultaneous Emissions Modeling Sulfur Dioxide Exxon Coker and YELP,'' was submitted with the July 1998 submittal (see document #II.E–3).
- We do not consider time-of-day restrictions to be a dispersion technique as defined by 40 CFR 51.100(hh)(1)(ii) because the time-of-day restricted emission limitations are based on historical meteorological data and do not vary according to atmospheric conditions or ambient concentrations of a pollutant.
- We believe the emission limitations are enforceable because YELP is required to operate CEMS. Specifically, SO2 concentration and flow CEMS are required on the stack that is subject to the time-of-day restrictions. The CEMS will be able to determine the SO2 emissions at all times. Additionally, a flow CEM is required to measure flow from the Exxon coker unit process stream. The latter flow monitor will provide information to determine whether or not YELP is receiving Exxon's coker unit flue gas.

Additionally, in a March 2, 1999 letter to MDEQ (see document # II.E–11), we raised the concern that the YELP emission limitations may not be practically enforceable. Specifically, the YELP emission limitations in section 3 of YELP's exhibit are based on whether or not Exxon's coker CO-boiler is burning coker gas. It is our understanding that there is no monitor to record whether or not the Exxon coker CO-boiler is burning coker gas. We believe that the YELP emission limitations must be written in the same format as the emission limitations in Exxon's exhibit. Thus, YELP's emission limits must be expressed in terms of whether or not YELP is receiving Exxon coker unit flue gas because there is a monitor that can record this condition.

In a letter dated March 24, 1999, the Governor committed to address our concerns with YELP's emission limitations by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to rewrite the emission limitations to make them practically enforceable, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations at sections 3(A)(1) and (2) of YELP's exhibit. We realize, however, that the time-of-day restricted emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the time-of-day restricted emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

b. Pro-Rated Emission Limitation

The YELP exhibit provides that for any 3-hour period during the course of a calendar day when both the time-of-day restricted emission limitation and the unrestricted emission limitation apply (time-of-day and unrestricted emission limitations discussed above), a

new emission limitation for the 3-hour period will apply. The new limitation will be determined by pro-rating, on an hourly basis, the time-of-day restricted emission limitation and the unrestricted emission limitation. We do not believe that YELP's exhibit adequately addresses how the emission limitation will be pro-rated in practice or what emission limitations will be pro-rated. In a letter dated March 24, 1999, the Governor of Montana committed to revise the YELP stipulation to address this concern by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to more clearly define how and what limitations will be pro-rated, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations in section 3(A)(3) YELP's exhibit. We realize, however, that the pro-rated emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the pro-rated emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

2. Exxon's Coker Carbon Monoxide (CO)-Boiler Emission Limitation

In the July 29, 1998 submittal, Exxon's exhibit has *not* been revised to provide a method to monitor emissions from the coker CO-boiler. In a letter dated March 24, 1999, the Governor provided a commitment to develop and submit a compliance method for this emission point by March 31, 2000.[9] (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation, section 3(B)(1) of Exxon's exhibit, based on the Governor's commitment to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation.

[9] Note that the Governor initially submitted a commitment with the July 29, 1998 submittal of the SIP to develop the necessary compliance monitoring method by December 31, 1998. Due to difficulties in developing the method, on October 26, 1998, the Governor revised his commitment, with a deadline of June 30, 1999 (see document # II.E–4). Again, on March 24, 1999, the Governor revised his commitment with a deadline of March 31, 2000. See document # II.E–5.) We believe that since we had not taken action on the initial commitment, it was acceptable for the Governor to revise the commitment.

3. Exxon's F–2 Crude/Vacuum Heater Stack Emission Limitations and Attendant Compliance Monitoring Methods

The July 29, 1998 submittal of the SIP revised attachment 2 of Exxon's exhibit, which describes the analytical method used to determine the H2S concentration in the sour water. The H2S concentration in the sour water is needed to determine compliance with the F–2 crude/vacuum heater stack emission limitations. In a letter dated January 15, 1999, we identified concerns with the revised attachment 2. In a letter dated March 24, 1999, the Governor committed to revise attachment 2 to address our concerns by March 31, 2000. (See document #'s II.E–10 and II.E–5, respectively.) We are proposing to conditionally approve the SIP as it applies to the F–2 crude/vacuum heater stack emission limitation and the attendant compliance monitoring methods, sections 3(E)(4) and 4(E) [only as they apply to the F–2 crude/vacuum heater stack], 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit, based on the Governor's commitment to revise attachment 2 of Exxon's exhibit, which provides the method used to monitor compliance with the F–2 crude/vacuum heater stack emission limitation.

4. Exxon's Fuel Gas Combustion Emission Limitations and Attendant Compliance Monitoring Method

The July 29, 1998 SIP submittal does not completely address earlier concerns we raised regarding the compliance monitoring method for Exxon's fuel gas combustion emission limitations. In a letter dated January 15, 1999, we indicated that we still believed the compliance monitoring method for the fuel gas combustion emission limitation at Exxon was inadequate because H2S concentration in the refinery fuel-gas fired units could exceed the levels which the H2S CEMS could monitor. (See document #II.E.10)

On March 24, 1999, the Governor submitted a commitment to address our concerns with the H2S CEMS at Exxon by March 31, 2000. (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to Exxon's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods, in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit, because of the Governor's commitment to address our concerns with the method for monitoring compliance with the emission limitation.

5. Cenex Sour Water Stripper (SWS)

The earlier Cenex exhibits (i.e., those submitted prior to the July 29, 1998 submittal) did not provide a means to monitor compliance with the combined boiler/heater emissions limitation if emissions from the existing SWS unit were directed to the main crude heater since compliance with the combined emissions limitation was monitored by fuel usage and sulfur content of the fuel. In the July 29, 1998 submittal of the SIP, the State of Montana has incorporated into attachment 2 a method for monitoring compliance when SWS emissions are burned in the main crude heater. This method is similar to the method used by Exxon to determine SWS emissions. We expressed concerns about the method used to determine SWS emissions in a letter dated January 15, 1999. (See document #II.E–10.) In a letter dated March 24, 1999, the Governor of Montana committed to revise Cenex's SWS test method to address our concerns by March 31, 2000. (See document #II.E–5.) We are proposing to conditionally approve the SIP as it applies to the combustion sources emission limitations and attendant compliance monitoring method in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit.

D. What Happens When EPA Approves Parts of the State of Montana's Plan?

Once we approve a SIP, it is legally enforceable by us and citizens under the Act.

E. What Happens When EPA Disapproves Parts of the State of Montana's Plan?

Once we disapprove a SIP, it is still enforceable at the State level but not at the Federal level. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved in the area. Also, in some cases, once we disapprove a plan, sanctions may be imposed.

III. Other Issues Pertaining to State Authority

A. How Do the State-Only Provisions Affect EPA's Actions?

In June 1998, the MBER adopted ''Additional State Requirements'' for each of the seven sources in the Billings/Laurel area. These requirements (hereinafter referred to as the ''State-only provisions'') were not submitted for inclusion in the SIP and are

enforceable only by the State of Montana. Among the State-only provisions are requirements for the affected companies to develop and submit to the MDEQ the following documents: Corrective Action Plan, Alternative Monitoring Plan, Quality Assurance Project Plans, and Standard Operating Procedures document. By the terms of the State-only provisions, these documents will affect how the MDEQ makes certain compliance determinations. For example, for purposes of monitoring whether a source has satisfied the quarterly data recovery rate (QDRR) requirement of the Billings/Laurel SO2 SIP, the MDEQ will rely on a source's Standard Operating Procedures manual to specify what is an ''adequate spare parts inventory.'' What is ''timely and appropriate action to correct a failure in the CEMS'' will be outlined in the source's Corrective Action Plan, Quality Assurance Project Plan, and Standard Operating Procedures document. ''Short-term corrective measures'' and ''long-term corrective measures'' for CEMS failure will be specified in a similar fashion. When a CEMS fails, the source will correct or replace the CEMS ''as expeditiously as practicable and within a period not to exceed six months'' according to a schedule already established in the source's Corrective Action Plan.

Since the State-only provisions were not included in the Billings/Laurel SO2 SIP, we are not acting to propose to approve or disapprove these provisions nor are we relying on these provisions in proposing to approve or disapprove other provisions in the submitted SIP. Nothing in this action should be construed as making any determination or expressing any position regarding the State-only provisions or their impact on the SIP. State-only provisions can affect only State enforcement of the SIP and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including, for example, sections 113, 114, or 167, to enforce the requirements of the Billings/Laurel SO2 SIP independent of any State enforcement effort. We may take action to enforce the SIP regardless of any State compliance determination or any constraint on State enforcement discretion which the State-only provisions may impose. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by the State-only provisions.

If we were to determine that the State-only provisions, as implemented, appeared to limit, constrain, or otherwise have a chilling effect on state enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act.

B. How Does Montana's Environmental Audit Act Affect EPA's Actions?

On May 5, 1997, the Governor of Montana signed a bill enacted by the legislature that creates immunity under State law from penalties for violations discovered during a voluntary environmental audit and creates a judicial privilege under State law for information contained in an environmental audit report. This bill has not been submitted to EPA as part of Montana's SIP.

Nothing in our proposed action should be construed as making any determination or expressing any position regarding the State of Montana's audit privilege and penalty immunity law, the Voluntary Environmental Audit Act, 75–1–101 *et seq.*, M.C.A. (H.B. 293, effective October 1, 1997), or its impact upon any provision in the SIP including the proposed revision at issue here. Our proposed action does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of the State of Montana's audit privilege and immunity law. The State of Montana's audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including for example, sections 113, 114, or 167, to enforce the requirement or prohibitions of the State of Montana's plan, independent of any state enforcement effort. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by a state audit privilege or immunity law.

IV. Other Rulemaking Actions

A. How Does This Proposed Rulemaking Relate to EPA's SIP Call?

Our March 4, 1993 SIP Call letter (see document # II.G–1) stated that the SIP Call was not final Agency action subject to judicial review, and that a final Agency action would occur when we made a binding determination regarding the State's response to the SIP Call. With this document we are proposing action on the State of Montana's response to the March 4, 1993 SIP Call; we will make a binding determination regarding Montana's response to the SIP Call if and when we take final rulemaking action based on this proposal.

B. Why Is EPA Proposing Sanctions?

Under section 179(a)(3)(B) of the Act, if we disapprove in whole or in part a submission of a SIP revision required under the Act, one of the sanctions specified in section 179(b) applies, unless the deficiency has been corrected within 18 months after our disapproval. Section 179(b) specifies two sanctions available to the Administrator: (1) withholding of certain highway funding under section 179(b)(1); and (2) application of a 2:1 offset ratio to new or modified stationary sources of emissions for which a new source review permit is required under part D of title I.

We have promulgated final regulations to implement section 179 of the Act. See 59 FR 39832 (August 4, 1994); 40 CFR 52.31 (the ''sanctions rule''). The regulations specify the order in which sanctions will apply when states do not submit a part D SIP or SIP revision or implement an approved part D SIP or SIP revision, or we disapprove a part D SIP or SIP revision. The sanctions rule does not, however, address the imposition of sanctions in the case of state failure to submit or implement a SIP in response to a SIP Call under section 110(k)(5) of the Act, or where we disapprove such a SIP. Since we are proposing to partially disapprove the SIP revision the State of Montana has submitted in response to our SIP Call, which would render our SIP Call binding, we believe it is appropriate to propose the order of sanctions for the State of Montana's failure to comply with the SIP Call, in the event that we finalize our proposal to disapprove portions of the SIP. We believe that the regulatory scheme promulgated for sanctions generally, under 40 CFR 52.31, should also apply here, for the same reasons as discussed in the sanctions rule (see 59 FR 39832). Thus, we are proposing to apply the 2:1 offset sanction within 18 months of the effective date of a final partial disapproval of the SIP and the highway sanction six months after the imposition of the offset sanction. We believe that the rationale for this approach in the sanctions rule (see 59 FR 39832) applies with equal force here. In addition, we're considering whether the particular circumstances here—namely that the State of Montana submitted the required SIP revision in September 1995 one year after our SIP Call's deadline for submittal, and subsequently amended the submission in 1996, 1997, and 1998 without ever establishing a fully

approvable SIP—may merit acceleration of sanctions. That is, we request comment on whether we should provide for the immediate application of sanctions under section 110(m) of the Act if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval. In addition, we request comment on whether we should provide for application of sanctions in other areas of the State, outside the Laurel nonattainment area, under section 110(m) of the Act, if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval.

V. Background

A. What Is a State Implementation Plan (SIP)?

The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPS) to attain and maintain these NAAQS. We approve SIPS if they adequately accomplish the following:

- Demonstrate attainment and maintenance of the applicable NAAQS.
- Describe a control strategy.
- Contain legally enforceable regulations.
- Include an emissions inventory.
- Include procedures for new source review.
- Outline a program for monitoring.
- Show adequate resources.
- Meet other requirements specific to the pollutant being considered.
- Are adopted according to the State's and our procedural requirements, including public input.

Under this air quality management process, we do not dictate to the States the control strategies that are needed to demonstrate attainment and maintenance. States are provided the flexibility to determine what is appropriate in terms of controlling a particular pollutant. We provide technical assistance when needed.

B. What Are the Sulfur Dioxide (SO2) National Ambient Air Quality Standards (NAAQS)?

On April 30, 1971, we issued primary and secondary NAAQS for sulfur oxides (SO_x) (measured as sulfur dioxide (SO2)) (40 CFR 50.4). The primary standards were set at 365 micrograms per cubic meter ($\mu g/m^3$) (0.14 parts per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.03 ppm) annual arithmetic mean. The secondary standard was set at 1,300 $\mu g/m^3$ (0.5 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. See our TSD to this action for more information on the SO2 NAAQS.

C. What Is the Regulatory History in Billings/Laurel, Montana?

The SO2 problems in the Billings/Laurel area go back over twenty years. On July 8, 1976 (41 FR 28002), we announced in the **Federal Register** that the SIP for the Billings air quality maintenance area (AQMA) was inadequate to provide for the maintenance of the SO2 NAAQS. The Billings AQMA encompasses Carbon, Stillwater, Sweet Grass, Yellowstone and Big Horn (excluding the Northern Cheyenne Indian Reservation) counties.

The Governor of Montana submitted a SIP revision on January 26, 1978, which included a stipulation (discussed below). (The January 26, 1978 SIP can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.) However, the SIP revision did not include a demonstration that the known NAAQS violations would be corrected.

In the interim, the Act was amended in 1977, changing our approach for areas not attaining the NAAQS. Section 107 required us to officially designate areas violating the NAAQS as nonattainment.

On March 3, 1978 (43 FR 8962), Laurel was designated as nonattainment for the primary SO2 NAAQS. See also 40 CFR 81.327. The nonattainment area consists of an area with a two-kilometer radius around the Cenex Petroleum Refinery. This designation was based on measured and modeled violations of the NAAQS. We reaffirmed this nonattainment designation on September 11, 1978 (43 FR 40412).

On September 6, 1979 (44 FR 51977), we approved the revisions to the Montana SIP submitted on January 26, 1978. The revision included a stipulation between the Montana Department of Health and Environmental Science and Cenex. Other companies that were parties to the stipulation include Exxon, Conoco, Montana Power, Western Sugar and Montana Sulphur & Chemical Company. Since the January 26, 1978 SIP submittal did not include a demonstration that the NAAQS violations in Laurel would be corrected, we contracted with Pacific Environmental Science (PES) to quantify the emission reductions expected from Cenex. Based on an October 1978 report by PES and diffusion modeling performed by the State of Montana, we believed that the NAAQS would be attained in Laurel after full implementation of the control program proposed at Cenex. (PES's October 1978 report and the State of Montana's diffusion modeling report can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.)

On January 10, 1980 (45 FR 2034), we approved the Laurel plan, submitted in 1978, as meeting the part D requirements of the Act.

D. Why Did EPA Call for a SIP Revision?

The 1990 Act maintains the requirement that states revise SIPs once inadequacies have been identified. Section 110(k)(5) of the Act states that ''whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS, * * * the Administrator shall require the state to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the state of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.''

Results from two different dispersion modeling studies—the study for the Billings Gasification, Inc. (BGI) (now YELP) permit and the GeoResearch, Inc. (GRI) study commissioned by the Billings City Council and subsequently refined by the State of Montana—both showed projected violations of the NAAQS for sulfur dioxide (SO2) at various receptor points in the Billings and Laurel area. In the Laurel area, the receptor points were outside the existing nonattainment area boundary. (See document #'s III.G–12 and III.G–13 for copies of the GRI and BGI study reports.)

In both the BGI and GRI modeling studies, the analysis was performed using the modeling techniques and data bases recommended in our ''Guideline on Air Quality Modeling (Revised),'' found in 40 CFR part 51, appendix W. Major sources of SO2 in the Billings/Laurel area (the Conoco, Exxon, and Cenex refineries, Montana Power, Montana Sulfur and Chemical Company, and Western Sugar) all contributed to high ambient concentrations of SO2. The modeling studies predicted violations using actual emissions from these sources, allowable emissions (the higher levels allowed under then-current permits), and potential emissions (maximum capacity, at the time, of a stationary source to emit a pollutant under its physical and operational design). These results led us to believe that the SIP was inadequate

and should be revised. Therefore, on March 4, 1993, we issued a letter to the Governor of Montana calling for the State of Montana to revise its SIP for the Billings/Laurel area to assure attainment and maintenance of the SO2 NAAQS. (See 58 FR 41430, August 4, 1993, and document #'s II.G–1 and II.G–3.)

E. What Did the State of Montana Submit in Response to EPA's SIP Call?

Our 1993 SIP Call called for the State of Montana to submit a SIP revision for the Billings/Laurel area by September 4, 1994. On September 6, 1995, the Governor of Montana submitted a SIP revision in response to the SIP Call (see document # II.B). The SIP was later amended with revisions submitted on August 27, 1996, April 2, 1997 and July 29, 1998 (see document #'s II.C., II.D., and II.E., respectively).

F. What Sources Does the SIP Affect?

The major SO2 emitting industries in the Billings area are the Conoco and Exxon Petroleum Refineries, Western Sugar Company, the Montana Power Company J.E. Corette Plant, Montana Sulphur & Chemical Company, and Yellowstone Energy Limited Partnership. The major SO2 emitting industry in the Laurel area is the Cenex Petroleum Refinery. Although Laurel and Billings are 15 miles apart, the industries in Billings have some impact on the air quality in Laurel and the industry in Laurel has some impact on the air quality in Billings.

The Billings/Laurel SO2 SIP regulates most of the SO2 emission points at the above-mentioned sources.

VI. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send your comments in duplicate to the address listed in the front of this Notice. We'll consider your comments in deciding our final action if your letter is received before August 27, 1999.

VII. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

Today's proposed rule does not create a mandate on state, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. This proposed rule, if made final, will have the effect of making existing, state-enforceable requirements federally enforceable against seven industrial sources of air pollution. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 action is not subject to E.O. 13045 because it partly approves a state rule implementing a Federal standard.

D. Executive Order 13084

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

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval and conditional approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The

Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the proposed conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of a state submittal does not affect its state-enforceability. Moreover, EPA's proposed disapproval of a submittal will not have a significant impact on a substantial number of small entities because the disapproval action only affects seven industrial sources of air pollution: Cenex, Conoco, Inc., Exxon Company, USA, Montana Power Company, Montana Sulphur & Chemical Company, Western Sugar Company, and Yellowstone Energy Limited Partnership. Only a limited number of sources are impacted by this action. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no budgetary impact statement is required.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: July 20, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR Part 52, subpart BB of chapter I, title 40 is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

Subpart A—General Provisions

2. Section 52.32 is amended by designating the existing text as (a) and by adding paragraph (b) to read as follows:

§ 52.32 Sanctions following findings of SIP inadequacy.

* * * * *

(b) By letter dated March 4, 1993, pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5), EPA informed the Governor of Montana that the Sulfur Dioxide State Implementation Plan (SIP) for the Billings-Laurel area was substantially inadequate to attain and maintain the sulfur dioxide National Ambient Air Quality Standards (NAAQS) and called for the State of Montana to revise the SIP as necessary to assure attainment and maintenance of the sulfur dioxide NAAQS. The Governor of Montana submitted sulfur dioxide SIP revisions for the Billings-Laurel area to EPA on September 6, 1995, August 27, 1996, April 2, 1997, and July 29, 1998. EPA partially disapproved these SIP revisions on [Effective date of disapproval] (see 40 CFR 52.1370(c)(47)). By virtue of EPA's partial disapproval, sanctions, as described in section 179(b) of the Clean Air Act, 42 U.S.C. 7509(b), apply to the Billings-Laurel area pursuant to section 179(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7509(a)(3)(B). These sanctions shall apply to the Billings-Laurel area in the sequence set forth in § 52.31(d)(1) and in accordance with the terms of § 52.31. [Effective date of disapproval] shall be deemed the date of the finding described in §§ 52.31(d) and (e).

Subpart BB—Montana

3. Section 52.1370 is amended by adding paragraph (c)(47) To read as follows:

§ 52.1370 Identification of plan

* * * * *

(c) * * *

(47) The Governor of Montana submitted sulfur dioxide SIP revisions for Billings/Laurel on September 6, 1995, August 27, 1996, April 2, 1997 and July 29, 1998. On March 24, 1999, the Governor submitted a commitment to revise the SIP.

(i) Incorporation by Reference

(A) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Cenex Harvest Cooperatives including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation and the portions of sections 3(B)(2) and 4 (D), of exhibit A that apply to flares.

(B) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Conoco including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(C) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Exxon including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1 and 22 of the stipulation, and the portions of sections 3(E)(4) and 4(E) of exhibit A that apply to flares.

(D) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Power Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(E) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1, 2 and 22 of the stipulation, and sections 3(A)(1)(a) and (b), 3(A)(3), and 3(A)(4) of exhibit A.

(F) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Western Sugar Company including the stipulation and exhibit A and attachment to the stipulation,

except for paragraph 20 of the stipulation.

(G) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation.

(ii) Additional Material.

(A) All portions of the September 6, 1995 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(B) All portions of the August 27, 1996 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(C) All portions of the April 2, 1997 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(D) All portions of the July 29, 1998 Billings/Laurel SO2 SIP submittal that are not covered in section 52.1370(c)(47) above other than the stipulations and exhibit A's and attachments to the stipulations.

(E) April 28, 1997 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(F) January 30, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality to Richard R. Long, Director, Air Program, EPA Region VIII.

(G) August 11, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Kerrigan G. Clough, Assistant Regional Administrator, EPA Region VIII.

(H) September 3, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(I) March 24, 1999 commitment letter from Marc Racicot, Governor of Montana, to William Yellowtail, EPA Regional Administrator.

(J) May 20, 1999 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

[FR Doc. 99–19270 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, FCC 99–150]

Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document examines the development of a transition plan to ensure that the transition from the Commission to privately owned accounting authorities in the settlement of accounts for maritime mobile, maritime satellite, aircraft and hand-held terminal radio services. The Commission seeks further comment in this proceeding on how best to implement this privatization. The Commission initiated this proceeding pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Comments are due on or before August 23, 1999; and reply comments are due on or before September 8, 1999. Written comments by the public on the proposed information collections are due September 27, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554. A copy of any comments on the proposed information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478. For additional information concerning the proposed information collection contained in the FNPRM contact John Copes at (202) 418–1478, or via the Internet at jcopes@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, FCC 99–150, adopted on June 21, 1999, and released on July 13, 1999. The full test of the FNPRM is available for inspection and copying during normal business hours in the Federal Communications Commission, Reference Information Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554 The complete text of the FNPRM may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW Washington, DC 20036, (202) 857–3800. The FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Summary of FNPRM

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 39800, July 24, 1998) (NPRM) to streamline further the regulations and authorization of privately owned accounting authorities that settle accounts in the maritime mobile and maritime mobile-satellite radio services.

2. On June 21, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 99–150) to make final the proposals in its July 1999 NPRM and to institute a transition period leading to the handing over of its functions to private accounting authorities. A final rule relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the Report and Order (R&O) portion of the document, the Commission affirmed its proposal to withdraw from performing the functions of an accounting authority and to rely solely upon the private accounting authorities to provide account-settlement services for maritime and satellite communications.

3. In the FNPRM, the Commission declined to appoint another accounting authority to take over the function of ''accounting authority of last resort'' that the Commission has traditionally performed. The Commission has traditionally not required U.S. users of maritime and satellite communications to designate a specific accounting authority to settle its accounts with foreign cost stations. Rather, the Commission has been willing to accept accounts from such foreign coast stations and to attempt to locate the user, send them the bill and remit their payment. The Commission noted that, upon the Commission's withdrawal as an accounting authority, there would be no one to accept such accounts and that it would be necessary to designate someone as the new accounting authority of last resort or to provide some other alternative, such as a formula to divide undesignated

accounts among certified authorities or to require customers to designate an accounting authority at the time they send the communications. No one volunteered to perform the function, though the Commission concluded that it would not designate anyone as the accounting authority of last resort. The Commission also concluded that a formula would require someone to administer it and would probably be difficult to administer. The Commission concluded that it would be better to require users to designate an accounting authority for each call. Such a requirement would eliminate undesignated calls or the need to designate someone to handle them. The Commission noted that another way to accomplish the same end would be to require users to presubscribe to the services of an accounting authority in the same manner that users are now required to presubscribe to a carrier to handle their long-distance telephone calls.

4. In the FNPRM the Commission also tentatively concluded to delay its withdrawal as an accounting authority for three years and to institute a transition period to ensure an orderly transition to reliance solely upon private accounting authorities. The Commission was responding to arguments by the Federal governmental agencies for which it provides account-settlement services, who argued that they need three years to budget for the increased costs that they will face once the Commission withdraws as an accounting authority. The Commission now settles accounts for government agencies at no charge. Because private accounting authorities typically charge a fee for service, the agencies will need to budget for money to pay the fees. The Commission noted that during the transition period it would notify other users of their need to find an alternative accounting authority. Finally, the Commission asks interested persons to identify any areas where they believe Commission withdrawal would cause problems, so that they may be addressed and resolved.

Regulatory Flexibility Act

5. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, we are required to prepare an Initial Regulatory Flexibility Analysis (IRFA) for the proposals contained in the FNPRM, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The purpose of this FNPRM is to seek comment on how best to implement the proposals adopted in the R&O. The proposals in the FNPRM do not impose any additional compliance burden on small entities dealing with the Commission. Rather, the FNPRM seeks comment on a proposed transition period and any problem areas that should be addressed during this transition period. The transition period is intended to ensure that the Commission's withdrawal as an accounting authority shall be as smooth as possible. We anticipate that the proposals will reduce any regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules proposed in this FNPRM will not, if promulgated, have a significant economic impact upon a substantial number of small business entities, as that term is defined by the Regulatory Flexibility Act. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this document, including this certification, to the Chief Counsel for Advocacy of the Small Business Administrations in accordance with the Regulatory Flexibility Act. We shall analyze the information submitted during the comment period and, if we determine at the time that we issue a final rule that such final rule changes will have a significant economic impact on a significant number of small business entities, we shall prepare a Final Regulatory Flexibility Analysis.

Copies to Private Accounting Authorities and Governmental Users

6. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the current U.S.-certified private accounting authorities (Mackay Communications Inc.; Radio-Holland Communications, Inc.; Seven Seas Communications, Inc.; KFS World Communications (d/b/a Globe Wireless); 7 Cs Ltd; Mobile Marine Radio, Inc.; EXXON Communications Company; Raytheon Service Company; and Global Communications Corporation) and to the current governmental users (U.S. Coast Guard, Department of Defense). A list of those agencies is in an Attachment to this summary.

Initial Paperwork Reduction Act of 1995 Analysis

7. The FNPRM contains a proposed information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the proposed information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due on September 27, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Persons wishing to comment on the proposed and/or modified information collections should file written comments on or before August 23, 1999. The Office of Management and Budget (OMB) must submit its written comments on the proposed and/or modified information collections, if any, on or before 60 days after the date of publication of the summary of this FNPRM in the **Federal Register**. In addition to filing comments with the Secretary, they should also submit a copy of any comments on the information collections contained herein to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW, Washington, DC 20503.

8. Parties in this proceeding may file comments and replies on paper or electronically. Under Section 1.419 of the Commission's Rules, 47 CFR 1.419, parties filing comments on paper must file an original and four copies of all comments, reply comments, and supporting documents. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554. Those filing written pleadings in person should file them at the counter TW–A325 located in the lobby of 445 12th Street, SW. Additionally, parties must file a copy of their comments, replies and supporting documents with the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW, Washington, DC 20036. Comments and reply comments

will be available for public inspection during regular business hours in the FCC Reference Information Center (Room CY–A257) at 445 12th St. SW. For additional information about this proceeding, please contact John Copes at (202) 418–1478.

Supplementary Information Regarding Paperwork Reduction Act Analysis

OMB Control Number: 3060–XXXX.

Title: Designation of Accounting Authority for Maritime Mobile and Maritime Mobile-Satellite Radio Communications.

Form Number: N/A.

Respondents: Federal Government; State, local or tribal governments; businesses or other for profit entities; individuals or households.

Number of Respondents: 2,600.

Estimated Time per Response: 1.0 hour.

Frequency of Response: One-time reporting requirement; Third Party Disclosure.

Total Annual Burden: 2,600 hours.

Total Annual Cost: None.

Needs and Uses: When the Commission withdraws as an accounting authority, it will be necessary for those users who rely upon the Commission to settle their maritime and satellite radio accounts. As a result of this FNPRM, the Commission may decide the best way to accomplish this is to require all users to designate a particular accounting authority to settle their radio accounts.

Electronic Filing of Comments

9. Pursuant to Section 1.49(f) of the Commission's Rules, 47 CFR 1.49(f), Parties may file their comments, replies and supporting documents in electronic form via the Internet. Such parties should use the Commission's Electronic Comment Filing System, which they can access using the following Internet address: <http://www.fcc.gov/e-file/ecfs.html>

Further information on the process of submitting comments electronically is available at <http://www.fcc.gov/e-file/>. Pursuant to Section 1.419(d) of the Commission's Rules, 47 CFR 1.419(d), Parties need file only one copy of an electronic submission. In completing the transmittal screen, a party filing a comment, reply or supporting document should include his or her full name, U.S. Postal Service mailing address and the lead Docket number for this proceeding, which is IB Docket No. 98–96. The Commission will consider electronically filed comments that conform to the guidelines of this section part of the record in this proceeding and accord them the same treatment as comments filed on paper.

10. Parties filing comments, replies and supporting documents on paper must also file their submissions on diskette. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format, using MS DOS and Word Perfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly marked with the party's name, the proceeding to which it is addressed (in this case, IB Docket No. 98–96), the type of pleading (comment or reply) and the date of submission. The diskette should be accompanied by a cover letter setting forth the same information. Each diskette should contain only one party's pleading, preferably in a single electronic file. The party should submit one copy of the diskette to John Copes, International Bureau, Telecommunications Division, 445—12th St., SW, Room 6–C847, Washington, DC 20554. The party should file an exact copy of the diskette, identically marked, with the Commission's copy contractor, International Transcription Service, Inc., at 1231 20th St., NW, Washington, DC 20036.

Conclusion

11. *It is ordered* pursuant to Sections 4(i), 4(j), 11, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201–205 and 303(r), that this FNPRM *Is hereby adopted* and comments *Are requested* as described above.

12. *It is further ordered* that the Office of Public Affairs, Reference Operations Division, *Shall send* a Copy of this FNPRM, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 3

Accounting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Attachment—Government Agencies Who Use the Federal Communications Commission as an Accounting Authority

Department of Agriculture
Department of Air Force
Department of the Army
Coast Guard
Department of Commerce
Defense Information Systems Agency
Department of Energy
Federal Aviation Administration
Federal Emergency Management Agency
Department of Health and Human Services
Department of the Interior
Department of Justice
Department of the Navy
Department of Navy—Command
National Aeronautics and Space Administration
National Science Foundation
Office of Secretary of Defense
On-Site Inspection Agency
Department of State
Department of Treasury
United States Information Agency
U.S. Postal Service
Department of Veteran Affairs

[FR Doc. 99–19066 Filed 7–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, and 177

[Docket No. RSPA–98–4952 (HM–223)]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Supplemental advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 27, 1999, the Research and Special Programs Administration (RSPA, ''we'') published a supplemental advance notice of proposed rulemaking (ANPRM) inviting public comment on the applicability of the Hazardous Materials Regulations to loading, unloading, and storage of hazardous materials. In response to a petition filed by the Transportation Trades Department of the AFL–CIO, we are extending until August 25, 1999, the period for filing comments to the supplemental ANPRM.

DATES: Submit comments by August 25, 1999. To the extent possible, we will consider comments received after this date in making our decision on whether to proceed to develop a proposed rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number RSPA–98–4952 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by

accessing the Dockets Management System web site at ''http://dms.dot.gov/'' and following the instructions for filing a document electronically.

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. You can also review comments on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

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

SUPPLEMENTARY INFORMATION: On April 27, 1999 (64 FR 22718), we published a supplemental ANPRM seeking comments on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to loading, unloading, and storage of hazardous materials. The supplemental ANPRM summarized comments received in response to an earlier ANPRM, outlined commenters' three most commonly suggested approaches for applying the HMR to activities incidental to transportation, and asked a number of questions focused on the details of each suggested approach.

As of July 23, 1999, we have received only eight comments in response to the supplemental ANPRM. The Transportation Trades Department (TTD) of the AFL–CIO has petitioned for an extension to the comment period, stating that an extension of 60 days will enable it to work with its affiliates to present a sound, comprehensive response to the questions posed in the supplemental ANPRM. In addition to the TTD petition, several persons wishing to comment have asked if we have considered extending the comment period. We agree that the comment period should be extended. However, we believe that an extension of 30 days should be sufficient to accommodate commenters' need for additional time. Accordingly, the closing date of the comment period is extended to August 25, 1999.

Issued in Washington, DC on July 23, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 99–19260 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

The 64-Acre Tract Intermodal Transit Center, Lake Tahoe Basin Management Unit (LTBMU), Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to address issuing a permit to authorize construction and operation of an Intermodal Transit Center on a portion of the tract known as the ''64-Acres''. This site is located to the west of California State Route 89 just south of Fanny Bridge over the Truckee River, in Tahoe City, California.

ADDRESSES: Written comments concerning the Draft EIS should be sent to the responsible official, Forest Supervisor, attention: 64-Acre Tract Intermodal Transit Center, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action to Joe Oden, Forest Planner, at (530) 573–2653 or at the above address.

DECISION TO BE MADE: The decision to be made for this EIS is whether to issue a Special Use Permit authorizing the construction and operation of an Intermodal Transit Center on the 64-Acres Tract. If a permit is issued, what conditions, requirements and mitigations should be included to protect the environment?

PURPOSE AND NEED: The proposal's purpose is to provide an Intermodal Transit Center in the Tahoe City area to support existing and future transit operations. Traffic congestion has long been considered a problem in the Tahoe Basin and numerous planning efforts have been undertaken to reduce dependence on automobile travel and to enhance transit as an effective alternative. One of the constraints to effective transit in the Tahoe Basin is that there have been limited facilities to support their operation and to provide safe transfer points for transit riders, especially during periods of inclement weather. This facility will transport visitors to the Lake of the Sky Interpretive Center, also to be built on the 64-Acres tract.

PROPOSED ACTION AND ALTERNATIVES: The proposed action includes issuing a permit authorizing the construction and operation of a transit center and associated parking facilities to be located on the northwest portion of the tract. Associated with the transit center would be roadway system improvements and recreation trail alterations necessary to accommodate the new facility. The proposed transit center would provide parking for six buses at a time. The facility would also provide an enclosed structure with a heated waiting area to serve 40 patrons. A parking area is to be provided with 130 spaces to support the Intermodal Transit Center. Intermodal transportation includes bicycling, roller blading and walking as well as bus, shuttle and taxi transportation. The transit center and parking will support all of these uses. This proposal is consistent with Forest Service multiple use plans and it does not violate the section 4(f) of the Department of Transportation Act. In addition to the proposed action and no action, various parking and traffic circulation alternatives may be evaluated in the EIS.

ISSUES: Traffic impacts, parking, and the need for a transit center on this site are likely to be the main issues. Air quality, water quality, visual, noise, recreation, and biological resources will also be addressed.

SUPPLEMENTARY INFORMATION: The Tahoe City Community Plan and the TRPA Regional Transportation Plan/Air Quality Plan both recognize the need for a transit facility in the Tahoe City area to support existing and potential transit operations. The tract has been identified in adopted plans and policies as the location for the facility because of the proximity of the site to Tahoe City and because the location provides an effective transfer point for transit serving the north shore, west shore and the Truckee River area including the town of Truckee.

An Environmental Assessment (EA) for this proposal was distributed for public review and comment February 11, 1999. The EA was tiered to the Lake of the Sky environmental Impact Statement. Other documents that contributed to the preparation of the EA include the Tahoe City Community Plan, the Sixty-four Acres Tract Multimodal Transportation Center Study Final Report May, 1994, and the LTBMU Forest Plan. A scoping meeting for the EA was held on May 1, 1998, in Tahoe City. There were two noticed public hearings on the EA: Tahoe City on February 24, 1999 and San Francisco on April 8, 1999. The project was discussed at the North Tahoe Advisory Council meeting August 13, 1998. Scoping meetings for the EIR/TRPA EIS were held July 14 (Tahoe City) and July 15, 1999 (Incline Village Nevada). Scoping letters inviting input on the EIS/EIS are being sent to all those who expressed an interest in this project. Scoping input and public comments that were received on the EA, as well as additional written comments and suggestions postmarked by August 31, 1999 will be addressed in the EIS/EIR. No additional scoping meetings are planned at this time.

Implementation of the management proposal would require several permits or licenses from other agencies including the Tahoe Regional Planning Agency, Placer County, and Caltrans. Compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) is required. Placer County is the lead for the EIR and TRPA will also take action on the EIR/EIS in conformance with the Agency's Code of Ordinances.

The decision will be made by Lake Tahoe Basin Management Unit Forest Supervisor, as the Forest Service is the lead agency under NEPA. Placer County is the lead state agency under the California Environmental Quality Act (CEQA).

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the public for comment in November 1999. The final EIS and Record of Decision is expected in April 2000. The decision will be appealable under Forest Service regulations found at 36 CFR part 217.

The comment period for the draft EIS will be at least 45 days from the date the Environmental Protection Agency

publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circut, 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Linda Massey,

Acting Forest Supervisor.

[FR Doc. 99–19294 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Chalk Creek Timber Sales, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposal Action to harvest and regenerate timber and thin young stands created by past regeneration harvest. The proposal also calls for the construction, reconstruction, and decommissioning of roads within the Chalk Creek, McKinley Creek, and Hamner Creek drainages of the North Fork of the Middle Fork of the Willamette River watershed. The planning area is bounded by the North Fork of the Middle Fork of the Willamette River on the east, Alpine River to the west and north (the watershed boundary between the North Fork and the Fall Creek watershed) and an unnamed ridge to the south which separates Hamner Creek and High Creek. The area is approximately 40 air miles east of the City of Eugene and 12 air miles northeast of the City of Oakridge. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. These proposals are tentatively planned for implementation in fiscal year 2001 and 2002. The Willamette National Forest invites written comments and suggestions on the scope of the analysis. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by September 1, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rick Scott, District Ranger, Middle Fork Ranger District, Willamette National Forest, P.O. Box 1410, Oakridge, Oregon 97463.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Kristie Miller, Planning Resource Management Assistant or Tim Bailey, Project Coordinator, Middle Fork Ranger District, phone 541–782–2283.

SUPPLEMENTARY INFORMATION: The Chalk Creek Planning area is entirely within the North Fork of the Middle Fork of the Willamette River watershed, which is designated as a Tier 2 Key watershed by the Northwest Forest Plan (ROD, C–7). Tier 2 Key watersheds contain important sources of high quality water. A Watershed Analysis was completed for the North Fork of the Middle Fork of the Willamette River in September, 1995.

The purpose of this project is to harvest timber in a manner that implements the management objectives, and to implement various resource restoration activities to meet Key Watershed objectives.

The proposed actions include harvesting timber in one to several commercial thinning timber sales over the next five years, and one regeneration harvest timber sale to be sold in the year 2001. Both thinning and regeneration timber sale proposals involve temporary road construction, system road reconstruction, and system road decommissioning. This analysis will evaluate alternative ways of addressing the Forest Service proposal to harvest approximately 15 million board feet. Approximately 3 million board feet would be from thinning about 600 acres of young stands created by past clearcut harvest. Approximately 12 million board feet would from regeneration harvest on about 200 acres. All the above proposed harvest would require some temporary road construction and reconstruction of existing system roads.

The Chalk Creek planning area comprises about 9,500 acres, all of which is National Forest System lands. Of the 9,500 acres about 4,200 acres (44%) have been previously harvested and regenerated. Of the remaining acres, approximately 1,450 acres (15%) is in a late-successional stand condition [ranging in ages from 80 to 170 years], and 3,500 acres (37%) is in an old-growth stand condition [stand ages exceeding 200 years]. The planning area contains about 200 acres (2%) of non-forest vegetation types. Management areas that provide for programmed timber harvest are Scenic (11c) and General Forest (14a). Other land allocations in this planning area are Late-Successional Reserves, Riparian Reserves, Wild and Scenic River Corridor, Special Wildlife Habitats, and one Old-Growth Grove.

Preliminary issues identified for this analysis include water and stream quality, habitat fragmentation, economic benefit, reduction of habitat considered critical for the northern spotted owl, and road management.

The Forest Service will be seeking information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. This information will be used to determine the issues significant to the development and analysis of alternatives, to determine the appropriate range of alternative ways of implementing the proposed action, and to guide the analysis of effects. This input will be used in preparation of the draft EIS.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of alternative ways to implement the proposed actions based on the issues identified during the scoping process; and
- Determination of environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1, 1999. the comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in November, 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Rick Scott, District Ranger, is the responsible official and as responsible official, he will document the chalk Creek Timber Sales project decision and rationale in a record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 12, 1999.

Rick Scott,

District Ranger.

[FR Doc. 99–19233 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on August 5, 1999, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to: information sharing on salmon restoration and recovery from the Soil and Water Conservation District perspective; a presentation of the Regional Community Economic Revitalization Team Report; and progress reports on ongoing implementation issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowels, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: July 20, 1999.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 99–19234 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Comments on Information Collection Package

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intent to request approval of an Information Collection Package in support of the program for servicing the Agency's Community Programs loans and grants.

DATES: Comments on this notice must be received by August 27, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039. For program content, contact Beth Jones, Senior Loan Specialist, Community Programs Servicing and Special Authorities Branch, RHS, USDA, 1400 Independence Ave., Mail Stop 0787, SW, Washington, DC 20250–0787, Telephone (202) 720–1498, E-mail epjones@rdmail.rural.usda.gov. Comments should be submitted to Ms. Gillin at USDA—Rural Development, 1400 Independence Ave., SW, Mail Stop 0742, Washington, DC 20250–0742.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 3570–E, Servicing of Community Programs Loans and Grants.

Type of Request: New information collection.

Abstract: The Rural Housing Service (RHS) is a credit agency within the Rural Development mission area of the United States Department of Agriculture. Rural Development is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes through the Community Facilities program for the development of essential community facilities primarily serving

rural residents. The information will be collected by Rural Development field offices from applicants, borrowers, consultants, lenders, and attorneys. This information is used to determine applicant/borrower eligibility and project feasibility for various servicing actions. This information enables field staff to ensure that borrowers operate on a sound basis and use loan and grant funds for authorized purposes. RHS is combining the applicable portions of seven regulations affecting the servicing of Community Programs (CP) loans and grants into one regulation. The administrative portion has been removed from the published regulation. Agency field personnel will receive an instruction which will include the administrative portion and the published regulation. This action is being taken as part of the National Partnership for Reinventing Government program to eliminate unnecessary regulations and improve those that remain in force. This effort will streamline the published regulations, improve efficiency and effectiveness, and increase the level and quality of customer service. The regulation is being published as a final rule because there are no policy or procedural changes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 46 minutes per response.

Respondents: Not-for-profit institutions, State, Local, or Tribal Government.

Estimated Number of Respondents: 266.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 1,783.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS'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. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 21, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–19293 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Pollution Abatement Costs and Expenditures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the 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)).

DATES: Written comments must be submitted on or before September 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Ron Taylor, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, on (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau, prior to 1995, conducted the Survey of Pollution Abatement Costs and Expenditures, MA–200. Due to budget limitations the survey was suspended. In response to the need for data to assess the cost of environmental regulations on private business, the Census Bureau, with support from the Environmental Protection Agency, plans to reinstate the survey. The survey form will collect, from plants that produce goods or provide services classified in manufacturing, mining and electric utility industries, data on the operating costs of pollution abatement, including hazardous pollutants, payments to government agencies for pollution removal and new capital expenditures for pollution abatement structures and equipment each by the media: air pollution control, water pollution control and solid waste management. These data are similar to that collected previously in this survey. The survey results will be used to track costs of regulatory programs and rules. Results will also be used for monitoring economic impact and promoting growth of environmental programs.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 60 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0176.

Form Number: MA–200.

Type of Review: Regular.

Affected Public: Businesses or other for profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Response: 2.5 hours.

Estimated Total Annual Burden: 50,000 hours.

Estimated Total Annual Cost: $649,000.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19231 Filed 7–27–99; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Establishment of the Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Notice of the establishment of the Bureau of Economic Analysis Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Secretary of Commerce has determined that the establishment of the Bureau of Economic Analysis Advisory Committee (the ''Committee'') is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Director of the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts

The Committee will consist of thirteen members appointed by the Director of BEA and will be balanced to include members from business, academic, research, government, and international organizations who are acknowledged experts in relevant fields, such as economics, statistics, and economic accounting. Persons interested in being considered for membership on the Committee should contact J. Steven Landefeld, Director of BEA, at the address below.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

DATES: The charter will be filed under the Act, August 12, 1999.

ADDRESSES: BEA Advisory Committee, BE–1, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Part 101–6.

Dated: July 22, 1999.

J. Steven Landefeld,

Director.

[FR Doc. 99–19320 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 99–BXA–01]

Action Affecting Export Privileges; Fawzi Mustapha Assi; Decision and Order

In the Matter of: Fawzi Mustapha Assi, 7706 Middlepoint Street, Dearborn, Michigan 48126, Respondent.

On January 7, 1999, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Fawzi Mustapha Assi (hereinafter ''Assi''). The charging letter alleged that Assi committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the ''Regulations''), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (hereinafter the ''Act'').[1]

Specifically, the charging letter alleged that, on or about July 13, 1998, Assi attempted to export from the United States to Lebanon a thermal imaging camera without the export license that he knew or had reason to know was required by Sections 742.4 and 742.6 of the Regulations. BXA alleged that, by attempting to violate the Act, the Regulations, or any order, license, or authorization issued thereunder, Assi violated Section 764.2(c) of the Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, the Regulations, or any order, license, or authorization issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, Assi violated Section 764.2(e) of the Regulations.

Finally, BXA also alleged that, in connection with the attempted export described above, Assi failed to file with the U.S. Customs Service, at the time of the attempted export, the Shipper's Export Declaration (SED), an export control document as defined in Part 772 of the Regulations, required by Section 758.1(e) of the Regulations. BXA alleged that, by failing to file the SED, Assi concealed material facts from a United States agency for the purpose of or in connection with effecting an export from the United States, and, in so doing, violated Section 764.2(g) of the Regulations.

Thus, BXA alleged that Assi committed one violation of Section 764.2(c), one violation of Section 764.2(e), and one violation of Section 764.2(g), for a total of three violations of the Regulations.

BXA presented evidence that the charging letter was served on Assi in accordance with Section 766.3 of the Regulations but that he failed to answer it, as required by 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter in the ALJ) find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 764.2(c), one violation of Section 764.2(e), and one violation of Section 764.2(g), for a total of three violations of the Regulations by Assi, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of Assi's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & supp. 1999)).

First, that, for a period of 20 years from the date of this Order, Fawzi Mustapha Assi, 7706 Middlepoint Street, Dearborn, Michigan 48126, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations.

B. Take any action that facilities the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Assi and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19250 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Dmitry N. Chernyshenko; Decision and Order

In the Matters of: Dmitry N. Chernyshenko, Director, SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410, Russia, and SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410, Russia, Respondents.

On May 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued separate charging letters initiating administrative proceedings against Dmitry N. Chernyshenko and SFT Advertising Agency, (hereinafter) ''Chernyshenko'' and ''SFT'').[1] The charging letters alleged that Chernyshenko and SFT each committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the ''Regulations''),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (hereinafter the ''Act'').[3]

Specifically, the charging letters alleged that, beginning in March 1993 and continuing through September 1993, Chernyshenko and SFT engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as ''HP-Workstation'') from the United States through Germany to Russia, the ultimate destination, without first obtaininig the authorizations that Chernyshenko and SFT knew or had reason to know were required. BXA alleged that, by ordering commodities exported or to be exported from the United States, and that, by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, both Chernyshenko and SFT violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letters alleged that, in connection with that transaction, on or about May 14, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, Chernyshenko, acting in his capacity as Director of SFT, drafted a letter of assurance which stated, among other things, that the HP-Workstation would not be shipped outside GCT-eligible countries, without prior authorization from the appropriate national authorities and, in particular, that ''this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department.'' BXA alleged that, by falsifying information in

[1] In light of the fact that the enforcement proceedings against Chernyshenko and SFT arose out of the same transaction, and as the evidence supporting BXA's allegations in both cases is the same, BXA has consolidated the proceedings and filed a single default submission.

[2] The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1993)) and referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures and apply to these matters.

[3] The Act expired on August 20, 1994. The Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

the letter of assurance, both Chernyshenko and SFT (through Chernyshenko, its Director) concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and thereby violated Section 787.5(a) of the former Regulations.

Finally, the charging letters alleged that, in connection with the transaction and the activities described above, on or about July 20, 1993, both Cherynshenko and SFT caused, counseled or induced a third party to state on a Shipper's Export Declaratio, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP–Workstation was authorized for export from the United States to Germany under General License GCT, when in fact the shipment required a validated license, as the HP–Workstation was ultimately destined for Russia. BXA alleged that, in so doing, both Chernyshenko and SFT caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and thereby violated Section 787.2 of the former Regulations.

BXA presented evidence that the changing letters were served on Chernyshenko and SFT. Neither Chernyshenko nor SFT has answered the charging letters, as required by Section 766.7 of the Regulations, and each respondent is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ''ALJ'') find the facts to be as alleged in the charging letters and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letters, and concluded that those facts constitute three violations of the former Regulations by both Chernyshenko and SFT, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is that Chernyshenko and SFT each be denied all U.S. export privileges for a period of 10 years. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 10 years from the date of this Order, Dmitry N. Chernyshenko, Director, SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and all of SFT's successors, assigns, officers, representatives, agents and employees when acting for or on behalf of SFT, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of either denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by either denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby either denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from either denied person or any item subject to the Regulations that has been exported from the United States;

D. Obtain from either denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by either denied person, or service any item, of whatever origin, that is owned, possessed or controlled by either denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to either denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on both Chernyshenko and SFT, as well as on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 21, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19248 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Order Denying Permission To Apply For or Use Export Licenses

Action Affecting Export Privileges; James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor.

In the Matter of: James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor; currently incarcerated at: Federal Correctional Institution, Register #422–87–083, River Road, P.O. Box 1000, Petersburg, Virginia 23804; and with an address at: 904 prospect Avenue, Takoma, Maryland 20912.

On December 4, 1998, James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor (Clark), was convicted in the United States District

Court for the Eastern District of Virginia of violating Sections 794 (a) and (c) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 1999)). Specifically, Clark was convicted of unlawfully and knowingly combining, conspiring, confederating and agreeing with other persons, both known and unknown, to knowingly and unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used to the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1999)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Clark's conviction for violating Section 794 (a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Clark permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 4, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Clark had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

I. Until December 4, 2008, James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor, currently incarcerated at: Federal Correctional Institution, Register # 422–87–083, River Road, P.O. Box 1000, Petersburg, Virginia 23804, and with an address at: 904 Prospect Avenue, Takoma, Maryland 20912, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Clark by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 4, 2008.

VI. A copy of this Order shall be delivered to Clark. This Order shall be published in the **Federal Register.**

Dated: July 19, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–19214 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 98–BXA–09]

Action Affecting Export Privileges; Export Materials, Inc.; Decision and Order

In the Matter of: Export Materials, Inc., 3227 Greenbrier Drive, No. 108, Stafford, Texas 77477, Respondent.

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Export Materials, Inc. (hereinafter ''Export Materials''). The charging letter alleged that Export Materials committed 112 violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, Export Materials conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for Export Materials and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR § 746.4, previously codified at 15 CFR § 785.7 of the former Regulations, and 15 CFR § 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, Export Materials violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as ''pipe coating materials'') from the United States to Libya, without obtaining from the Department the validated export licenses that Export Materials knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, Export Materials, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, Export Materials, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, Export Materials, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)[3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that Export Materials committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a), five violations of Section 787A.4(a), 32 violations of Section 787.5(a); five violations of Section 787A.5(a), 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

BXA presented evidence that the charging letter was served on Export Materials in accordance with Section 766.3 of the Regulations but that Export Materials failed to answer it, as required by 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 CFR Parts 786–799 (1994 and 1995) and 15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996)) (hereinafter the ''former Regulations''). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 CFR Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730–774, effective Aprl 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR., 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR., 1996 Comp. 298 (1997), August 13, 1997 (3 CFR., 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A.4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by Export Materials, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of Export Materials's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 20 years from the date of this Order, Export Materials Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of Export Materials may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Export Materials and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19246 Filed 7–27–99; 8;45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 98–BXA–08]

Action Affecting Export Privileges; Nancy Ann Harvey; Decision and Order

In the Matter of: Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon 97305, Respondent.

On August 3, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) (Harvey). The charging letter alleged that Harvey committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act).[2]

Specifically, the charging letter alleged that, on or about August 4, 1993, Harvey exported U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells to the Republic of South Africa, concealing them in a 40 foot container and representing on a bill of lading that the items in the container were ''used household goods and personal effect,'' without obtaining from BXA the validated export license Harvey knew or had reasons to know was required by Section 772.1(b) of he former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation or contrary to the provisions of the Act or any regulation, order or

[1] The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1993)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to his matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)) and August 13, 1998 (CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp.1999)).

license issued thereunder, Harvey violated Section 787.6 of the former Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities export or to be exported from the United States with knowledge of reason to know that a violation of the Act, or any regulation, order or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the shipment, Harvey violated Section 787.4(a) of the former Regulations.

Further, the charging letter alleged that, in connection with the August 4, 1993 transaction, Harvey represented on a bill of lading, an export control document as defined in Section 770.2 of the former Regulations, that the container that she was shipping to the Republic of South Africa held ''used household goods and personal effects.'' In fact, the container also held shotguns (with barrel lengths of 18 inches and over) and shotgun shells that she had concealed among the household items. BXA alleged that, by making false or misleading representations of material fact directly or indirectly to a United States government agency in connection with the preparation, submitted or use of an export control document, Harvey violated Section 787.5(a) of the former Regulations.

BXA presented evidence that Harvey received the charging letter but failed to answer the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default. Thus pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find he facts to be alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constituted three violations of the former Regulations by Harvey, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is a denial, for a period of three years, of all of Harvey's export privileges. As provided by Section 766.22 of The Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of three years from the date of this Order, Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon, 97305, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subjects to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the uses of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provision of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Harvey and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effectively immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19249 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Order Denying Permission To Apply For or Use Export Licenses

Action Affecting Export Privileges; Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margrit, Margret, Margrit, Lisa Martin Resi, Anne.

In the Matter of: Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Marget, Margrit, Lisa Martin, Resi, Anne; currently incarcerated at: Federal Correctional Institution, Register #422–90–083, 501 Capital Cricle, NE, Tallahassee, Florida 32301; and with an address at: 3809 13th Street, N.E., Washington, D.C. 20017.

On January 22, 1999, Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Margaret, Margrit, Lisa Martin, Resi, and Anne (Squillacote), was convicted in the United States District Court for the Eastern District of Virginia of violating Sections 793(b) and 794(a) and (c) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 1999)). Specifically, Squillacote was convicted of: (1) unlawfully and knowingly combining, conspiring, conferating and agreeing with other persons, both known and unknown, to knowingly and

unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa: (2) knowingly and unlawfully attempting to communicate, deliver, and transmit classified secret documents pertaining to the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States and to the advantage of the Republic of South Africa; (3) and of knowingly and unlawfully copying, making, taking, and obtaining classified secret documents and writings connected with the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app 2401–2420 (1991 & Supp. 1999)) (the Act) [1] provides that, at the discretion of the Secretary of Commerce, [2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Squillacote's conviction for violating Sections 793(b) and 794(a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Squillacote permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on January 22, 2009. I have also decided to revoke all licenses issued pursuant to the Act in which Squillacote had an interest at the time of her conviction.

Accordingly, it is hereby *ordered*:

I. Until January 22, 2009, Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Margret, Margrit, Lisa Martin, Resi and Anne, currently incarcerated at: Federal Correctional Institution, Register #422–90–083, 501 Capital Circle, NE, Tallahassee, Florida 32301, and with an address at: 3809 13th Street, NE Washington, DC 20017, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the regulations.

II. No person may, directly or indirectly, do nay of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations:

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control or any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to known that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Squillacote by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This order is effective immediately and shall remain in effect until January 22, 2009.

VI. A copy of this Order shall be delivered to Squillacote. This Order shall be published in the **Federal Register**.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

Dated: July 19, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–19216 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kurt Alan Stand, Also Known as Ken, Junior, and Alan David Jackson; Order Denying Permission To Apply for or Use Export Licenses

On January 22, 1999, Kurt Alan Stand, also known as Ken, Junior, and Alan David Jackson (Stand), was convicted in the United States District Court for the Eastern District of Virginia of violating Sections 793(b) and 794(a) and (c) of the Espionage Act (18 U.S.C.A. §§ 792–799 (1976 & Supp. 1999)). Specifically, Stand was convicted of: (1) unlawfully and knowingly combining, conspiring, confederating and agreeing with other persons, both known and unknown, to knowingly and unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used to the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa; (2) knowingly and unlawfully attempting to communicate, deliver, and transmit classified secret documents pertaining to the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States and to the advantage of the Republic of South Africa; (3) and of knowingly and unlawfully copying, making, taking, and obtaining classified secret documents and writings connected with the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Stand's conviction for violating Sections 793(b) and 794(a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Stand permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 22, 2009. I have also decided to revoke all licenses issued pursuant to the Act in which Stand had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. Until January 22, 2009, Kurt Alan Stand, also known as Ken, Junior, and Alan David Jackson, currently incarcerated at: Federal Transfer Center, Register #422–89–083, P.O. Box 898801, Oklahoma City, Oklahoma 73189–8801, and with an address at: 3809 13th Street, NE., Washington, DC 20017, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilities the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation,

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Stand by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 22, 2009.

VI. A copy of this Order shall be delivered to Stand. This Order shall be published in the **Federal Register.**

Dated: July 19, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–19215 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802, A–588–850, A–588–851, A–201–827, A–791–808, A–485–805]

Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Presing or Kris Campbell at (202) 482–0194 and (202) 482–3813, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

The Petitions

On June 30, 1999, the Department of Commerce (''the Department'') received petitions on large diameter carbon and alloy seamless standard, line and pressure pipe (''large diameter pipe'') filed in proper form by U.S. Steel Group, (a unit of USX Corp.-Fairfield Seamless Pipe Mill), USS/Kobe Steel Company. Also that day, the Department received petitions on small diameter carbon and alloy seamless standard, line and pressure pipe (''small diameter pipe'') filed in proper form from Koppel Steel Corporation, Sharon Tube company, U.S. Steel Group, USS/Kobe Steel Company and Vision Metals, Inc.(Gulf States Tube Division). On June 30, 1999, the United Steel Workers of America joined as co-petitioners in all of the cases. The Department received supplemental information to the petitions throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain large and small diameter pipe from the above-mentioned countries are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions* below).

Scopes of Investigations

Scope of Large Diameter Investigations

The scope of these investigations includes large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at

elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (''OCTG'') are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Scope of Small Diameter Investigations

The scope of these investigations includes small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also include all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure

piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A-335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petitions accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 10, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

There are two domestic like products, one for small diameter pipe and one for large diameter pipe. These domestic like products, as referred to in the petitions, are the domestic like products defined in the ''Scopes of Investigation'' section, above. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions (and subsequent amendments) and supplemental information obtained through the Department's research contain adequate evidence of industry support; therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support*, July 20, 1999). For both large and small diameter, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department's decision to initiate these investigations is based.

The petitioners, in determining normal value (''NV'') for Japan, Mexico and South Africa relied upon price data contained in confidential market research reports filed with the

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Department. At our request, the petitioners arranged for the Department to contact the authors of the reports to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the authors of the market research reports are summarized in *Memorandum to the File: Re—Foreign Market Research Reports,* dated July 20, 1999. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and factors of production and sources of data for each country named in the petition, *see Initiation Checklist,* dated July 20, 1999. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Czech Republic

The petitioners based EP on a U.S. price for a sale to an unaffiliated purchaser, and calculated net U.S. price by subtracting from gross price unloading and wharfage charges, international shipping charges, U.S. customs duties, and an industry standard U.S. trading company mark-up.

The petitioners noted that the Department has never had occasion to determine whether the Czech Republic is a non-market economy (NME) country to the extent that sales or offers for sale of the foreign like product in the Czech Republic do not permit calculation of NV under 19 CFR 351.404. In previous investigations, however, the Department has determined that Czechoslovakia, the predecessor of both the Slovak Republic and the Czech Republic, was an NME. *See e.g., Carbon Steel Wire Rod from Czechoslovakia; Preliminary Negative Countervailing Duty Determination,* 49 FR 6773 (February 23, 1984). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the Czech Republic has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, pursuant to section 773(c) of the Act, the petitioners constructed NV of the product based on factors of production valued in a surrogate market economy country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the Czech Republic's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994).

The petitioners selected Brazil as the most appropriate surrogate market economy. The petitioners stated that: (1) Brazil is ranked third in proximity to the Czech Republic with respect to a similar per capita GNP; (2) Brazil is a significant producer of the subject merchandise; and (3) the petitioners have been able to secure detailed financial statements for Brazil's major seamless pipe producer. The petitioners believe Brazil is the most appropriate surrogate market economy because it is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by the petitioners, we believe their use of Brazil as a surrogate country is appropriate for purposes of initiation of this investigation.

For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for small diameter pipe on the same basic billet round input used by the petitioners, adjusted to reflect unit factor costs in the surrogate. The petitioners asserted that detailed information is not available regarding the Czech producers' actual usage rates. Thus, the petitioners have assumed, for purposes of the petition, that Czech producers of subject merchandise use the same basic billet round input as the petitioners. Specifically, the petitioners have used one U.S. producer's factors of production through the heating, piercing, rolling, and finishing of a billet round into finished pipe.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. The petitioners estimate Czech producers' unit factor cost for billet rounds by utilizing Brazilian import/export statistics as published in the 1997 reports of the United Nations Statistical Division. Labor was valued using a regression-based wage rate for the Czech Republic provided by the Department in accordance with 19 CFR 351.408(c)(3). This value was multiplied by the usage rate of the U.S. steel company to calculate total cost of labor. Electricity rates were taken from *Energy, Prices and Taxes,* Fourth Quarter 1998. The petitioners determine depreciation for Czech producers by drawing from the 1997 annual report of a major Brazilian producer of seamless pipe. In addition, petitioners have calculated selling, general and administrative expenses as well as a net financial expense based on expenses reported in the 1998 financial statements of Brazil's major pipe producer. The necessary financial information to determine factory overhead (including all indirect labor, materials, and utilities) was not available for the major pipe producer in Brazil. The Brazilian producer's financial statements group all direct and indirect costs into cost of goods sold, and provide no means by which to segregate these items. Therefore, the petitioners instead utilized the financial statements of a South African pipe producer and relied upon the factory overhead incurred by this producer as a surrogate for the Czech Republic. (South Africa, like Brazil, is at a level of economic development comparable to that of the Czech Republic.) In determining an amount of profit for constructed value, the petitioners could not use Brazil's major pipe producer as a surrogate because this producer reported a net loss in 1998. Therefore, the petitioners have used the financial statements of two Brazilian steel companies, neither of which produce pipe, to estimate a profit percentage to be used as surrogate for the Czech producer. However, given that the petitioners did not capture correctly the Brazilian producers' profit, we recalculated the profit rate and the overall estimated dumping margins accordingly. *See Memorandum to the File: Re—Recalculation of Brazilian Surrogate Profit Rate,* dated July 20, 1999.

Based on the information provided by the petitioners, we believe that their surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for small diameter pipe from the Czech Republic range from 161.18 to 167.42 percent.

Japan (Both Large and Small Diameter Pipe)

For both small and large diameter pipe, the petitioners based EP on a price quote from a Japanese trading company to an unaffiliated customer.

The petitioners calculated a net U.S. price by subtracting estimated costs for the trading company mark-up, foreign inland freight, brokerage and port charges, international freight, unloading and wharfage, U.S. movement, U.S. discount and U.S. customs duties.

NV is based upon prices for products which are identical to the products used

as the basis for the U.S. price. The petitioners calculated the net ex-factory price by deducting foreign movement charges. In addition, the petitioners deducted domestic packing expenses, added U.S. packing expenses and adjusted for differences in credit expenses between the U.S. and Japanese market.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that large and small diameter pipe sold in the home market were made at prices below the fully absorbed cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''), selling, general, and administrative expenses (''SG&A'') and packing. To calculate COP, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce certain seamless pipe products in the United States and in Japan using market research and publicly available data.

To calculate SG&A and financial expenses, petitioners relied upon the fiscal year 1998 audited financial statements of a Japanese steel producer. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, petitioners also based NV for sales in Japan on constructed value (''CV''). For this initiation, we are accepting CV as the appropriate basis for NV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon a Japanese producer's fiscal year 1998 financial statements. We adjusted the CV for differences in circumstances of sales by subtracting home market credit expenses and adding U.S. credit and packing expenses.

The margin calculations based on price to CV, as revised, indicate dumping margins ranging from 74.17–106.07 percent for small diameter pipe and 64.00–107.80 percent for large diameter pipe. The estimated dumping margins, based on price-to-price comparisons range from 50.42–51.07 percent for small diameter pipe and 50.21–53.52 percent for large diameter pipe.

Mexico

The petitioners based EP on an offer for sale of a range of products from a distributor which is affiliated with the one known Mexican producer.

The petitioners calculated a net U.S. price by deducting estimated values for U.S. inland freight, U.S. port charges, customs duty, ocean freight, insurance, foreign inland freight, loading and warehousing charges.

With respect to NV the petitioners obtained gross unit prices for products offered for sale in Mexico which are identical to those sold in the United States. The petitioners deducted from the gross price foreign inland freight charges and domestic packing expenses, added export packing expenses and adjusted for differences in U.S. and Mexican credit expenses.

The estimated dumping margins in the petition based on a comparison of TAMSA's U.S. and home market prices range from 26.07–27.42 percent.

Romania

The petitioners based EP on U.S. price offers for sale to an unaffiliated purchaser. Because the offers were from trading companies to unrelated purchasers in the United States prior to importation of the merchandise, the petitioners treated the sales as export price (EP) sales.

To determine net U.S. price, the petitioners deducted from gross price U.S. port charges including unloading and wharfage, international shipping charges, U.S. Customs duties, and a trading company mark-up.

With respect to NV, the petitioners assert that Romania is an NME country and pursuant to 19 U.S.C. 1677(18)(C)(i) (section 771(18)(C)(i) of the act), ''any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.'' Because Romania's status as an NME has not been revoked, the petitioners' allocation is based upon a nonmarket economy analysis. In previous investigations, the Department has determined that Romania is an NME. *See e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and United Kingdom*, 64 FR 8790, 8796 (February 23, 1999) (Preliminary Results) and *Tapered Roller Bearings and Parts Thereof From Romania*, 63 FR 36390 (July 6, 1998) (Final Results). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Romania has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Romania's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

For the NV calculation, the petitioners assert that Indonesia is the most suitable among the potential surrogates, because: (1) It is the most significant producer of comparable merchandise among those countries economically similar to Romania; and (2) the financial statements of the leading Indonesian steel producer are available (in contrast, the petitioners state that financial statements are not reasonably available with respect to steel producers in Egypt, Algeria, and the Philippines, other countries economically comparable to Romania). Egypt, Algeria, and the Philippines have a higher comparability ranking by per capita GNP than Indonesia as calculated from data from the World Bank, *World Development Report 1998/99*. However, the petitioners assert that none of those potential surrogates (including Indonesia) is a significant producer of the subject merchandise. The petitioners point to *Antifriction Bearings from Romania*, in which the Department made clear that the surrogate need not be a significant producer of the identical merchandise. The petitioners further assert that the Department has used surrogate countries which did not produce merchandise identical to the subject merchandise. They cite *Sebacic Acid from the PRC*, in which the Department chose India as the surrogate for China despite the fact that India did not produce the subject merchandise. Accordingly, the petitioners submit that for the purpose of identifying a surrogate, steel in general may be considered ''comparable'' to seamless pipe. Indonesia is the most significant steel manufacturer, producing over 3.8 million MT of crude steel. Based on the

information on the record, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for the purposes of initiation.

For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for small diameter carbon and alloy seamless standard, line, and pressure pipe on Indonesian import statistics. Since none of the principal Romanian producers are integrated steel producers (*i.e.*, they do not make their own steel from raw materials, rather they purchase billet rounds from other countries), the petitioners have used the factors of production of a U.S. steel producer for the heating, piercing, rolling, and finishing of a billet round into finished pipe.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. For the purposes of determining Indonesian unit factor costs, the petitioners utilize the most recent information reasonably available and substitute such costs for those of the U.S. producer. The petitioners use company specific data in the form of financial statements from an Indonesian steel producer to calculate depreciation, factory overhead, SG&A, financial expense, and profit. Labor was valued using a regression-based wage rate for Romania provided by the Department in accordance with 19 CFR 351.408(c)(3). This value was multiplied by the usage rate of the U.S. steel company to calculate total cost of labor. For electricity, the usage rate of the U.S. steel company was used. Petitioners valued electricity using the rates for Indonesia as published in a news article. For natural gas, petitioners applied the usage rate of the U.S. steel company in conjunction with the Indonesian unit factor cost for natural gas, as determined from the financial statement of YPF, a large Indonesian provider of natural gas.

The estimated dumping margins in the petition are based on a comparison of U.S. price and constructed value. These comparisons reveal estimated dumping margins ranging from 30.83—42.36 percent.

South Africa

The petitioners used prices from two sources as the basis for EP. For two sizes of pipe, they used prices from a price list for South African products obtained from a trading company. For a third size of pipe, petitioners provided a price quote for South African pipe from an international trading company to an unaffiliated U.S. customer.

The petitioners calculated a net U.S. price by subtracting estimated costs for domestic inland freight, international freight, loading and wharfage and U.S. customs duty.

NV is based upon prices for products offered for sale in South Africa which are identical to the products used as the basis for the U.S. price. The petitioners calculated NV by subtracting estimated costs for inland freight. Additionally, the petitioners made adjustments for differences in credit and packing.

The estimated dumping margins in the petition range from 36.82–43.51 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the Japanese home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for Japan. The Statement of Administrative Action (''SAA''), of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA at 833 (1994). The SAA at 833 states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in Japan were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of small and large diameter pipe from the above-referenced countries are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like products are being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in (1) U.S. market share, (2) average unit sales values, (3) share of domestic consumption, (4) operating profits, (5) employment, (6) output, (7) sales, (8) return on investment, (9) capacity utilization, (10) hours worked, and (11) wages paid.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury*, July 20, 1999).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on large and small diameter pipe, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Japan, the Republic of South Africa and Romania, and certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and Mexico are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the Czech Republic, Japan, Mexico, Romania and the Republic of South

Africa. We will attempt to provide a copy of the public versions of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by no later than September 3, 1999, whether there is a reasonable indication that imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Japan, the Republic of South Africa and Romania, and certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19307 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China; Notice of recission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Recission of New Shipper Review.

SUMMARY: On December 7, 1998, in response to a request by Zunyi Titanium Plant, an exporter and producer, the Department of Commerce initiated a new shipper review concerning the antidumping duty order on silicon metal from the People's Republic of China (PRC). The period of review was June 1, 1998 through November 30, 1998. This review has now been rescinded as a result of the withdrawal of the request for review by Zunyi Titanium Plant, the only party that requested the review.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4106 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, the Department of Commerce (the Department) published an antidumping duty order on silicon metal from the PRC (56 FR 26649). On December 7, 1998, Zunyi Titanium Plant, an exporter and a producer, requested a new shipper review in reference to the antidumping duty order on silicon metal from the PRC. In accordance with 19 CFR 351.214(d), we published the initiation of the review on February 1, 1999 (64 FR 4842) covering the period of June 1, 1998 through November 30, 1998. On May 11, 1999, Zunyi Titanium Plant withdrew its request for review.

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. In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (1998).

Recission of Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that the Department ''may rescind a new shipper review * * * if a party that requested a review withdraws its request no later than 60 days after the date of publication of notice of initiation of the requested review.'' Zunyi Titanium Plant withdrew its request for new shipper review on May 11, 1999.

Although this date is more than 60 days from the date of initiation, consistent with the Department's past practice in the context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (See *e.g. Iron Construction Casings from Canada: Notice of Recission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998).) In this case, the Department has determined to grant the request to rescind this new shipper review based on the fact that the Department has not yet devoted considerable time and resources to this proceeding. Moreover, rescission of this review would not prejudice any party in this proceeding, as Zunyi Titanium Plant would continue to be included in the PRC-wide rate to which it was subject at the time of its request for this new shipper review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–19306 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–856]

Initiation of Antidumping Duty Investigation: Synthetic Indigo From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dinah McDougall or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–4136, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act

(URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

The Petition

On June 30, 1999, the Department received a petition filed in proper form by Buffalo Color Corporation (''BCC'') and the United Steel Workers of America, AFL–CIO/CLC, which represents BCC's production workers, collectively referred to hereinafter as ''the petitioners.'' In accordance with section 732(b) of the Act, the petitioners allege that imports of indigo from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring or threatening to injure an industry in the United States. The petitioners filed supplemental information to the petition on July 9, 1999 and July 13, 1999.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they represent, at a minimum, the required proportion of the United States industry (*see* Determination of Industry Support for the Petition section below).

Scope of Investigation

The products subject to this investigation are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as ''Vat Blue 1.'' Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.*, powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this investigation are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties: Final Rule* (62 FR 27296, 27323) (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of investigation.

To the best of the Department's knowledge, the petitioner is the sole U.S. producer of the domestic like product. *See* memorandum to file dated July 13, 1999, ''Industry Support and Petitioner Buffalo Color Corporation's Sole Producer Claim''. Additionally, no person who would qualify as an interested party pursuant to sections 771(9)(C), (D), (E) or (F) of the Act has expressed opposition to the petitioner on the record. Thus, the petitioner accounts for more than 50 percent of the production of the domestic like product. Therefore, in accordance with section 732(c)(4) of the Act, we determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist dated July 20, 1999 (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) (Initiation Checklist).

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified eleven potential PRC exporters and exporter/producers of indigo. The petitioners based export price on offers for sale of the subject merchandise to U.S. purchasers by one of the PRC exporters in November 1998 and May 1999. From these starting prices, the petitioners deducted international freight, marine insurance, and foreign brokerage and handling charges. The petitioners based international freight on an actual ocean freight invoice from a market economy shipping company for a shipment of indigo from the PRC. Marine insurance fees were based on a quote from a market economy supplier. The foreign brokerage and handling charges, which were based on the Department's ''Index of Factor Values for Use in Antidumping Duty Investigations

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Involving Products From the PRC'' (''Index of Factor Values''), were adjusted for inflation using the Wholesale Price Index (WPI) published in the International Monetary Fund's *International Financial Statistics.*

Because the PRC is considered a non-market economy (NME) country under section 771(18) of the Act, the petitioners based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. For purposes of the petition, the petitioners selected India as the most appropriate surrogate market economy. The petitioners calculated NV using publicly available Indian prices to value all unit costs associated with the factors of production. The petitioners established estimates for per-unit consumption based on BCC's production experience adjusted for differences in the PRC production process according to information reasonably available to the petitioners.

Materials were valued based on Indian prices obtained from publicly available information and published price lists, principally chemical prices in the Indian publications *Chemical Weekly* and *Monthly Statistics of the Foreign Trade of India*, and adjusted using the WPI published in the *International Financial Statistics*, where appropriate. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). The values for water and electricity were obtained from international publications containing the prices applicable to India, and adjusted using the WPI published in the *International Financial Statistics.* The fuel oil and natural gas values were based on the Department's Index of Factor Values, and adjusted using the WPI published in the *International Financial Statistics.* To determine factory overhead, selling, general and administrative expenses, and profit, the petitioners relied on data from an Indian producer of hydrogen peroxide, which experiences similarly high fixed costs relative to direct manufacturing costs, as those incurred by producers of synthetic indigo. The valuation of packing factors was based on the Department's Index of Factor Values and international publications containing the prices applicable to India, and adjusted using the WPI published in the *International Financial Statistics*, where appropriate.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of indigo from the PRC are being, or are likely to be, sold at less than fair value. Based on a comparison of EP to NV, the petitioners' calculated dumping margins ranging from 124.69 percent to 129.60 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with further material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import statistics, lost sales, trade and financial data, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of indigo from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by December 7, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 16, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of indigo from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19299 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: Natinal Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, August 4, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the stage I process and selection of applicants for the consensus stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 4, 1999 at 9:00 a.m. and adjourn at 4:30 p.m. on August 4, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standard and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code,

since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 7. 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–19244 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public meeting with the limited access permit holders in the golden crab fishery in the South Atlantic region.

DATES: The meeting will be held on Tuesday, August 17, 1999, from 7:30 p.m. until all business is concluded.

ADDRESSES: The meeting will be held at the Best Western-Miami Airport, 1550 NW LeJuene Road, Miami, FL; telephone: 305–871–2345.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Council staff to meet with the limited access permit holders in the golden crab fishery to gather information on fishing areas and discuss current issues in the fishery.

Although other issues not contained in this agenda may come before the 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 10, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Suatainable Fisheries, National Marine Fisheries service.

[FR Doc. 99–19311 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099C]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Marine Reserves Advisory Panel (AP) will hold a meeting.

DATES: The meeting will be held on Tuesday, August 24, 1999, from 1:00 p.m. until 5:30 p.m., Wednesday, August 25, 1999, from 8:30 a.m. until 5:30 p.m., and Thursday, August 26, 1999, from 8:30 a.m. until 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the AP to hear presentations on the status of snapper grouper stocks in the southeast, to discuss the Council's Habitat Plan and Comprehensive Amendment, to review the Revised Marine Reserves Discussion Document, and to discuss, revise and take action on the document ''The Use of Marine Reserves in the South Atlantic Council's Area of Authority.'' The AP will also make recommendations to the Council regarding these issues.

Although other issues not contained in this agenda may come before the 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 17, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–19312 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Joint Executive/Finance Committee (Committee) will hold a public meeting.

DATES: The meeting will be held on Monday, August 23, 1999, from 1:30 p.m. until 5:00 p.m., and Tuesday, August 24, 1999, from 9:00 a.m. until 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Committee to discuss the status of calendar year 1999 Council activities schedule and budget, to review and approve proposed changes to the 1999 activities schedule and budget, and to review and approve the proposed 2000 activities schedule and budget.

Although other issues not contained in this agenda may come before the 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 17, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–19313 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071599D]

Marine Mammals; File Nos. 684–1458 and 738–1454

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

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that the following Permit Holders have requested an amendment to their scientific research Permit: Dr. Donald Siniff, University of Minnesota, Department of Ecology, Evolution and Behavior, 100 Ecology Bldg., 1987 Upper Buford Circle, St. Paul, MN 55108, Permit No. No. 684–1458; and Ms. Carole Conway, University of California, Davis, One Shields Avenue, Davis, CA 95616–8521, Permit No. 738–1454.

DATES: Written or telefaxed comments must be received on or before August 27, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Permit No. 738–1454 - Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendments to Permits No. 684–1458 and 738–1454 issued on August 11, 1998 (63 FR 43914) and July 9, 1998 (63 FR 38391), respectively, are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1541 *et seq.*), and the regulations governing endangered and treatened species (50 CFR parts 222–226).

Permit No. 684–1458 authorizes the permit holder to capture, tag, sample and lavage adult Weddell seals on McMurdo Sound in the Antarctica. The permit holder requests authorization to increase the number of adult females from 400 to 600, adult males from 200 to 300 and pups from 80 to 180 animals per season.

Permit No. 738–1454 authorizes the importation of 50 blue whales samples from Canada. The Holder requests authority to increase the samples to 100 annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 20, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–19310 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Supplement, Part 216, Types of Contracts, and Related Clauses in Part 252.216; OMB Number 0704–0259.

Type of Request: Revision.

Number of Respondents: 153.

Responses per Respondent: 2.

Annual Responses: 302.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 1,212.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19183 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–M

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19183 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–22]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–22, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 JUL 1999

In reply refer to:
I-99/07937

Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-22, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 99-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 28 million
Other	$ 22 million
TOTAL	$ 50 million

(iii) **Description of Articles or Services Offered: Six AN/TPQ-36(V)7 FIREFINDER radar sets, 16 AN/VRC-90E SINCGAR radio systems, six commercial M1097A2 HMMWV trucks, a U.S. Government Quality Assurance Team, support and test equipment, spare and repair parts, publications and technical data, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.**

(iv) **Military Department: Army (USN)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(vii) **Date Report Delivered to Congress:** 12 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - AN/TPQ-36(V)7 FIREFINDER Radar Sets

The Government of Egypt has requested a possible sale of six AN/TPQ-36(V)7 FIREFINDER radar sets, 16 AN/VRC-90E SINCGAR radio systems, six commercial M1097A2 HMMWV trucks, a U.S. Government Quality Assurance Team, support and test equipment, spare and repair parts, publications and technical data, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $50 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the AN/TPQ-36 short range mortar radar will be used in conjunction with their long range, artillery locating, AN/TPQ-37 radar purchased and delivered under a prior FMS case and provides a modest increase in counter-mortar capability. Egypt needs these SINCGARS radio systems to fulfill their strategic commitments for complete communicative interoperability and standardization of equipment and to be able to communicate with their various vehicles and the U.S. forces. Egypt, which already has AN/TPQ-37 radar sets in its inventory, will have no difficulty absorbing these radar sets.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, El Segundo, California. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Egypt. A Quality Assurance team consisting of four persons will be required in-country for two weeks to assist in de-processing and inspecting the equipment upon delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The following components of the AN/TPQ-36(V)7 radar contain critical technology: The signal processor unit and related software of the operations control group; the antenna array group, receiver, transmitter, and electronic counter-countermeasures of the antenna transceiver group. Certain operating characteristics of the radar are classified Confidential. The radar system is highly susceptible to the development of countermeasures (CMs) in a short period of time if both the hardware and software were acquired by a potential adversary.

2. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–19185 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–23]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–23, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 JUL 1999

In reply refer to:
I-99/07938

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-23, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $38 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 99-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Egypt

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 22 million
Other	$ 16 million
TOTAL	$ 38 million

(iii) **Description of Articles or Services Offered**: Two UH-60L VIP BLACKHAWK Utility helicopters, two spare GE turbine engines with containers, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) **Military Department**: Army (USP)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(vii) **Date Report Delivered to Congress**: 12 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - UH-60L VIP BLACKHAWK Utility helicopters

The Government of Egypt has requested a possible sale of two UH-60L VIP BLACKHAWK Utility helicopters, two spare GE turbine engines with containers, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $38 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle Eastern region.

The Government of Egypt will use these helicopters to expand their intra-country transportation requirements, including the movement of their National Command Authority. Egypt, which already has BLACKHAWK helicopters in its inventory, will have not difficulty absorbing the additional helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technologies Sikorsky Aircraft, Stratford, Connecticut and General Electric Company, Lynn, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government personnel and two contractor representatives for one week to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is a twin turbine engine, semimonocoque fuselage, rotary wing aircraft capable of transporting cargo, 11 combat troops, and weapons during day, night, visual, and instrument conditions. The cargo hook is capable of carrying up to 8000 pounds of equipment in support of tactical sling load missions. The UH-60L possesses essentially the same capabilities as the UH-60A, with enhanced high altitude/hot temperature and one engine inoperative performance engine power provided by the T700-GE-701C engines. These aircraft will be sold in a VIP configuration.

2. The UH-60L BLACKHAWK helicopter will include the following classified or sensitive components:

a. AN/APR-39(V)(1) Radar Detecting Set is a light weight receiver for general aircraft application. The system provides warning of radar directed threats to allow appropriate evasive maneuvers and deployment of active countermeasures. The system has the capability of detecting all pulse radar normally associated with hostile Surface-to-Air, airborne intercept, or anti-aircraft weapons. The hardware is classified Confidential, technical performance data is Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

b. AN/ALQ-144A(V)3 Radar Warning System (Export Version) is a light weight passive device which alerts the air crew to radar threats from Surface-to-Air Missile and Airborne Intercept Missiles. The alert is provided by aural warning through the intercom system and visual indicator light. This system provides coverage for Continuous Wave Radar Illuminators of upper and lower hemisphere threats. The hardware is classified Confidential, technical performance data is Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

c. M-130 Chaff-flare Dispenser is a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for operation and maintenance are Unclassified. Reverse engine is not a major concern.

d. Hover Infrared Suppressor Subsystem (HIRSS) is a special function engine exhaust subsystem which replaces the standard engine and the standard engine exhaust subsystem modules. The HIRSS function is to suppress engine exhaust system infrared radiation by cooling visible surfaces. Exhaust gases are cooled by dilution. The HIRRS is comprised of two main component groups: (1) the composite firings group and (2) the sheet metal core group. The core group has four stages: (1) the first or inlet stage, (2) the second or mixing stage, (3) the third or diffusion stage, and (4) the fourth or exhaust stage. All four are sized so as to provide optimum cooling at minimum exhaust system back pressure (i.e., power loss and weight).

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–19186 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–24]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–24, with attached transmittal and policy justification.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

19 JUL 1999
In reply refer to:
I-99/08326

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-24 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $18 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 17 million
Other	$ 1 million
TOTAL	$ 18 million

(iii) **Description of Articles or Services Offered: Forty-two AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.**

(iv) **Military Department: Air Force (YEO, Amd 2)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(vii) **Date Report Delivered to Congress: 19 JUL 1999**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Israel has requested a possible sale of 42 AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $18 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs these missiles to enhance the air-to-air self defense capability of its F-15 aircraft and provide for an increase in interoperability with U.S. forces. Israel will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, Tucson, Arizona. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any U.S. Government personnel or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–19187 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–25]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–25, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 JUL 1999
In reply refer to:
I-99/08328

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-25, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $564 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 418 million
Other	$ 146 million
TOTAL	$ 564 million

(iii) **Description of Articles or Services Offered: A coproduction program for the possible sale of 100 M1A1 Abrams tanks to include 100 M256 Armament Systems, 100 M2 .50 caliber machine guns, 200 M240 7.62mm machine guns, 12 M16A2 rifles, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, technical assistance and support, and other related elements of logistics support.**

(iv) **Military Department: Army (NFM, NFO, and JBP)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 16 JUL 1999**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - M1A1 Abrams Tanks Coproduction

The Government of Egypt has requested a coproduction program for the possible sale of 100 M1A1 Abrams tanks to include 100 M256 Armament Systems, 100 M2 .50 caliber machine guns, 200 M240 7.62mm machine guns, 12 M16A2 rifles, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, technical assistance and support, and other related elements of logistics support. The estimated cost is $564 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale will increase the quantity of the Abrams tank coproduction program, started in 1988 with a quantity of 530 tanks, to 630 tanks. Egypt, which already co-produced the M1A1 Abrams tanks, will have no difficulty absorbing the additional tanks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics, Sterling Heights, Michigan. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 20 U.S. contractor representatives in-country up to three years. The four U.S. Government personnel already in Egypt on HERCULES coproduction will also manage this program for production and fielding. One additional U.S. Government personnel may be required during the overlap of the two programs.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-25
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. Components considered to contain sensitive technology in the proposed coproduction program are special armor, 120mm gun and ammunition, gas turbine propulsion system, Night Vision Forward Looking Infra Red, and compartmentation.

a. M1A1 Tank Special Armor:

(1) FMS armor and other special armors used in the hull and turret are classified at the Secret level. Major components of special armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor components and associated vulnerability data for both chemical and kinetic energy rounds are classified Secret, SPECIAL ACCESS. The track skirts have been formally declassified but still considered to be sensitive items and their dissemination is controlled.

(2) Release of classified information can be used by potential adversaries to develop improved munitions to defeat U.S. armor systems. The consequences would be the capabilities neutralize or defeat the armor. The armor in question has been previously sold to Egypt as a part of the M1A1 Abrams Tank coproduction program delineating obligations and measures for the protection of special armor.

b. M1A1 Tank 120mm Gun and Ammunition:

(1) The 120mm system is composed of a smooth bore gun manufactured at Watervliet Arsenal; "long rod" APFSDS penetrators; and combustible cartridge case ammunition also made in the United States. The gun and ammunition are produced under license from the Federal Republic of Germany.

(2) Gun production and design technology are generally well known. Ammunition technology is much more sensitive and includes the design criteria for long rod penetration warheads, new kinds of higher energy propellants. Evidence indicates that the United States and its allies have technological advantages in these areas. Technology for the weapons has been previously released to Egypt as a part of the M1A1 Abrams Tank Coproduction Program.

c. M1A1 Tank Gas Turbine Propulsion System:

(1) The use of a gas turbine propulsion system in the Abrams tank is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT 1500 engine and X1100-3B transmission, and is not classified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings, and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

(2) Unauthorized release and exploitation of sensitive propulsion system information would adversely impact U.S. technology advantages. Acquisition of production data by a potential enemy could enhance their capability to design and produce gas turbine propulsion systems with application to land and air vehicles.

d. Night Vision Forward Looking Infra Red (FLIR):

(1) First Generation (GEN) FLIR can be used for target acquisition such as IR missile target acquisitions or air defense. It is classified as Confidential.

(2) First GEN FLIR is a fairly mature technology and this capability can be obtained in the marketplace. The First GEN FLIR has been previously sold to Egypt as a part of the M1A1 Abrams Tank Coproduction program.

e. Compartmentation:

(1) A major survivability feature of the Abrams Tank is the compartmentation of fuel and ammunition. Compartmentation is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentation. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

(2) The U.S. Army has invested millions of dollars in the design, development, and integration of compartmentation in the Abrams Tank. Although the concept of compartmentation is not new and design principles are known, the U.S. currently has the advantage in the design and integration of compartmentation into combat vehicles. The design of the compartments cannot be protected. However, the guidelines, parametric inductions, and test data used to develop the compartments do not have to be disclosed to permit a sale.

2. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 99–19188 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Board of Visitors for the Department of Defense Centers for Regional Security Studies.

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of Public Law 92–463, the ''Federal Advisory Committee Act,'' notice of a meeting of the Board of Visitors for Department of Defense Centers for Regional Security.

The Board will meet in closed session at the Pentagon on July 27, 1999 from 0930 to 1330.

The purpose of the meeting is to allow the Board of Visitors to provide advice on the role the Centers for Regional Security play in the broader U.S. national security context. The Board will hold classified discussions on various national security policies to be handled by the regional centers. This notice is being published less than fifteen days prior to the meeting because of a scheduling oversight.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fred Smith, (703) 693–0482.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19184 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The 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 27, 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 22, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Secretary's Annual Report on the Quality of Teacher Preparation Programs.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 58.

Burden Hours: 464.

Abstract: This is a Congressionally-mandated annual report (P.L. 105–244, Section 207; 20 USC 1027) of state teacher certification and licensure requirements and teacher preparation program pass rates. Information is due from state certification authorities to the Secretary by October 7 of each year, starting October 7, 2000; data are due from institutions to the states by April 7 of each year, starting April 7, 2000. The Secretary's first report to Congress is due by April 7, 2001, and annually thereafter.

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 Joe Schubart at 202–708–9266. 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. 99–19229 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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 27, 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, NW, Room 10235, New Executive Office Building, Washington, DC 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 purposes 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 22, 1999.

Willliam E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Teacher Quality in U.S. Public Schools in 2000.

Frequency: One time.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,300.

Burden Hours: 4,950.

Abstract: The survey , Teacher Quality in U.S. Public Schools in 2000, is designed to provide NCES and the Office of the Secretary with timely data to monitor changes in key indicators of teacher quality. It is the second in a proposed series of biennial reports on the preparation and qualifications of public school teachers. In addition, the survey will provide some early estimates for data that will be provided in the Schools and Staffing Survey (SASS) to be conducted 1999–2000. The issues addressed in the proposed survey have been the focus of a growing concern of the condition of education, challenging U.S. teachers to adequately prepare students for competing in an increasingly complex international marketplace. Thus, the data will provide a national profile of teacher quality, representing an important device for tracking the nation's progress toward the goal of raising educational standards and ensuring high levels of student competence.

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 Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–8339.

[FR Doc. 99–19228 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development

AGENCY: Department of Education.

ACTION: Notice of proposed eligibility and selection criteria.

SUMMARY: The Secretary proposes eligibility and selection criteria to govern competitions under the National Awards Program for Model Professional Development for fiscal year (FY) 2000 and future years. Under these criteria, the National Awards Program would recognize a variety of schools and school districts with model professional development activities in the pre-kindergarten through twelfth grade levels that have led to increases in student achievement.

DATES: We must receive your comments on or before August 27, 1999.

ADDRESSES: Address all comments about these proposed eligibility and selection criteria to Sharon Horn, Office of Educational Research and Improvement, US Department of Education, 555 New Jersey Avenue, NW, room 506E, Washington, DC 20208–5644. If you prefer to send your comments through the Internet, use the following address: sharon__horn@ed.gov.

You may also fax your comments to Sharon Horn at (202) 219–2198.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this notice. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Sharon Horn. Telephone: (202) 219–2203. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed eligibility and selection criteria.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed eligibility and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed eligibility and selection criteria in room 506E, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed eligibility and selection criteria. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General Information

Through this notice the Secretary proposes definitions and criteria to govern applications for recognition submitted under the National Awards Program for Model Professional Development. This Program began in 1996, in coordination with a wide range of national education organizations, to highlight and recognize schools and school districts whose professional development activities are well aligned with the statement of the Mission and Principles of Professional Development that the Department developed in 1994. The National Awards Program to be conducted during FY 2000 and future years would be implemented in ways similar to prior years' programs (see, for example, the Notice of Final Eligibility and Selection Criteria published in the

Federal Register on October 30, 1997 (62 FR 58870). However, as explained more fully in the Proposed Eligibility and Selection Criteria section of this notice, the program's selection criteria would be slightly revised to identify information applicants will need to provide to demonstrate a strong link between their professional development efforts and increased student achievement, to address circumstances in which applications are received from both a school and its local educational agency (LEA), and to require certification of compliance with the Individuals with Disabilities Education Act (IDEA). The Secretary plans to publicly honor and recognize successful applicants, and to pay the costs incurred in enabling them to make presentations about their professional development activities at national and regional meetings.

The reasons for wanting to continue the National Awards Program are clear. Schools and school districts throughout the Nation are undertaking efforts to raise academic standards and to improve the academic achievement of all students. Research indicates that for these efforts to be successful they must include strategies for permitting teachers and other school and LEA staff to obtain the skills and knowledge they need to enable all students to achieve to high standards. Indeed, teachers are at the core of any school reform initiative. However, teachers need access to new knowledge and skills to enable them to continue to teach to higher standards and to respond to the challenges facing education today.

The public has expressed great interest in this program. In the first two years of the program, the Department received over 200 applications and recognized 13 schools and school districts in Arizona, California, Colorado, Connecticut, Georgia, Kansas, Massachusetts, New York, and Texas for the high quality of their professional development activities and the link between those activities and improved student learning. Moreover, the National Awards Program has helped educators at all levels to learn both how teachers and others in these sites have succeeded in implementing high-quality professional development activities, and what educators in other locations can do to better evaluate the effectiveness of their own professional development efforts.

Currently, the Department and its outside panels of reviewers are evaluating the quality of the nearly 65 applications submitted for FY 1999 national recognition. The importance of encouraging even more schools and LEAs to implement high-quality professional development that is tied to increased student achievement, and having even greater numbers of exemplary sites as models for others, demands that this awards program be continued. Therefore, the Secretary is pleased to propose definitions and criteria to govern the FY 2000 and future year National Awards Program.

The Secretary will announce the final eligibility and selection criteria in a notice in the **Federal Register**. The final eligibility and selection criteria will be determined by responses to this notice and other considerations of the Department.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final eligibility and selection criteria.

Proposed Eligibility and Selection Criteria

Eligible Applicants

As with previous years' programs, eligible applicants would be schools and school districts in the States (including schools located on Indian reservations, and in the District of Columbia, Puerto Rico, and the outlying areas) that provide educational programs in the pre-kindergarten through twelfth grade levels.

Selection Criteria

Subject to the three changes described in the next three items, the Secretary also proposes to use in the FY 2000 and future year competitions both the eligibility and application selection criteria and the selection procedures as published in the **Federal Register** on October 30, 1997 (59 FR 63773). Similarly, the Secretary would retain the relatively simple application format that has been used to date. Those wishing to review a copy of the FY 1999 application package, which incorporates the criteria and procedures the Department will continue to use, may do so by calling or writing the Department contact identified in the **FOR FURTHER INFORMATION** section of this notice. Those with access to the Internet also may view the document at the following URL web site: *http://www.ed.gov/inits/TeachersWeb/*

1. The application criteria would be revised to better identify information that applicants would need to present to demonstrate the link between their professional development activities and increased student achievement. Specifically, Criterion D (''Objective Evidence of Success'') in the application package for the FY 1999 competition required that applicants present evidence that teacher effectiveness and student learning improved as a direct result of the implementation of the school's or LEA's professional development activities. While the application package observed that the highest-quality applications were likely to be those which include evidence drawn from multiple assessment measures and cover a period of three years or more, the selection criteria did not require applicants to present evidence of this kind. In the fourth and succeeding years of the National Awards Program, the Secretary believes that it is time that these recommended measures of exemplary quality be required components of all professional development activities that would receive national recognition. Accordingly, the Secretary proposes that for the FY 2000 and future year competitions Criterion D include the following additional language: ''Applicants here must provide and discuss data that indicate the connection between needs assessments, improvement plans, professional development activities, and teacher and student outcomes. In order to confirm that student achievement has increased, data on student achievement must reflect multiple measures and cover a period of three years or more.''

2. Existing selection criteria for the National Awards Program do not address how the Department responds if a school that applies for national recognition is located in the area served by an LEA that applies on its own. This situation occurred in a prior competition, and the Department had established no criteria for addressing it. Accordingly, there is a need now to clarify this matter.

The Department's peer reviewers cannot assess the degree to which professional development activities at a school are independent of the support provided by the school district in which it is located. Therefore, in order to promote fairness in the application process, the Secretary proposes that a school that applies for national recognition must apply on its own or as part of its LEA's application. A school would not be able to apply through both applications. Moreover, should the Department receive an application from a school and the LEA in which the school is located, it will review only the LEA's application. Since a school's professional development activities are linked, to some degree, to the support of the LEA in which it is located, the proposal to consider the LEA's application but not the school's seems

the most appropriate response to this problem.

3. It is important that schools and LEAs that would receive national recognition support the rights of all students, including those with disabilities, to an appropriate education. Therefore, the Secretary proposes that those applying for National Awards Program recognition be required to certify that there are no outstanding findings of violations of IDEA in a Department monitoring report or, if findings do exist, the findings either have been corrected or are part of an agreement for corrective action.

In all other respects, subject to minor editing that does not affect the program's eligibility or selection criteria, the Secretary proposes to retain for the FY 2000 and future year competitions the application package used for the FY 1999 National Awards Program competition, and the eligibility and selection criteria and selection procedures published in the **Federal Register** on October 30, 1997.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed eligibility and selection criteria would address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Paperwork Reduction Act of 1995

This notice and the proposed application packet contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice and the application packet to the Office of Management and Budget (OMB) for its review.

Collection of Information: National Awards Program.

Schools and school districts that operate programs for children in the pre-kindergarten through twelfth grade levels are eligible to apply for national recognition of the quality of their professional development activities. Information in the application would include: (1) A description of the applicant's professional development activities in terms of specific criteria designed to clarify the kinds of activities that would align with the Department's statement of the Mission and Principles of Professional Development, (2) basic identifying and demographic information about the applicant school or school district, and (3) a certification of compliance with requirements of the Individuals with Disabilities Education Act. Applications also would be limited in page number and have to meet basic formatting requirements. The Department would use this information to select the highest-quality applicants through a review of responses to the criteria and site visits that can confirm the accuracy of information contained in the application.

All information is to be collected once only from each applicant. Annual reporting and record keeping burden for this collection of information is estimated to average 30 hours for each response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For the 20 applicants selected for site reviews, there will be an additional annual reporting and record keeping burden that is estimated to average 20 hours for each response. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 6,400 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for US Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this notice.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collection of information contained in this notice of proposed eligibility and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the notice of proposed eligibility and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may review 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. 8001.

Dated: July 23, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–19309 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice to guaranty agencies of invitation to participate in Voluntary Flexible Agreements.

SUMMARY: The Secretary invites Federal Family Education Loan (FFEL) guaranty agencies to submit an application to participate under a Voluntary Flexible Agreement. This notice specifies the criteria that the Secretary will use to select not more than six guaranty agencies (initial guaranty agencies) that will be invited to negotiate a Voluntary Flexible Agreement (VFA). Although the Higher Education Act limits the Secretary to entering into not more than six VFAs, a guaranty agency with which the Secretary has a VFA may provide the benefits derived through that agreement to other guaranty agencies. The Secretary encourages a guaranty agency submitting a VFA proposal to identify, in its application, other guaranty agencies that may benefit from the agreement. In addition, a guaranty agency is urged to consult with schools and lenders that participate in its program in developing its proposal.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: August 27, 1999.

ADDRESSES: All guaranty agencies are invited to apply. Applications may be sent to: Mr. George Harris, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1998, President Clinton signed the Higher Education Amendments of 1998 (Pub. L. 105–244, referred to as the ''1998 Amendments''), which amended the Higher Education Act of 1965 (the ''HEA''). The 1998 Amendments added a new section 428A to the HEA, authorizing the Secretary to enter into VFAs during fiscal years 1999, 2000, and 2001 with up to six guaranty agencies. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a VFA with the Secretary.

Scope of the VFA

A VFA incorporates and modifies the guaranty agreements under sections 428 (b) and (c) of the HEA, and is intended to enhance program integrity, increase cost efficiencies, and improve the availability and delivery of student financial aid. Each VFA will be developed by the Secretary, in consultation with the agency, on a case-by-case basis, and, in accordance with the HEA, may include provisions concerning—

- The issuance of insurance on FFEL loans;
- Monitoring FFEL insurance commitments;
- Default aversion activities;
- Review of default claims from lenders;
- Payment of default claims;
- Collection of defaulted loans;
- Adoption of internal systems of accounting and auditing, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;
- Timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the Title IV programs;
- Monitoring schools and lenders participating in the FFEL Program;
- Informational outreach to schools and students in support of access to higher education; and
- Such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of the FFEL Program.

It is not the intent of the Secretary to use VFAs to redistribute market share among guaranty agencies or lenders. Accordingly, the Secretary would have serious reservations about a proposal where a redistribution of market share appears to be the primary goal.

Information To Be Included With the Application

An agency wishing to enter into a VFA with the Secretary should submit a short (not to exceed 10 pages) written application that describes the substance of the proposal and addresses the following criteria:

- *Transferability*—Explain how the agency's proposed VFA could be extrapolated and easily used by other FFEL participants.
- *Customer/partner benefits*—Explain how the proposal would improve the ''system'' for delivery and servicing of loans for borrowers and schools. What impact would it have on delinquencies and defaults? Who would benefit from the proposal and how?
- *New technology*—Explain if and how the proposal uses new technology.
- *Efficiency*—Explain the impact the proposal would have on overall operating costs for the agency and its partners, including the Department. Would the proposed VFA encourage standardization? How would efficiency and customer satisfaction be measured?
- *Inducements waiver*—Include a description of any proposed waiver of the prohibited inducement restrictions contained in section 428(b)(3) of the HEA.

Other Information That the Secretary Will Consider

Based upon an evaluation of the applications received, the Secretary will select the initial guaranty agencies with which to negotiate VFAs. Those negotiations will include:

- The fees the Secretary will pay, in lieu of revenues that the agency may otherwise receive, and other funds that the agency may receive or retain under the VFA.
- The use of net revenues for other activities in support of postsecondary education.
- The standards by which the agency's performance of the agency's responsibilities under the VFA will be assessed, and the consequences for an agency's failure to achieve a specified level of performance on one or more performance standards.
- The circumstances in which an agency's VFA may be ended in advance of its expiration date.
- The involvement of other businesses, previously purchased or developed with reserve funds, that relate to the FFEL Program, and in which the Secretary permits the agency to engage.
- The uniform ability of lenders to participate in the agency's program.
- The ability for borrowers to select a lender of their choice, subject to the prohibitions and restrictions under the HEA.
- Other provisions that the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of the FFEL Program.

Outline of Planned Evaluation and Selection Process

The following outline identifies the general sequence of activities and projected target dates that will be followed by the Department in negotiating agreements:

- *By September 10, 1999:* Evaluate proposals received in response to this notice and invite promising candidates to make oral presentations to a Department of Education evaluation panel. (Guaranty agencies are encouraged to include school and lender representatives, and other parties in support of their proposals). After the oral presentations, up to six VFA

proposals will be selected for further development.

- *September 10 to October 1, 1999:* Negotiate tentative agreements with the six initial agencies and publish the tentative agreements on the Department's web site for two weeks.
- *By November 1, 1999:* Modify agreements as necessary to reflect public comments and notify congressional committees of proposed agreements.
- *December 1, 1999:* Sign agreements.

If the Secretary and an initial guaranty agency are unable to reach agreement on the terms and conditions of a VFA, the Secretary may select another guaranty agency with which to enter negotiations.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris at the address listed in the **ADDRESSES** section of this notice. Telephone: (202) 708–8242.

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 **ADDRESSES** section of this notice.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm

http://ifap.ed.gov/csb__html/fedlreg.htm

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first 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.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 22, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–19116 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–444–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 22, 1999.

Take notice that on July 19, 1999, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets, to be effective August 1, 1999:

Third Revised Sheet No. 102
First Revised Sheet No. 105A
Second Revised Sheet No. 106
Second Revised Sheet No. 146

CIPCO states that this filing is being made in compliance with Commission Order No. 587–K, issued by the Commission on April 2, 1999. CIPCO requests a waiver of the Commission's regulations to allow the filing to become effective on less than thirty-days' notice.

Any person desiring to be heard or to protest such 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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19220 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–015]

Kansas Pipeline Company; Notice of Revised Tariff Filing

July 22, 1999.

Take notice that on July 1, 1999, Kansas Pipeline Company (Applicant) tendered for filing corrections to the FERC Gas Tariff, Original Volume No. 1 to be effective May 11, 1999.

Applicant states that the corrected tariff includes changes directed by the Commission's April 2, 1999, order in the above-captioned docket (87 FERC ¶ 61,020 (1999)). Applicant further states that a copy of this filing is available for public inspection during regular business hours at Applicant's offices located at 8325 Lenexa Drive, Lenexa 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152.

Any person desiring to be heard or to protest this 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or comments should be filed on or before August 2, 1999. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This application may be viewed on the Commission's web site at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19222 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–006]

K N Interstate Gas Transmission Co.; Notice of Revised Compliance Filing To Place Tariff Sheets Into Effect

July 22, 1999.

Take notice that on July 20, 1999, K N Interstate Gas Transmission Co. (KNI) moved into effect certain rates and revised sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, as follows:

The following tariff sheets to become effective August 1, 1998:

Third Revised Volume No. 1–A
Third Sub. Second Revised Sheet No. 4A
Third Sub. Second Revised Sheet No. 4C
Third Sub. Fifth Revised Sheet No. 4D

The following tariff sheets to become effective January 1, 1999:

Third Revised Volume No. 1–A
Second Sub. Sixth Revised Sheet No. 4D

The following tariff sheets to become effective June 1, 1999:

Third Revised Volume No. 1–A
Substitute Third Revised Sheet No. 4A
Substitute Third Revised Sheet No. 4C
Substitute Seventh Revised Sheet No. 4D
First Revised Volume No. 1–C
Substitute Twelfth Revised Sheet No. 4

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to the Commission's orders issued on March 3, 1999, and June 21, 1999, in this proceeding, 86 FERC ¶ 61,229 (1999), and 87 FERC ¶ 61,340 (1999), respectively.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19218 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 22, 1999.

Take notice that on July 16, 1999, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with a proposed effective date of August 16, 1999:

First Revised Title Page
First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 6
Second Revised Sheet No. 9
Original Sheet No. 75
Second Revised Sheet No. 101
Second Revised Sheet No. 102
Second Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 108
First Revised Sheet No. 109
First Revised Sheet No. 110
Second Revised Sheet No. 123
First Revised Sheet No. 126
Second Revised Sheet No. 127
Original Sheet Nos. 200–214

Petal States that the tariff sheets are being filed in order to: (1) update its tariff to reflect name, address and telephone number changes resulting from Crystal Gas Storage Inc.'s acquisition of Petal; (2) make miscellaneous clarifying tariff changes by adding needed definitions, correcting typographical errors, and including a Form of Service Agreement for each class of service that Petal offers; and (3) implement its blanket authority to make unbundled sales of natural gas.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19219 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3426–000]

San Diego Gas & Electric Company; Notice of Filing

July 20, 1999.

Take notice that on July 1, 1999, San Diego Gas & Electric Company, tendered for filing a signature page of William H. Hieronymus (Attachment B) inadvertently omitted from the tariff filed with the Federal Energy Regulatory Commission on June 30, 1999, in the above referenced docket.

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 Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 29, 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).

David P. Boergers,

Secretary.

[FR Doc. 99–19221 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–000]

Southern Natural Gas Company; Notice of Report Following Technical Conference

July 22, 1999.

Take notice that on June 30, 1999, in compliance with the schedule established at the April 15, 1999 technical conference held in the above-referenced proceeding, Southern Natural Gas Company (Southern) tendered for filing the results of its working sessions with shippers regarding the use of certain operational flow orders (OFOs) on Southern's system.

Reply comments on Southern's June 30, 1999 filing are due on or before August 2, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19217 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00275; FRL–6091–4]

Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Toxic Chemical Release Reporting (EPA ICR No. 1363.07, OMB No. 2070–0093). This ICR involves a collection activity that is currently approved and scheduled to expire on April 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number ''OPPTS–00275'' and administrative record number 214, must be received on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Amy Newman, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1846; Fax: 202–401–8142; e-mail: newman.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you own or operate certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to report annually on the environmental releases and transfers of and waste management activities for such chemicals. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Metal mining	10 (except 1011, 1081, and 1094)
Coal mining	12 (except 1241)
Food	20
Tobacco	21
Textiles	22
Apparel	23
Lumber and wood	24
Furniture	25
Paper	26
Printing/publishing	27
Chemicals	28
Petroleum	29
Rubber and plastics	30
Leather	31
Stone, clay, and glass	32
Primary metals	33
Fabricated metals	34
Machinery (except electrical)	35
Electrical/electronic equipment	36
Transportation equipment	37
Instruments	38
Miscellaneous manufacturing	39
Electric utilities (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)	4911, 4931, and 4939
Commercial hazardous waste treatment (limited to facilities regulated under the Resource Conservation and Recovery Act (RCRA) Subtitle C, 42 U.S.C. section 6921 *et seq.*)	4953
Chemical allied products-wholesale	5169
Petroleum bulk terminals and plants-wholesale	5171
Solvent recovery services (limited to facilities primarily engaged in solvents recovery)	7389

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 372 and in section 3(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the ''**Federal Register**-Environmental Documents'' entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the

Federal Register citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr. You can then follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call 202–401–0527 and selecting item 4068. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established under docket control number ''OPPTS–00275'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202– 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number ''OPPTS–00275'' and administrative record number 214 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC, Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on 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 ''OPPTS–00275'' and administrative record number 214. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

In addition, EPA is requesting comment on two minor changes to Reporting Form R in this ICR. The first change is to section 4.5 of the form, which requests that facilities identify their SIC code. EPA is proposing to add the term ''primary'' in the first SIC code box in order to make clear that the first SIC code entered should be the facility's primary SIC code. The Form R instructions directs reporters to enter the primary SIC code first, but this is not clear on the form itself. EPA has found that many facilities do not enter their primary SIC code first even though they are so directed in the instructions. This change should help rectify that problem and enable the Agency to conduct more accurate analyses on an industry sector-specific basis.

The second proposed change is in Section 7A of the Form R: On-site waste treatment methods and efficiency. In order to eliminate the need for facilities to repeat the section 7 data for every waste stream, EPA is proposing to add a column f which asks, ''How many individual waste streams does this apply to?'' This should slightly reduce the burden of reporting, particularly for the treatment, storage, and disposal facilities.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Toxic Chemical Release Reporting.

ICR numbers: EPA ICR No. 1363.07, OMB No. 2070–0093.

ICR status: This ICR is currently scheduled to expire on April 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPCRA section 313 requires owners or operators of certain facilities that manufacture, process, or otherwise use any of over 600 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information on toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 52.1 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases and transfers of waste management activities for such chemicals.

Estimated total number of potential respondents: 25,159.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 4 (average).

Estimated total annual burden hours: 6,133,055 hours.

Estimated total annual burden costs: $417.1 million.

VI. Are There Changes in the Estimates from the Last Approval?

The major change from the information collection most recently approved by OMB is a significant decrease in the estimated burden hours to respondents, from an estimated annual total burden of 7,340,524 hours currently approved to an average annual total burden of 6,133,055 hours in this request. This decrease reflects two different adjustments. One, EPA has revised downward its estimates of the number of respondents reporting annually under this information collection, based on experience since the last approval of this collection. Two, EPA has also revised downward the unit burden hour cost for certain facilities that were required for the first time to report due to amendments to the TRI reporting rule, as of the time of the most recent approval of this collection. The burden of complying with TRI reporting is higher in the first year than in subsequent years. The first year of reporting for these facilities was covered by the currently approved ICR. This request covers subsequent year reporting, so the burden for these facilities reflects a decrease from the first year burden hour estimates.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR

1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19272 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00272; FRL–6084–1]

TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions (EPA ICR No. 1139.06, OMB No. 2070–0033). This ICR involves a collection activity that is currently approved and scheduled to expire on September 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number ''OPPTS–00272'' and administrative record number 212, must be received on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–8157; Fax: 202–260–1096; e-mail: cronin.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture, distribute, process, import, use or dispose of chemical substances or mixtures. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Industrial organic chemicals	2819
Adhesives and sealants	2891
Paints and allied products	2851
Textile goods	2299
Petroleum products	5172

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR 790.2 and in section 4(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the ''**Federal Register**-Environmental Documents'' entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr. You can then follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call (202) 401–0527 and selecting item 4067. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established under docket control number ''OPPTS–00272'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202– 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number ''OPPTS–00272'' and administrative record number 212 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall,

401 M St., SW., Washington, DC, Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on 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 ''OPPTS–00272'' and administrative record number 212. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions.

ICR numbers: EPA ICR No. 1139.06, OMB No. 2070–0033.

ICR status: This ICR is currently scheduled to expire on September 30, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing is made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an ''unreasonable risk'' or is produced in ''substantial'' quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the results of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information are mandatory (see 40 CFR part 790). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 133 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are persons in the United States who manufacture, distribute, process, import, use or dispose of chemical substances or mixtures.

Estimated total number of potential respondents: 40.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 235 (average).

Estimated total annual burden hours: Approximately 1,110,800 hours.

Estimated total annual burden costs: Approximately $263.5 million.

VI. Are There Changes in the Estimates from the Last Approval?

The major change from the information collection most recently approved by OMB is a significant increase in the estimated burden hours to respondents, from an average annual total burden of 76,450 hours currently approved to an average annual total burden of 1,110,782 hours in this request. This increase reflects the addition of a proposed High Production Volume (HPV) test rule that will review 3,000 chemicals over a 3 year period, or 1,000 chemicals annually, and a children's health test rule that will review 44 chemicals in the first year of this ICR. EPA assumes that half the chemicals targeted for these TSCA section 4 rulemakings will be enrolled in the voluntary testing program. Only those costs and burdens associated with the voluntary program are considered in this ICR. EPA is particularly interested in receiving comments on these changes.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19274 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6408–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Administrative Requirements for Assistance Programs, EPA ICR No. 0938.07, OMB Control No. 2030–0020, expiration date September 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0938.07.

SUPPLEMENTARY INFORMATION:

Title: General Administrative Requirements for Assistance Programs (OMB Control No. 2030–0020; EPA ICR No. 0938.07, expiration date September 30, 1999). This is a request for an extension of a currently approved collection.

Abstract: The information is collected from applicants/recipients of EPA assistance and is used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations' and 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/25/99 (64 FR 14441). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 31 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Not-for-profit institutions, individuals; state, local or tribal governments.

Estimated Number of Respondents: 4,623.

Frequency of Response: as required; varies.

Estimated Total Annual Hour Burden: 142,435 hours.

Estimated Total Annualized Cost (non-labor) Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0938.07 and

OMB Control No. 2030–0020 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1999.

Joseph Retzer, Director,

Regulatory Information Division.

[FR Doc. 99–19268 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6409–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA Office of Site Remediation Enforcement Program Evaluation ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA Office of Site Remediation Enforcement Program Evaluation ICR, EPA ICR Number 1890.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1890.01.

SUPPLEMENTARY INFORMATION:

Title: EPA Office of Site Remediation Enforcement Program Evaluation ICR, EPA ICR Number 1890.01. This is a new collection.

Abstract: During the last 3–5 years, EPA's Office of Site Remediation Enforcement (OSRE), in conjunction with EPA's Office of Emergency and Remedial Response (OERR), has been implementing a series of Administrative Reforms in the Superfund program. These reforms are an effort to make Superfund a faster, fairer, and more efficient program for all parties involved. With 3–5 years of implementation past for a number of these reforms, OSRE is interested to learn how well these Administrative Reforms have worked and whether they have achieved their stated intentions in the eyes of the external stakeholders whom the reforms were intended to impact. The purpose of this ICR is to enable OSRE to collect data on the effectiveness of Superfund Administrative Reforms so that we can understand which of the reforms are most effective, as well as to obtain anecdotal and statistically valid information on the outcomes of the reforms.

With each of the information collections described in this ICR, OSRE will be measuring whether or not the Administrative Reform is meeting its intended goal, such as speeding site study and cleanup and reducing private party transaction costs. Typical goals of the Administrative Reforms include: increasing the efficiency of reaching settlements with parties at Superfund sites; reducing transaction costs for parties at Superfund sites; increasing the fairness of enforcement actions at Superfund sites; and facilitating the reuse of Superfund sites.

OSRE is planning to conduct program evaluations of up to 15 Superfund policies and Superfund reform initiatives. Eight of these reform initiatives are known and listed below. An additional seven program evaluations will take place as part of these information collections, but the exact topics are not known at this time. The eight known program evaluations are:

(1) Orphan Share Compensation
(2) Unilateral Administrative Order Administrative Reform
(3) Effective Oversight Management Administrative Reform
(4) Expedited Settlements Reform
(5) De Minimis Settlements
(6) PRP Response Costs and PRP Transaction Costs
(7) Reuse of Superfund and Brownfield Sites
(8) Disbursement of Response Costs to PRPs Performing Work from Special Accounts.

Information will be collected through a series of mail, telephone, and on-line survey questionnaires. Responses to these information collection requests are voluntary and one-time efforts.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 19, 1999 (64 FR 13573); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.86 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses; State, Local or Tribal Governments.

Estimated Number of Respondents: 10,520.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 9,994 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1890.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–19269 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00615; FRL–6093–1]

Notice of Public Meeting; EPA/USDA Workshop on Bacillus thuringiensis Crop Resistance Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA and United States Department of Agriculture (USDA) will conduct a 1–day joint public workshop on managing the emergence of insect populations that are resistant to *Bacillus thuringiensis* (Bt) plant-pesticides. The workshop will provide the two Agencies with information to help them develop and implement plans related to managing resistance.

DATES: The meeting will be held on Thursday August 26, 1999 from 8:00 am to 5:30 pm.

ADDRESSES: The meeting will be held at Sheraton Four Points Hotel, Memphis International Airport, 2240 Democrat Road, Memphis, TN, telephone number: (901) 332–1130.

FOR FURTHER INFORMATION CONTACT: By mail: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0514; e-mail address: matten.sharlene@epa.gov; fax: (703) 308–7026. For questions specifically about registration for the workshop, contact the person listed in Unit II B of this document.

SUPPLEMENTARY INFORMATION:

I. GENERAL INFORMATION

A. Does this Notice Apply to Me?

This notice applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of Any Documents Discussed in this Notice?

1. *Electronically*. You may obtain electronic copies of this document and related supporting materials from the EPA internet Biopesticides Home Page at http://www.epa.gov/pesticides/biopesticides/btworkshop826.htm. Electronic copies of this document, a draft agenda, and an EPA/USDA Position Paper for the workshop are currently available; a list of panelists and draft questions for panelists will be available by August 1, 1999. You can also go to the EPA internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

2. *In person*. If you have any questions or need additional information about this action, you may contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–00615]. This official 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. A public version of this official record, which includes printed, paper versions of any electronic comments, but does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall 2 (CM #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, you must identify docket control number [OPP–00615] in the subject line on the first page of your response. Comments on the EPA/USDA position paper, especially on Bt cotton, should be forwarded to the Agency no later than September 30, 1999.

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

3. *Electronically*. Submit your comments and/or data electronically by e-mail to: opp-docket@epamail.epa.gov. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption, or in WordPerfect 5.1/6.1. 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 [OPP–00615]. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as Confidential Business Information (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 consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider As I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

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. Tell us what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Offer alternative ways to improve this activity.
8. Make sure to submit your comments by the deadline in this notice.
9. At the beginning of your comments, 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–00615] in the subject line on the first page of your response. You may also provide the name, date, **Federal Register** citation, and/or the appropriate EPA or OMB ICR number.

II. BACKGROUND

A. What Issues Will the Workshop Address?

On Thursday, August 26, 1999, the EPA/USDA will conduct a joint public workshop on Bt crops to discuss specific insect resistance management issues focusing on Bt cotton. Three preselected panels will explore: Refuge Design and Deployment; Monitoring and Remedial Action; and Education and Compliance Issues. The workshop will begin with introductory comments from representatives of EPA and USDA. Panelists will be selected beforehand from the various stakeholder groups: industry, academia, USDA, conventional and organic growers, public interest groups, Arizona Cotton Research & Protection Council, and the National Cotton Council. Each panel's presentation will be followed by approximately 30–60 minutes of open discussion. Proceedings will be sent to all attendees and posted on the Biopesticides website: (http://www.epa.gov/pesticides/biopesticides).

EPA believes that managing insect resistance to Bt toxins is important because of the threat that resistance poses to the high benefits and low risk of using Bt toxins in transgenic crops and in microbial spray formulations. With use of Bt-crops increasing, EPA recognizes the value of ensuring that Bt crops and microbial Bts remain effective against target pests for as long as possible. To this end, EPA has worked with stakeholders (e.g., industry, public sector research and extension, growers, user groups, public interest groups, and government agencies) to address resistance management for Bt crops.

B. What Should I Do if I Want to Attend the Workshop?

EPA strongly requests all persons planning on attending the workshop to preregister. This information is needed to ensure adequate space for attendees. There is no registration fee. To register, please visit the workshop website at http://www.epa.gov/pesticides/biopesticides/btworkshop826.htm and fill out the registration form there. As an alternative, you may provide the following registration information directly to Teresa Bullock by e-mail or fax: Name(s); Organization; Mailing Address; Phone; Fax; E-mail. Teresa Bullock can be reached by: E-mail: tbullock@niu.edu; Fax: (815) 753–9348; telephone: (815) 753–9347; Mailing Address: Teresa Bullock, American Farmland Trust, P.O. Box 987, DeKalb, IL 60115.

A block of rooms has been reserved at the workshop hotel at a special rate. Please make your reservation early to ensure you get a room at that rate. Make your reservation by calling: Sheraton Four Points Hotel, 2240 Democrat Road, Memphis, TN 38132; Phone: (901) 332–1130; Fax: (901) 398–5206.

List of Subjects

Environmental protection, Bt cotton, Bt crops, pesticides, plant-pesticides, biopesticides, resistance management.

Dated: July 14, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–19273 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30478; FRL–6080–3]

Bayer Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to amend the pesticide products Folicur 3.6 F and Elite 45 DF involving a changed use pattern of the active ingredient pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 249, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–308–9354; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copy of this document is available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA received applications from Bayer Inc., 8400 Hawthorne Road, P.O. Box 4913, Kansas City, MO 64120–0013, to amend the pesticide products Folicur 3.6 F and Elite 45 DF, foliar fungicides (EPA Registration Numbers 3125–394 and 3125–388), containing the active ingredient tebuconazole, α-[2-(4-chlorophenyl)-ethyl]-α-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol at 38.7% and 45% respectively, an active ingredient which involves a changed use pattern of the products. However, since the notice of receipt of these applications to register the products as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit written comments within 30 days from the date of publication of this notice for these products. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov.

These applications were approved on January 8, 1999; in addition to the currently registered uses, these two products will be used as listed below:

1. Folicur 3.6 F for control of specified diseases on grasses grown for seed (EPA Registration Number 3125–394).
2. Elite 45 DF for control of specified diseases on grapes (EPA Registration Number 3125–388).

The Agency has considered all required data on risks associated with the proposed use of tebuconazole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations

which show that use of tebuconazole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–19275 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00597; FRL–6078–6]

Proposed Test Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel and the Scientific Advisory Board (SAB) and other expert scientific organizations. With this notice, EPA is announcing the availability of a combined chronic toxicity and carcinogenicity test guideline for the Series 870–Health Effects Test Guidelines for use in the testing of fibrous particles in the development of test data (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. An EPA SAB meeting to review the proposed test guideline will be scheduled after incorporation of public comments. Complete details of this meeting will be announced in a subsequent **Federal Register** notice.

DATES: Comments, identified by docket control number OPP–00597, must be received by EPA on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00597 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: David Lai, Risk Assessment Division, Office of Pollution Prevention and Toxics (7403), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone number: (202) 260–6222; e-mail address: lai.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain copies of this document and certain other available documents from the EPA Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

You may also obtain copies of test guidelines from the EPA Internet Home Page by selecting ''Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines'' at http://www.epa.gov/epahome/research.htm.

B. In Person

The Agency has established an official record for this proposed guideline under docket control number OPP–00597. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch, 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.

III. How Can I Respond to this Action?

A. 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–00597 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00597. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA 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 the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

IV. What Action is EPA Taking?

EPA is announcing the availability of and seeking comment on proposed test guidelines for developing a combined chronic toxicity and carcinogenicity test guideline for use in the testing of respirable fibrous substances (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. For many of these fibers there are limited, inconclusive, or virtually no information about their health effects. As a result, EPA has added a ''respirable fibers'' category as priority substance for health effects and exposure testing to obtain the necessary data to evaluate the extent and magnitude of health risks to exposed individuals and populations. However, the Agency's current test guidelines for chronic inhalation toxicity and/or carcinogenicity studies of chemical substances are not sufficiently specific for the testing of fibrous particles, and there is no general agreement upon test protocols for chronic inhalation toxicity and carcinogenicity testing of fibers for regulatory purposes. On May 8–10, 1995, EPA, in collaboration with National Institute of Environmental Health Sciences (NIEHS), the National Institute for Occupational Safety and Health (NIOSH), and the Occupational Safety and Health Administration (OSHA), conducted a workshop to obtain input from the scientific community on a number of issues related to fiber testing. The proposed test guideline has been developed based largely on the recommendations from the workshop expert panel and participants.

All interested parties are encouraged to submit comments on this proposed guideline. Specific comments should reference the specific number and paragraph or subparagraph of the related provision in the proposed test guidelines. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to OPPTS, or to unpublished data. Citations must be sufficiently detailed to allow OPPTS to access and evaluate the published information, original documents submitted, or unpublished data.

V. Are There Any Applicable Voluntary Consensus Standards That EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

In the future, these test guidelines could be incorporated into regulatory actions taken by EPA under TSCA, i.e., with regard to the section 4 testing program. Although the NTTA requirements do not specifically apply to the issuance of these particular test guidelines today, EPA invites your comment on whether or not there are any voluntary consensus standards that should be considered during the development of the final test guidelines or any future regulatory action that may be taken under TSCA. Future regulatory actions under TSCA section 4 may involve notice and comment rulemaking or negotiated voluntary testing enforcement consent agreements/orders/decrees. Nevertheless, the Agency is interested in whether or not there are any voluntary consensus standards that EPA should considered either as part of the development of the test guidelines themselves or in leu of these test guidelines when the Agency develops any future regulatory action that incorporates these test guidelines. Any comments provided will assist the Agency in complying with the NTTAA by facilitating the Agency's identification of voluntary consensus standards that should be addressed in the test guideline or considered during the development of a proposed regulatory action that incorporates any standards included in the final test guidelines. Please submit your

comments as directed in Unit III. of this document.

List of subject

Environmental protection, Chemical testing, Test guideline.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19271 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, July 27, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–19354 Filed 7–26–99; 10:11 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Cancellation of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App.), announcement is made of the cancellation of the following committee meeting:

NAME: Advisory Committee for the National Urban Search and Rescue Response System.

DATE OF MEETING: July 29, 1999.

PLACE: Federal Emergency Management Agency, Cavanaughs Olympus Hotel, 161 West 600 South, Salt Lake City, UT 84101.

TIME: 9:00 a.m.–5:00 p.m.

The meeting which was to be held on July 29, 1999, at the Cavanaughs Olympus Hotel in Salt Lake City, Utah, is cancelled. It is expected that the next meeting will be held in October 1999. Members of the public that need information about this meeting should contact Mark R. Russo, at 202–646–2701.

Lacy E. Suiter,

Executive Associate Director, Response & Recovery Directorate.

[FR Doc. 99–19434 Filed 7–27–99; 8:45 am]

BILLING CODE 6718–02–P

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 20, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Kercheval Limited Partnership, Largo, Florida; to become a bank holding company by acquiring 34.166 percent of the voting shares of Montezuma State Bank, Montezuma, Iowa.

Board of Governors of the Federal Reserve System, July 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19189 Filed 7–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in 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 August 11, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire a majority of the voting shares of Customers Forever, LLC, Milwaukee, Wisconsin, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19190 Filed 7–27–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Nutritional Biochemistry Cooperative Agreements for Innovative Technology Development Grant for Detection and Monitoring of Diabetic Hypoglycemia by Non- or Minimally-Invasive Techniques

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Nutritional Biochemistry Cooperative Agreements for Innovative Technology Development Grant for Detection and Monitoring of Diabetic Hypoglycemia by Non-or Minimally-Invasive Techniques, Program Announcement #99151.

Times and Dates: 8:30 a.m.–9 a.m., August 12, 1999 (Open); 9 a.m.–5 p.m., August 12, 1999 (Closed); 9 a.m.–4 p.m., August 13, 1999 (Closed).

Place: Atlanta Marriott North Central, 2000 Century Boulevard NE, Atlanta, Ga. 30345–3377. Telephone 404/325–0000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99151.

Contact Person for More Information: Dayton T. Miller, Ph.D., Chief, Nutritional Biochemistry Branch, NCEH, CDC, 4770 Buford Hwy., m/s F18, Atlanta, Ga. 30341–3724. Telephone 770/488–4579, e-mail dtm1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19235 Filed 7–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–8000]

Memorandum of Understanding Between the Food and Drug Administration and People's Republic of China

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and People's Republic of China. The purpose of the MOU is to establish a certification system that will increase the likelihood that daily-use ceramicware manufactured in the People's Republic of China and offered for import into the United States will comply with U.S. law.

DATES: The agreement became effective May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Frank M. MacKeith, Center for Food Safety and Applied Nutrition (HFS–585), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4045.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

BILLING CODE 4160–01–F

225-99-8000

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA

AND THE

STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA

COVERING CERAMICWARE INTENDED FOR USE IN THE PREPARATION, SERVING OR STORAGE OF FOOD OR DRINK AND OFFERED FOR EXPORT TO THE UNITED STATES OF AMERICA

PREAMBLE

The Parties to this Memorandum of Understanding (MOU), the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America, and the State Administration of Entry-Exit Inspection and Quarantine of the People's Republic of China (SAIQ), hereinafter referred to as the "Parties,"

RECOGNIZING that SAIQ is the government agency in charge of unified supervision and administration of the China's export and import commodity inspections,

RECOGNIZING that the China Import and Export Commodity Inspection Bureaus (CCIB), under the authority of SAIQ, are authorized by SAIQ to conduct the inspections, and collect and examine representative samples of all exports of ceramicware from China to ensure that qualified daily-use ceramicware from SAIQ/CCIB certified factories intended for export to the United States is safe for use in the preparation, serving, or storage of food or drink, and

RECOGNIZING that the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America is charged with the enforcement of, among other laws, the Federal Food, Drug, and Cosmetic Act, and the Fair Packaging and Labeling Act,

AGREE as follows:

I. PURPOSE

The mutual goals of FDA and SAIQ, in entering into this MOU, are to:

A. Establish a certification system that will increase the likelihood that daily-use ceramicware manufactured in the People's Republic of China and offered for import into the United States will comply with United States law. To that end, this MOU sets forth the Criteria for Certification (the Criteria) of: 1) ceramicware to be exported directly from the People's Republic of China or from the People's Republic of China via Hong Kong to the United States, as indicated by those involved in the trade (ceramicware manufacturers or importers/exporters), and intended for use in the preparation, serving, or storage of food; and 2) firms in the People's Republic of China manufacturing such ceramicware.

B. Enable the FDA to reduce the frequency of its sampling of daily-use ceramicware from factories in the People's Republic of China certified by the China Import and Export Commodity Inspection Bureaus (CCIBs) of SAIQ and offered for import into the United States, in accordance with FDA's confidence in the effectiveness of the SAIQ/CCIB factory certification system.

C. Provide for the cooperative exchange of scientific and regulatory information, technical assistance, and research to help ensure the safety, quality, and proper labeling of ceramicware exported from the People's Republic of China and offered for entry into the United States, under the terms of this MOU.

II. DEFINITIONS

For the purposes of this MOU, both Parties agree to the following definitions:

A. Action Level - means the concentration of an adulterant in or on a commodity at which FDA may take regulatory action against the commodity. The action level is non-discriminatory, applies without distinction to domestic and imported products, and reflects FDA's current thinking on the concentration of the adulterant in or on the commodity at which regulatory action is appropriate.

B. Audit Sample - means a sample collected to verify analytical results provided through a certification system or private laboratory analysis that purports to show that a product complies with the Food, Drug, and Cosmetic Act and/or regulations.

C. Certified Delivery Lot - means a quantity of ceramicware offered for entry into the United States at one time, that is produced by a factory certified by a CCIB, and is in compliance with the CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICWARE set forth in Attachment B this MOU (Criteria). A certified delivery lot may consist of one or

more factory lots or production lots. All shipping cartons and retail cartons in the lot are identified by a CCIB sticker/logo that is imprinted with the standardized factory code of the CCIB-certified factory.

D. Daily Use Ceramicware - means ceramic dinnerware intended for use in the preparation, serving, or storage of food or drink that usually are inexpensive, more durable items that have the expectation of being commonly used by the consumer.

E. Detention Without Physical Examination - means FDA's administrative act of detaining an import entry of a specified article without physical examination on the basis of information regarding its past history of violation of the Food, Drug, and Cosmetic Act or other information whereby there is an appearance that the product may be violative.

F. Electronic Entry Processing System - means an automated FDA import entry processing system which allows for a pre-determined percentage of import entries to be cleared by electronic means for entry into commerce in the United States. The pre-determined percentage of such cleared entries, referred to as a "may proceed rate," depends upon, among other things, the demonstrated degree of compliance of the commodity/country/firm combination with the laws enforced by FDA and their implementing regulations, and FDA's level of confidence that the commodity/country/firm combination will comply with such laws and regulations.

G. Factory Code - means an alpha-numeric code consisting of three parts with a total of six characters (five figures and one letter) for a particular plant. The first two figures represent the province or city, followed by the letter "T" for ceramicware, and followed by a set of three figures that SAIQ/CCIB uses to designate the factory number within each province or city.

H. Factory Lot or Production Lot - means a unit of ceramicware that is uniform and that represents ceramicware from no more than one homogeneously milled slip from the same materials. The factory lot or production lot must be uniform in the time and temperature of firing and the composition and application of the decorations and glazes.

I. Factory Lot Number or Production Lot Number - means a number assigned by the factory that relates to both the date and period of manufacture and denotes a distinct group of conditions (manufacturing date, kiln conditions, materials, patterns, etc.) that may affect the quality of the ceramicware.

J. Flatware - means ceramic articles that have an internal depth, as measured from the lowest point to the horizontal plane passing through the upper rim, that does not exceed 25 millimeters.

K. Hollowware - means ceramic articles having an internal depth, as measured from the

lowest point to the horizontal plane passing through the upper rim, greater than 25 millimeters. The two categories of hollowware and their sub-categories are:

1. Large hollowware - Ceramic articles with a capacity of 1.1 liter or more.

   a. Pitchers - Large ceramic hollowware vessels (sometimes known as jugs) commonly used for storage and dispensing of fruit and vegetables juices or other acidic beverages at or below room temperature. Pitchers are generally manufactured without a lid but with a handle and lip spout. Creamers, coffeepots and teapots are not considered to be pitchers. Depending upon capacity, creamers, coffeepots and teapots will be considered small or large hollowware.

   b. Other (not including pitchers) - Ceramic vessels with a capacity of 1.1 liter or more. (Note that different action levels apply to pitchers than to large hollowware other than pitchers under the Criteria.)

2. Small hollowware - Ceramic articles with a capacity of less than 1.1 liter.

   a. Cups and Mugs - Small ceramic hollowware vessels commonly used for consumption of beverages, for example, coffee or tea, at or above room temperature. Cups and mugs usually, but not exclusively, have a capacity of about 240 milliliters (240 mL) or 8 fluid ounces (8 fl. oz.) and are manufactured with a handle. Cups generally have a base and curved sides while a mug has cylindrical sides.

   b. Other (not including cups and mugs) - Ceramic vessels with a capacity of less than 1.1 liter. (Note that different action levels apply to cups and mugs than to small hollowware other than cups and mugs under the Criteria.)

L. May Proceed Rate - means the rate of import entries entered into domestic commerce without FDA physical examination or sampling that varies from a high near 100% for commodity/country/firm combinations for which FDA has a high confidence of compliance (e.g., particular firms have demonstrated a good compliance history and are certified by a foreign government), to a low of 0% for commodity/country/firm combinations for which FDA has a low confidence of compliance (e.g., firms with a history of noncompliance with the Food, Drug, and Cosmetic Act).

M. Sample - means portion of a certified delivery lot being offered for entry into the United States that is intended to be representative of that lot. It will consist of a number of units or subsamples, collected as specified in Article V, governing SAMPLE COLLECTION.

N. Shipping Carton - means a box that contains one or more retail cartons of daily-use

ceramicware produced by a CCIB-certified factory, has the CCIB sticker/logo with the CCIB factory code imprinted on it, and has the factory name and code, the year of production of the factory lot and the factory lot number printed on its exterior surface.

O. Traditional Ceramicware - means the ceramic dinnerware, spoons and other ware that might be used to contain or store foods and beverages. Such items are usually porcelain items, hand-painted with soft lead-containing enamels, and highly decorated with vivid colors and intricate patterns, which have been found to leach unacceptable levels of lead. The patterns are of red, yellow, and green, and referred to as "Longevity," "Flowers on Black," and "One Thousand Flowers," for example.

III. BASIC OBLIGATIONS

A. THE STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA

SAIQ shall ensure that daily-use ceramicware products that are intended for export to the United States comply with the provisions of this MOU. SAIQ agrees to direct the CCIBs to inspect and certify factories, and inspect and analyze samples, to ensure that ceramicware intended to be exported to the United States complies with these requirements and provisions.

To carry out its responsibilities, SAIQ agrees to:

1. Implement and oversee a daily-use ceramicware factory certification system;

2. a. Provide, on a continuing basis, FDA's Center for Food Safety and Applied Nutrition with a nationally standardized listing of factory names, addresses and codes of CCIB-certified daily-use ceramicware factories that export such daily-use ceramicware to the United States;

   b. Authorize the export of qualified daily-use ceramicware to the United States only from CCIB-certified factories;

3. a. Affix to each shipping carton and retail carton containing daily-use ceramicware that meets the Criteria a CCIB "H" (for Health) sticker/logo that is imprinted with the factory code of the CCIB-certified factory;

   b. Require that the factory lot or production lot number be on each shipping carton of the daily-use ceramicware that is to be exported to the United States;

4. Inspect and analyze factory lots or production lots of daily-use ceramicware to be

exported to the United States at a rate commensurate with the compliance history of the CCIB-certified factory and sufficient to provide a high degree of confidence that the daily-use ceramicware exported to the United States is in compliance with the Criteria;

5. Ensure that the CCIB laboratories that test daily-use ceramicware to determine its compliance with the Criteria follow the analytical procedures as described in the ANALYTICAL METHODOLOGY set forth in Attachment A;

6. Authorize the export of and issue export certificates for daily-use ceramicware intended for export to the United States, as indicated by either directly or transshipped through Hong Kong or other countries either by the manufacturer or by the importer/exporter, only for those delivery lots that are in compliance with the Criteria;

7. Require that all shipments of daily-use ceramicware intended to be exported to the United States via Hong Kong or other countries, as indicated by either the daily-use ceramicware manufacturer or the importer/exporter, be sealed by the CCIBs in such a way as to help prevent opening during transit;

8. a. Work with manufacturers and CCIBs to find solutions to any problems found when daily-use ceramicware from a CCIB-certified factory and covered by this MOU are determined by FDA not to meet the Criteria;

   b. Conduct an investigation if a daily-use ceramicware product from a CCIB-certified factory is detained by FDA because of an analytical finding of excessive levels of leachable lead or cadmium, to determine the cause of the technical defect that led to the violation and how it was remedied. SAIQ will provide FDA with a full report, in English, within three months of notification, on the findings of the investigation and the corrective measures taken to ensure future compliance;

9. Furnish FDA, upon request, with a copy, in both Chinese and English, of the current procedures and regulations relevant to daily-use ceramicware production/export and of the procedures/quality control plans used to ensure that each production lot of daily-use ceramicware is in compliance with United States FDA requirements;

10. Encourage the development and use of lead-free and cadmium-free decals, glazes and pigments in daily-use ceramicware and Chinese traditional ceramicware production; and,

11. Prevent, to the extent practicable, the export to the United States of ceramicware

which is not produced in a CCIB-certified factory, such as Chinese traditional ceramicware.

It is recognized by FDA and SAIQ that a period of four (4) months from date of signature will be necessary for SAIQ to complete certification procedures and logistical arrangements for all ceramicware factories which qualify for participation under the terms of this MOU. Therefore, SAIQ will provide FDA will the names, addresses and codes, as specified in Section III, A., as they are certified by SAIQ during the initial four-month implementation period.

B. THE FOOD AND DRUG ADMINISTRATION OF THE UNITED STATES OF AMERICA

FDA intends to:

1. Sample and analyze certified delivery lots of daily-use ceramicware produced in CCIB-certified factories, and offered for entry into the United States to ensure that such lots exported from the People's Republic of China and offered for entry into the United States comply with the laws of the United States administered by the FDA;

2. Adjust its electronic entry processing system and conduct surveillance monitoring of daily-use ceramicware from CCIB-certified factories at a rate consistent with the Agency's confidence in the effectiveness of the SAIQ/CCIB factory certification system, so that the may proceed rate can be substantially higher for daily-use ceramicware firms identified/certified by SAIQ/CCIB as consistently producing and exporting daily-use ceramicware in accordance with this MOU than the may proceed rate for other Chinese daily-use ceramicware firms not so identified and certified;

3. Sample and analyze delivery lots of daily-use ceramicware from manufacturers not on the list of factories certified by the CCIB at a relatively high review and sampling rate consistent with the FDA's concern about possible lead and cadmium contamination of daily-use ceramicware from these uncertified factories, and place such firms on detention without physical examination when it appears that the firms do not meet FDA's requirements;

4. Detain, at FDA discretion, without physical examination, subsequent delivery lots of daily-use ceramicware from a CCIB-certified factory whose products appear to be, through previous analysis, in violation of the United States laws administered by the FDA. All daily-use ceramicware from a CCIB-certified factory that produces violative daily-use ceramicware may remain subject to detention without physical examination until such time as the SAIQ provides assurance to FDA's satisfaction that appropriate corrective actions have been implemented, and that

future daily-use ceramicware products from that factory will be in compliance with the Criteria. This assurance includes the report of Section III., A., 8., b., above. FDA may then resume review of ceramicware from the CCIB-certified factory, consistent with the provisions in III.B.2, above;

5. Promptly notify SAIQ and the First Secretary (Commercial) of the Embassy of the People's Republic of China in the United States of any delivery lot or portion thereof of ceramicware covered by this MOU that is detained for failure to comply with United States law. This notification, by the International Activities Staff of FDA's Center for Food Safety and Applied Nutrition, should include:

   a. The CCIB-certified factory number;

   b. A copy of the accompanying CCIB certificate or certificate number;

   c. Production Lot number;

   d. Quantity of daily-use ceramicware detained;

   e. Commodity or the name of the product and the style number or pattern name;

   f. FDA's sample number;

   g. Date sample collected;

   h. Reason for detention, including the technical defect, e.g., defective color in decal, if known;

   i. Date of detention;

   j. FDA's District Office that detained the product and Port of Entry;

   k. Manufacturer/shipper name (Factory code, name and address); and

6. Provide advice to SAIQ concerning approaches or actions that may be taken by the manufacturer/shipper of the detained product to help ensure that subsequent shipments will not be detained.

7. On an annual basis, provide SAIQ with results of any FDA analyses of daily-use and other ceramicware offered for import into the United States from the People's Republic of China.

IV. TECHNICAL INFORMATION EXCHANGE

The Parties agree to share expertise, provide assistance, and exchange information. Such mutual cooperation may include, but shall not be limited to:

A. Sharing current, new, and improved methods of sampling and testing of daily-use ceramicware for lead and cadmium;

B. Sharing current, proposed, or modified regulations or legislation related to daily-use ceramicware;

C. As resources permit, the exchange of administrative, regulatory, and scientific personnel knowledgeable about daily-use ceramicware;

D. The exchange of information about daily-use ceramicware quality control operations, plans, and procedures, including summaries of inspections, samples and analytical results; and

E. The exchange of data and research related to major food-caused health concerns that may be attributed to lead and cadmium.

V. SAMPLE COLLECTION

Whenever practicable, FDA intends to use the same representative sample to determine adherence with the Criteria. A representative sample will generally consist of:

Six (6) units of identical size, shape, color, decoration, and glaze collected from each sampled delivery lot.

VI. ADMINISTRATIVE PROCEDURES

The Parties shall mutually agree on the ways and means of giving instruction and guidance for the practical implementation and application of this MOU. All travel and per diem expenses incurred by one of the Parties in the course of providing technical assistance or other non-regulatory activities requested by the other Party in accordance with this MOU will be borne by the requesting Party, upon receipt from the providing party of an itemized statement of account.

The Parties shall designate points of contact under this MOU. The Parties shall notify each other of the points of contact by letter.

VII. PERIOD OF AGREEMENT AND TEXTUAL VERSIONS

This MOU will enter into force upon signature by both Parties and will continue for five (5) years. The Parties agree to evaluate the MOU during the five-year period. It may be extended or amended by written consent of the Parties. It may be terminated by either Party upon 30-days written notice to the other.

This MOU is done in duplicate, in the Chinese and English languages, both being equally authentic.

Signed at:

WASHINGTON, DISTRICT OF COLUMBIA

ON May 20, 1999

FOR THE STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA:

Shi Jianxin
Minister-Counselor (Commercial)
Embassy of the People's Republic of China

and

WASHINGTON, DISTRICT OF COLUMBIA

ON May 20, 1999

FOR THE FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA:

Sharon S. Holston
Deputy Commissioner for International and Constituent Relations

ATTACHMENT A

ANALYTICAL METHODOLOGY

Compliance with the Criteria in Attachment B will be determined by using the analytical method Standard Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces described in the latest edition of *Annual Book of ASTM Standards*, of the American Society for Testing and Materials (ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959), currently volume 15.02 (1996), designation C738-94.

The method also appears in the March 1996 Supplement to the 16th Edition of *Official Methods of Analysis* (AOAC International, 481 N. Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417). Method 973.32 is used for high levels, Method 973.82 is used for low levels.

The levels of lead and cadmium are to be determined by analyzing each unit at the same time, individually, according to the above cited method.

ATTACHMENT B

CRITERIA FOR CERTIFICATION FOR EXPORT OF DAILY-USE CERAMICWARE

SAIQ agrees not to certify ceramicware factories that produce daily-use ceramicware for export to the United States that contain levels of lead or cadmium that exceed the following United States Food and Drug Administration guidance that is non-discriminatory, and applies without distinction to domestic and imported products:

A. LEAD

Category	Action Basis	Maximum Level* micrograms/mL
Flatware	Average of 6 units	3.0
Small Hollowware other than cups, mugs and pitchers	Any one of 6 units	2.0
Cups and mugs	Any one of 6 units	0.5
Large Hollowware other than pitchers	Any one of 6 units	1.0
Pitchers	Any one of 6 units	0.5

B. CADMIUM

Category	Action Basis	Maximum Level* micrograms/mL
Flatware	Average of 6 units	0.5
Small Hollowware	Any one of 6 units	0.5
Large Hollowware	Any one of 6 units	0.25

* Micrograms of element per milliliter of four percent (4%) acetic acid leaching solution as per cited analytical method.

[FR Doc. 99–19106 Filed 7–17–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0017]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Guidance on Validation of Analytical Procedures: Definition and Terminology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guidance for industry entitled ''Validation of Analytical Procedures: Definition and Terminology.'' This guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from an identically titled guidance adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and published in the **Federal Register** of March l, 1995 (60 FR 11260). The document provides guidance on characteristics that should be considered during the validation of analytical procedures included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled ''Validation of Analytical Procedures: Definition and Terminology'' may be obtained on the Internet within the CVM home page at ''http://www.fda.gov/cvm/fda/TOCs/guideline.html''. Persons without Internet access may submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966, e-mail ''wmarnane@cvm.fda.gov''.

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail ''sthompso@cvm.fda.gov''.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission, the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino–Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

In the **Federal Register** of January 27, 1998 (63 FR 3907), FDA published this guidance in draft form, giving interested persons until March 30, 1998, to submit comments. After consideration of comments received, a final draft guidance was submitted to the VICH steering committee.

At a meeting held from October 20 through 22, 1998, the VICH Steering Committee endorsed the draft guidance entitled ''Validation of Analytical Procedures: Definition and Terminology.'' This guidance discusses the characteristics that should be considered during the validation of the analytical procedures included in an application for registration of veterinary medicinal products in the European Union, Japan, and the United States. It is not intended to cover testing requirements or procedures, rather it is to serve as a collection of terms and definitions. These common definitions such as ''analytical procedures,'' ''specificity,'' ''precision,'' ''accuracy,'' etc., are meant to bridge the differences that often exist among various compendia and requirements of the European Union, Japan, and the United States. The final guidance will be implemented in October of 1999.

The final guidance represents the agency's current thinking on characteristics for consideration during the validation of the analytical procedures included as part of applications. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate approach may be used if it satisfies the requirements of applicable statutes, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: July 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19194 Filed 7–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0273]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Site Visit Assessment Tool and Supporting Regulations in 42 CFR 410.2; *Form No.:* HCFA–R–0273 (OMB# 0938–0770); *Use:* This information collection tool is essential for the Health Care Financing Administration (HCFA) to ensure that existing Community Mental Health Centers (CMHC), as well as CMHC applicants to the Medicare program are incompliance with Medicare provider requirements, as well as all applicable Federal and State requirements. The collection tool will be completed and used by HCFA and or its contractors to collect patient records, other CMHC operational information, and to verify CMHC compliance as determined by the HCFA regional office. CMHCs will be required to sign the completed form, provide medical records, and other operational information to be copied by the HCFA contractor representative on-site at the CMHC during the site visit.; *Frequency:* Upon initial application or re-enrollment into the Medicare program; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local, or Tribal Government; *Number of Respondents:* 850; *Total Annual Responses:* 850; *Total Annual Hours:* 3,400.

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: July 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–19210 Filed 7–27–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2000 National Household Survey on Drug Abuse—(0930–0110, Revision)

The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2000 NHSDA, additional questions in the following substantive areas are planned: mental health; mental health service utilization; industry and occupation; youth access to tobacco products and the cost of the last cigarettes purchased for adults as well as youth; and, substance abuse and treatment need. The remaining modular components of the NHSDA questionnaire will remain essentially unchanged except for minor modifications to wording and selective elimination of sufficient questions to allow for the additional burden of the questions and modules listed above.

As in 1999, the sample size of the survey for 2000 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 81,626 hours as shown below:

	Number of Respondents	Responses per respondent	Average burden per response (hrs.)	Total burden hours
Household Screener	210,000	1	0.050	10,500
NHSDA Questionnaire and interview verification	70,000	1	1.016	71,126
Total				81,626

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 21, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–19236 Filed 7–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

State Treatment Outcomes and Performance Pilot Studies Enhancement (TOPPS II)—New

The Center for Substance Abuse Treatment (CSAT) will develop a standardized approach that systematically measures the treatment outcomes of clients as they progress through State substance abuse treatment systems funded by the Substance Abuse Prevention and Treatment Block Grant (SAPT BG). The goal underlying TOPPS II is to enable Single State Authorities (SSAs) to collect information on SAPT BG funded treatment services and to monitor common substance abuse treatment effectiveness data measures across their State management information systems (MISs). The TOPPS II program supports initiatives to design or enhance State MISs or outcomes monitoring systems (OMS) which assess treatment outcomes measures. Nineteen SSAs are planning to conduct and pilot test studies of specific components of substance abuse treatment systems by incorporating common data measures across all nineteen States on an inter-State (i.e., with the States acting mutually together) basis. The TOPPS II study furthers the work begun by CSAT under TOPPS I. Ten of the nineteen TOPPS II States had received TOPPS I funding. Most of these States are now using the treatment outcomes assessment instruments developed during the TOPPS I project. All such instruments received OMB approval (OMB control number 0930–0182).

During TOPPS II initial project implementation, a consensus-derived core data set has been designed to identify key performance measures in two domains: Effectiveness and efficiency. Within these domains, data will be collected that will permit States and CSAT to assess client outcomes (improvement) for indicators such as confinement in a controlled environment, frequency of overnight hospitalizations and emergency room visits, pregnancy status, child care responsibilities, employment patterns, participation in vocational training or educational programs, arrests, living arrangements, and drug use patterns. These data will be collected through completion of the client-oriented core data set.

The inter-State evaluation design for TOPPS II participants will be a pre-test/post-test design that collects standardized data at client intake, discharge, and again at follow-up. This time frame is necessary to allow treatment providers the opportunity to assess the complex causal links between program processes and client outcomes and to monitor common substance abuse treatment effectiveness data measures across their State MISs. In addition, all State-specific designs will incorporate measures of client satisfaction at selected intervals, which is essential to assessing the quality, efficiency and efficacy of services.

This initiative is crucial to support CSAT in developing State substance abuse treatment accountability measures. The inter-State data base will incorporate standardized outcome measures which will be voluntarily reported on by States in their Fiscal Year 2000 SAPT BG applications. It will also comply with GPRA reporting requirements to establish measurable performance goals for SAPT BG recipients. Through these efforts, TOPPS II will contribute to the future development of a standardized national approach that measures the effectiveness and efficiency of public substance abuse treatment systems. The estimated annualized burden for TOPPS II core data set collection for the inter-State evaluation design, over the next three years is presented in the following table.

State	Number of respondents	Number of responses/ respondents	Total responses	Hours per response	Total hour burden
AZ*	556	4	2,224	0.12	267
AR	1,125	3	3,375	0.12	405
CA	2,700	3	8,100	0.12	972
CT	600	3	1,800	0.12	216
IL	2,000	3	6,000	0.12	720
IO	300	3	900	0.12	108
KY**	600	4	2,400	0.12	288
MA	1,370	3	4,110	0.12	493
MO	500	3	1,500	0.12	180
NH	657	3	1,971	0.12	237
NJ	1,200	3	3,600	0.12	432
NY	1,875	3	5,625	0.12	675
RI	1,200	3	3,600	0.12	432
TX	1,750	3	5,250	0.12	630
UT	1,050	3	3,150	0.12	378
VA	1,600	3	4,800	0.12	576
Total 3-Year Burden	19,083	.....	63,405	.....	7,009
Annualized Burden	6,361	.....	21,135	.....	2,336

* Arizona has elected to conduct two follow-up assessments: at 6 months post-discharge and at 12 months post-discharge.

** Kentucky is legislatively required to conduct a 12-month follow-up assessment in addition to the three data collection points required by the TOPPS II study.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 21, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–19237 Filed 7–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA); Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Mental Health Services (CMHS) National Advisory Council on August 13, 1999.

The meeting will include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Patricia Gratton, Committee Management Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 11C–26, Rockville, Maryland 20857. Telephone: (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 13, 1999.

Place: Center for Mental Health Services, 5600 Fishers Lane, Room 15C–94, Rockville, MD 20857.

Closed: August 13, 1999, 10:00 a.m.–11:30 a.m.

Contact: Anne Mathews-Younes, Ed.D., 5600 Fishers Lane, Room 17C–05, Telephone: (301) 443–0554 and FAX: (301) 443–7912.

Dated: July 22, 1999.

Sandi Stephens,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–19245 Filed 7–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, Preliminary Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a 32,400-Unit Residential Community To Be Built in Phases on 5,690 Acres Over a 32-Year Period, in Marion County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On Top of the World, Inc., of Ocala, Florida (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of four families of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened eastern indigo snake, *Drymarchon corais couperi*, in Marion County, Florida, for a period of thirty-two (32) years. The proposed taking is incidental to land clearing activities and residential development on a 32,400-acre project site (Project). The Project contains about 334 acres of occupied Florida scrub-jay habitat, and only one eastern indigo snake has been seen onsite, despite extensive surveys. The mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species are described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the ''No Surprises'' assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a ''No Surprises'' Policy for applicants seeking ITPs. Copies of the Service's ''No Surprises'' Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the ''No Surprises'' Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 27, 1999.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, US Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments or requests for the documentation must be in writing to be processed. Please reference permit number TE010099–0 in such comments, or in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Dell, Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Mr. Jay Herrington, Fish and Wildlife Biologist, Jacksonville Field Office, (see **ADDRESSES** above), telephone: 904/232–2580, extension 114.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens* is geographically isolated from other subspecies of scrub-jays found in Mexico and the western United States. The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total

estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that eleven families of Florida scrub-jays inhabit the Project site. Construction of the Project's infrastructure and individual home sites will likely result in death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of four alternatives. The no action alternative may result in continued loss of habitat for *Aphelocoma coerulescens* (through lack of fire management activity) or exposure of the Applicant under section 9 of the Act, should he decide to proceed with the Project without incidental take authorization. The on-site scrub habitat restoration alternative would require an ITP and would result in three scrub-jay territories being maintained where they are. In addition, habitat would be restored and/or created to provide for an additional seven FSJ families. However, this alternative would be the riskiest, in that little success has been achieved in the creation of scrub habitat. The off-site mitigation alternative would result in the loss of all eleven families of FSJs on the project site and would provide funds to the state of Florida to allow management activities to take place on the nearby Ross Prairie site specifically for the benefit of scrub-jays. The Applicant rejected this alternative because he wishes to maintain scrub-jays on the Project site as an amenity to future residents. In addition, providing funds to public agencies to conduct management activities would only be useful to scrub-jays in the event there were no plans for the state to manage the site properly. The Service is currently working closely with the state agencies to ensure that such activities will take place without additional funding being provided by the Service. The proposed action alternative is issuance of the ITP with on-site mitigation. To mitigate for the 122 acres of occupied habitat that would be eliminated on-site, the applicant will preserve and manage 273.1 acres of occupied scrub-jay habitat in addition to 32.2 acres of habitat already preserved as a result of previous coordination of a smaller project within the boundaries of this permit application. To buffer human-related impacts to the proposed preserves, buffers will be placed around them as outlined in the Environmental Assessment. Activities within the refuge areas will be limited to passive recreational activities on designated walkways. These preserves will provide habitat for any eastern indigo snakes occupying the site, as well. In addition, no clearing of scrub vegetation would occur during the nesting season of the Florida scrub-jay. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: July 21, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 99–19238 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collection; Request for Comments; AmerAlia, Inc. Proposed Sodium Solution Mine

AGENCY: Bureau of Land Management, USDI.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1978, the Bureau of Land Management (BLM) intends to complete an Environmental Assessment for AmerAlia, Inc.'s proposed experimental pilot plant nahcolite solution mine. Information will be collected to determine the level of environmental analysis necessary to fulfill BLM's mandate for the environmental protection of lands under their jurisdiction. Copies of this mine plan are available from AmerAlia, Inc., P.O. Box 1330, Rifle, CO 81650, Telephone (970) 625–9134.

DATES: Comments must be received by close of business on or before September 3, 1999.

ADDRESSES: All comments should be addressed to Larry M. Shults, Natural Resource Specialist, Bureau of Land Management, White River Field Office, 73544 Highway 64, Meeker, CO 81641, faxed to (970) 878–5717, or sent via e-mail to larry__shults@co.blm.gov.

FOR FURTHER INFORMATION CONTACT: Larry M. Shults at (970) 878–3601.

SUPPLEMENTARY INFORMATION:

Background

AmerAlia, Inc., phase one experimental mine plan involves the construction and operation of an experimental pilot plant nahcolite solution mine and associated surface facilities to produce up to 50,000 tons per year (tpy) of sodium bicarbonate for up to a 5 year period. Multiple wells may be used to solution mine the nahcolite. The mining plan being considered involves initially solution mining from alternate production wells. The objectives of the pilot plant are to develop the methods of solution mining and to develop the surface process. If successful, the project could proceed to the commercial phase two operation.

Comment Is Invited

The White River Field Office invites comments on the proposed experimental test mine to determine (a) what environmental issues are considered important by the commentor; (b) if an environmental assessment contains sufficient detail for a project of this scope; (c) if an environmental impact statement is necessary for the proposed project.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and used to determine the level of environmental analysis to be conducted on this project.

John J. Mehlhoff,

Resource Area Manager, White River Field Office.

[FR Doc. 99–19295 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–09–6650–00; GP9–0260]

Temporary Closure of a road: Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of a road in Lane County, Oregon.

SUMMARY: Notice is hereby given that a certain road in Lane County, Oregon is temporarily closed to all public use, including vehicular traffic, from July 30, 1999 through September 22, 1999. The closure is made under the authority of 43 CFR 8364.1.

The road affected by this closure is specifically identified as a portion of the Siuslaw Access Road (Road No. 19–7–25/18–8–34) located as follows:

Willamette Meridian, Oregon

Beginning at a point 50 feet west of the junction of the Siuslaw Access Road (Road No. 19–7–25/18–8–34) and Clay Creek Campground, located in the E½, Section 19, T. 19 S., R. 7 W.; then west along the Siuslaw Access Road (Road No. 19–7–25/18–8–34), 5.4 miles to a point approximately 500 feet west of Fawn Creek, located in the NE¼ NE¼ of Section 10, T. 19 S., R. 8 W.

SUPPLEMENTARY INFORMATION: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Federal employees; state, local and federal law enforcement and fire protection personnel; Raymond Fischer of 89985 Poodle Creek Road; Marion and Alyssa Shepard of 18008 Siuslaw River Road; the contractor authorized to replace culverts along the road and any of their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which includes a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

The road temporarily closed to public use under this order will be posted with signs at the points of closure.

The purpose of this temporary closure is to provide for public safety, facilitate replacement of culverts along the Siuslaw Access Road, and protection of property and equipment during the mobilization, culvert replacement and de-mobilization phases of the project.

DATES: This closure is effective from July 30, 1999 through September 22, 1999.

ADDRESSES: Copies of the closure order and maps showing the location of the closed road are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Manager, Eugene District Office, at (541) 683–6600 or 1–888–442–3061.

Dated: July 21, 1999.

Dan Howells,

Acting Coast Range Field Manager.

[FR Doc. 99–19283 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–46521]

Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The land was originally part of a 320-acre Recreation & Public Purpose Lease issued to Clark County on January 12, 1993. The County relinquished 10 acres on April 25, 1995. Clark County requests a lease amendment to add these 10 acres to the existing lease. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E., M.D.M., sec. 14, E½ W½ NE¼ NE¼

Containing 10.00 acres, more or less, located at Big Bend Drive and Edison Way in Laughlin, NV.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for road purposes which have been granted to Clark County by Permit No. N–50978 under the Act of October 21, 1976 (43 U.S.C. 1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a park site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 16, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–19276 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before August 27, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Larry Barker, RIK Study Team, telephone (303) 231–3157. You may also obtain copies of this collection of information at no cost by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind Pilot Program—Directed Third Party Communications Between Operators and Purchasers of Federal Royalty Oil and Gas.

OMB Control Number: 1010–0126.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK.

Collection of RIK requires communication between the operators of a lease and the purchaser of RIK from that lease to assure accurate and timely delivery of MMS' royalty share of production volumes. On January 29, 1999, OMB granted emergency approval for MMS to instruct lessees (or their operators), through a letter to operators which contains reporting requirements, to conduct all necessary communications with RIK purchasers during RIK pilot activities.

The three kinds of directed communication between operators and purchasers of RIK are: (1) Information about the volumes made available as RIK; (2) information about transportation of the RIK; and (3) information about correcting volumes made available as RIK. Experience with the Wyoming and Texas 8(g) Pilots demonstrates that the directed communication requirements differ according to the needs of each pilot situation. For example, in the Wyoming Pilot, RIK is delivered to the purchaser at the lease. Therefore, the direction to make transportation arrangements was not included in letters issued to those operators. For these reasons, we are not requesting approval of specific letters to operators but, instead, approval for the three kinds of reporting requirements concerning communications between operators and purchasers of RIK. By obtaining approval for these three kinds of reporting requirements, MMS will be able to select the types of directed communications needed for each pilot and include only those types in a letter appropriate to the operation of that pilot.

The types of communication and supporting data MMS will require operators to use in setting up the monthly delivery of RIK to the purchaser are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and gas and is exchanged as a normal part of the conduct of those business activities, even when operators are not directed to do so. Failure of lessees/operators and purchasers to timely communicate volumetric, delivery, and transportation information concerning MMS' RIK volumes will result in storage costs being incurred due to lack of pipeline space being reserved to move MMS' royalty production. Monetary penalties would also be incurred for failure to meet delivery due dates. Additionally, failure to communicate data from balancing accounts would severely impair MMS' ability to verify that it is receiving the full and accurate volume of its royalty share of production.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

The PRA provides that 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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 26, 1999 (64 FR 20321).

Estimated Number and Type of Respondents/Affected Entities: Approximately 80 lessees or operators of Federal oil or gas leases participating in RIK pilot programs.

Frequency of Response: Monthly.

Burden Statement and Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the respondent burden to average 2 minutes per response for a total of 285 hours. We estimate no additional recordkeeping burden.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: July 21, 1999.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 99–19261 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Revisions to Existing System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to amend the existing system of records managed by the Bureau of Reclamation (Reclamation) entitled ''Inventions and Patents, LBR–12.''

The notice is published in its entirety below.

DATES: Persons wishing to comment on the proposed revisions must do so by August 27, 1999.

Effective date: The proposed revised system of records will become effective without further notice on September 7, 1999, unless comments received result in a contrary determination. Reclamation will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Reclamation Privacy Act Officer, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007, or comments may be sent by facsimile transmission to fax No. 1–800–822–7651. Comments will be available for inspection at the Bureau of Reclamation, Denver Federal Center, Sixth Avenue and Kipling Street, Building 67, Room 112, Denver, Colorado, from 7:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding ''Inventions and Patents, WBR–12'' contact Ms. Lisa Henthrone, Research Program Coordinator, Research Office, at (303) 445–2136. For general information regarding Reclamation's Privacy Act program, call Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list this system of records as Reclamation-12. When originally published in the **Federal Register** this system of records was identified as LBR–12. The content of the system of records is the same; the prefix on the system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on April 11, 1977 (42 FR 19098). This publication revises the system location; increases the categories of records in the system to include home address and telephone number, date of birth, and social security number; a purpose has been added which was not included in the original notice; and the system managers and addresses have been updated. All other changes proposed are editorial in nature.

Rayleen Cruz,

Manager, Property and Facilities Group.

INTERIOR/WBR–12

SYSTEM NAME:

Inventions and Patents.

SYSTEM LOCATION:

(1) Department of the Interior, Bureau of Reclamation, Attention: W–6700, 1849 C Street, NW, Washington, DC 20240. (2) Bureau of Reclamation, Attention: D–6700, PO Box 25007, Denver, CO 80225–0007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Reclamation (Reclamation) employees who have been granted patents or who are seeking patents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, home address and telephone number, date of birth, social security number, and organizational segment of the inventor. Contains a thorough description and/or drawings of invention in original application for patent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101, 43 U.S.C. 373, 373a, 1457, 44 U.S.C. 3101.

PURPOSE(S):

The purpose of maintaining this system of records for the Bureau of Reclamation is to have a retrievable system of information for pending patents and patents that have been secured (granted). When the patents are submitted to the U.S. Patent Office, the first monetary award is granted to the inventor. Once the patent is granted, the second monetary award is granted along with the patent certificate. The patent is awarded for a certain amount of years and must be renewed before it expires, if deemed necessary, by the inventor/Reclamation. The records must be maintained on a continual basis for these purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer internal program for determining rights of employee to invention and status of securing patent for invention. Disclosures outside the Department of the Interior (Department) may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that

office by the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files maintained in manual form in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Department of the Interior, Bureau of Reclamation, Attention: W–6700, 1849 C Street, NW, Washington, DC 20240. (2) Bureau of Reclamation, Attention: D–6700, PO Box 25007, Denver, CO 80225–0007.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the records are maintained.

[FR Doc. 99–19239 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–389 (Review)]

3.5″ Microdisks From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 1999 to determine whether revocation of the existing antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 1, 1999, the Department of Commerce published notice that it was revoking the order because no domestic interested party responded with a complete substantive response to its notice of initiation by the applicable deadline (64 FR 35588, July 1, 1999). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject review is terminated.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 21, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19286 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Melamine 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 melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63747, November 16, 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 January 13, 1999 (64 FR 2233). The hearing was held in Washington, DC, on May 20, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 21, 1999. The views of the Commission are contained in USITC Publication 3209 (July 1999), entitled Melamine from Japan: Investigation No. AA1921–162 (Review).

Issued: July 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19284 Filed 7–27–99; 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)).

[2] Vice Chairman Miller and Commissioner Askey dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Preliminary)]

Certain Non-Frozen Concentrated Apple Juice From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports from China of concentrated apple juice, other than

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Bragg not participating.

[3] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from China that are allegedly sold at LTFV.

frozen,[4] provided for in subheading 2009.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. 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 and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 7, 1999, a petition was filed with the Commission and Commerce by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA., alleging that an industry in the United States is materially injured by reason of LTFV imports of non-frozen concentrated apple juice from China. Accordingly, effective June 7, 1999, the Commission instituted antidumping investigation No. 731–TA–841 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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** of June 16, 1999 (64 FR 32256). The conference was held in Washington, DC, on June 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 22, 1999. The views of the Commission are contained in USITC Publication 3216 (July 1999), entitled Certain Non-frozen Concentrated Apple Juice from China: Investigation No. 731–TA–841 (Preliminary).

By order of the Commission.

Issued: July 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19287 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

[4] For purposes of this investigation, non-frozen concentrated apple juice is defined as having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–380–382 (Final) and 731–TA–797–804 (Final)]

Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France, Italy, and the Republic of Korea (Korea) of certain stainless steel sheet and strip [2] that have been found by the Department of Commerce to be subsidized by the Governments of France, Italy, and Korea.[3] The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom of certain stainless steel sheet and strip that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3] The Commission further determines that critical circumstances do not exist with respect to imports of subject merchandise from Nisshin Steel Co. Ltd., Nippon Yakin Kogyo, Nippon Metal Industries, and Nippon Steel Corp. of Japan and Taihan of Korea.[4]

Background

The Commission instituted these investigations effective June 10, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Allegheny Ludlum Corporation, Pittsburgh, PA; Armco, Inc.,[5] Pittsburgh, PA; J&L Specialty Steel, Inc.,[6] Pittsburgh, PA; Washington Steel Division of Bethlehem Steel Corporation, Washington, PA; the United Steelworkers of America, AFL–CIO/CLC; Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain stainless steel sheet and strip from France, Italy, and Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of certain stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation 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** of January 14, 1999 (64 FR 2504). The hearing was held in Washington, DC, on May 25, 1999, and all persons who requested the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] The merchandise subject to these investigations is stainless steel sheet and strip in coils and is currently classified in the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7219.13.00, 7219.14.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00.

[3] Commissioner Askey dissenting.

[4] Commerce made affirmative determinations of critical circumstances with respect to these companies and negative determinations with respect to all other producers in Japan and Korea and all producers in Germany, Italy, and Taiwan. Critical circumstances were not alleged with respect to imports from France, Mexico, and the United Kingdom.

[5] Armco, Inc., Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. are not petitioners in the antidumping investigation relating to Mexico.

[6] J&L Specialty Steel, Inc, is not a petitioner in the countervailing duty and antidumping investigations relating to France.

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3208 (July 1999), entitled Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom: Investigations Nos. 701–TA–380–382 and 731–TA–797–804 (Final).

Issued: July 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19285 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–A (Final)]

Uranium From Kazakhstan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Kazakhstan of uranium, provided for in subheadings 2612.10.10, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 8, 1991, following receipt of a petition filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union (which has since become the Paper, Allied-Industrial-Chemical Union (PACE)). The Commission's investigation was suspended on October 21, 1992, following Commerce's notification that it was entering into a suspension agreement with Kazakhstan. The final phase of the investigation was continued on January 15, 1999, when Commerce notified the Commission that it was resuming its antidumping investigation with respect to Kazakhstan as a result of the Government of Kazakhstan's termination of its suspension agreement. Notice of the scheduling of the Commission's investigation 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** of March 3, 1999 (64 FR 10317). The hearing was held in Washington, DC, on June 9, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 23, 1999. The views of the Commission are contained in USITC Publication 3213 (July 1999), entitled ''Uranium from Kazakhstan: Investigation No. 731–TA–539–A (Final).''

Issued: July 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19288 Filed 7–27–99; 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)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') and the Resource Conservation and Recovery Act (''RCRA'')

Under 28 CFR 50.7, notice is hereby given that on July 6, 1999, a proposed consent decree in *United States* v. *Burgess Brothers, Inc.,* 2:99 Civil Action No. 194, was lodged with the United States District Court for the District of Vermont.

The proposed consent decree is a Remedial Design/Remedial Action (''RD/RA'') consent decree under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 9673, for implementation of the remedy selected by the United States Environmental Protection Agency (''EPA'') in the Record of Decision (''ROD'') issued September 25, 1998, for reimbursement of certain past response costs, for reimbursement of future oversight and response costs, and for payment of natural resource damages related to the Burgess Brothers Superfund Site between Bennington and Woolford, Vermont. The proposed consent decree requires three defendants—Burgess Brothers, Inc., operator at the Site, Eveready Battery Company, a generator of wastes at the Site, and Clyde Burgess, Jr., the owner of the Site, to perform the cleanup of the Site as selected by the September 25, 1998 ROD, pay the United States $374,143.51 in unreimbursed past response costs incurred by EPA, reimburse all future response and oversight costs incurred by EPA and future response and oversight costs up to $90,000 incurred by the State of Vermont, and pay the United States $100,000 in natural resource damages for restoration of wetlands at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Burgess Brothers, Inc.,* D.J. Ref. 90–11–3–1454. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The consent decree may be examined at the Office of the United States Attorney, District of Vermont, 11 Elmwood Avenue, Burlington, VT 05402, at U.S. EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $62.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19206 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States and State of New York* v. *Occidental Chem. Corp. and Olin Corp.*, Civil No. 79–987C was lodged with the United States District Court for the Western District of New York on July 19, 1999. The decree resolves claims against Occidental Chemical Corporation and Olin Corporation under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') for injunctive relief, cost recovery and natural resource damages in connection with the 102nd Street Site in Niagara Falls, New York. Pursuant to the decree, defendants will compensate the Superfund for $6.075 million, plus interest, for past United States' response costs, and reimburse future costs. Defendants are required to complete implementation of the remedial action at the Site and thereafter, perform operation and maintenance at the Site. The decree also requires the defendants to pay $518,864 for past assessment costs and natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of New York* v. *Occidental Chem. Corp. and Olin Corp.*, DOJ Ref. #90–11–2–951.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. In requesting copies please refer to the referenced case, specify the decree you would like to receive, and enclose a check payable to the Consent Decree Library in the amount of $23.25 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19207 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a consent decree in *United States of America and the Commonwealth of Pennsylvania* v. *Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority*, Civil Action No. 97–4815 (E.D. Pa.) was lodged with the court on June 18, 1999.

The proposed decree resolves claims of the United States and the Commonwealth against defendants Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority for violations of the Clean Water Act, 33 U.S.C. 1251 et seq. The decree requires defendants (1) to pay a civil penalty of $60,000, half to the United States and half to the Commonwealth, and (2) to achieve and maintain compliance with the effluent limits in the discharge permit for the Schuylkill Haven sewage treatment plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America and the Commonwealth of Pennsylvania* v. *Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority*, Civil Action No. 97–4815 (E.D. Pa.), DOJ Ref. # 90–5–1–1–3721A.

The proposed Consent Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 99–19204 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on July 13, 1999 a proposed consent decree in *United States* v. *Tafton Water Company, et al.*, Civil Action No. 33: CV 99–263, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States and Pennsylvania Department of Environmental Protection sought civil penalties, injunctive relief, and preliminary injunctive relief for violations of the Safe Drinking Water Act and its implementing regulations at the Tafton water system which serves the Wilson Hill development in Hawley, Pennsylvania. The proposed consent decree would resolve certain claims against one defendant, Richard M.S. Freeman, by requiring Richard Freeman to make modifications and repairs to the Tafton Water system to ensure long-term adequate disinfection of the water supply. Richard Freeman will also be obligated to provide personal financial information to the United States for determination of a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Tafton Water Company, et. al., DOJ* #90–1–1–06424.

The proposed consent decree may be examined at the offices of the United States Attorney, Middle District of Pennsylvania, Federal Building 228 Walnut Street, Second Floor, P.O. Box 11754, Harrisburg, PA 17108; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19203 Filed 7–21–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On July 12, 1999, the United States lodged a proposed consent decree in the case of *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil Action No. CV–S–99–0865–JBR–LRL (D. Nevada), with the United States District Court for the District of Nevada.

The proposed consent decree resolves claims that the United States asserted against Tomkins Industries, Inc. and Lasco Bathware, Inc. in a civil lawsuit filed concurrently with the lodging of the consent decree on July 12, 1999. The compliant in this case alleges that defendants constructed and then operated two production lines at their Lasco Bathware facility located in the Hidden Valley Industrial Park in Moapa, Nevada, without complying with the Clean Air Act, the State Implementation Plan, or permits issued by the Clark County Board of Health, Air Pollution Control Division. Resins containing styrene used in the manufacture of bathtubs and shower stalls emit Volatile Organic Compounds (''VOCs'') into the atmosphere, which create ground level ozone and smog. Among other things, the United States' lawsuit alleges that defendants operated without valid permits, failed to limit VOC emissions with Best Available Control Technology (''BACT''), and failed to comply with permit requirements.

The proposed Consent Decree requires defendants to pay a civil penalty of $575,000. In addition, Defendants are required to install a Regenerative Thermal Oxidizer on Line 1 at the Lasco Bathware facility, and to cease operating any equipment on Line 2 at the Lasco Bathware facility that would cause the emission of air contaminants within eight months of the effective date of the Consent Decree.

The Department of Justice will accept comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. *See* 28 CFR 50.7. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil Action No. CV–S–99–0865–JBR–LRL (D. Nevada), and DOJ No. 90–5–2–1–2128.

You may examine the proposed consent decree at the office of the United States Attorney, District of Nevada, 701 East Bridger Avenue, Suite 600, Las Vegas, Nevada 89101; or at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. You may also obtain a copy of the consent decree in person or by mail from the Consent Decree Library. Your request for a copy of the consent decree should refer to *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil No. CV–S–99–0865–JBR–LRL (D. Nevada), and DOJ No. 90–5–2–1–2128, and must include a check for $9.50 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19205 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that the Department of Justice, in response to a request from citizens, has decided to extend the public comment period on the proposed consent decree in *United States* v. *Tucson Airport Authority, et al.*, Civil No. CIV–99–313–TUC–WDB, which was lodged on June 17, 1999, with the United States District Court for the District of Arizona (''Airport Property Decree''). Notice of the initiation of a 30-day comment period was published in the **Federal Register** on June 23, 1999. *See* 64 FR 33515–33516 (June 23, 1999). The Department of Justice will receive, for a period of 90 days from the June 23, 1999, date of publication of notice, comments relating to the proposed Airport Property Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Tucson Airport Authority, et al.*, D. Ariz., Civil No. CIV–99–313–TUC–WDB, DOJ Ref. #90–11–3–369/2.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources division.

[FR Doc. 99–19195 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–8]

Mark L. Beck, D.D.S.; Revocation of Registration

On November 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Mark L. Beck, D.D.S. (Respondent) of Washington, DC. The Order to Show Cause notified Dr. Beck of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB3603114 pursuant to 21 U.S.C. 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the District of Columbia.

On December 3, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On December 8, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on December 14, 1998, alleging that Respondent is currently registered with DEA to handle controlled substances in the District of Columbia, however he is currently without state authority to handle controlled substances in the District of Columbia. Although given an opportunity to file a response to the Government's motion, Respondent did not do so.

On January 15, 1999, Judge Bittner issued her Opinion and Recommended Ruling, finding that Respondent lacks authorization to handle controlled substances in the District of Columbia; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on February 17, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that in its Motion for Summary Disposition, the Government asserted that Respondent's District of Columbia controlled substances registration

expired on March 30, 1997, and his license to practice dentistry in the District of Columbia expired on December 31, 1997. According to the Government neither of these licenses were renewed.

The Deputy Administrator further finds that while there is no documentation in the record to support the Government's assertions, Respondent did not dispute that his licenses to practice dentistry and to handle controlled substances in the District of Columbia both expired without being renewed. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the District of Columbia, where he is registered with DEA.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the District of Columbia. Since Respondent lacks this authority, he is not entitled to a DEA registration there.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the District of Columbia. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *See also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d 432 (9th Cir. 1971).

According, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BB3603114, previously issued to Mark L. Beck, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 27, 1999.

Dated: June 23, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–19181 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired; National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on January 27, 1999 at 64 FR 4125, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 27, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate to the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers). Secondary: None. Brief Abstract: The Brady Handgun Violence Prevention Act of 1994, required the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contract, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law. Information pertaining licensees who may contact the NICS is collected to manage and control access to the NICS, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information. Additionally, the FFLS are requested to sign a legal document in order to ensure the privacy and security of NICS information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 Federal Firearms Licensees at 18 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800 annual burden hours.

Public comment on this proposed information collection is strongly

encouraged. If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington, DC 20530.

Dated: July 22, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–19197 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–100]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 27, 1999.

ADDRESSES: All comments should be addressed to Ms. Michele Hull, National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports

Title: Required Central Contractor Registration.

OMB Number: 2700–

Type of review: New.

Need and Uses: NASA is requiring it's vendors to register in DoD's Central contractor Registration Database. This requirement will be applicable for all awards excluding purchases with a Government purchase card.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Number of Respondents: 10,120.

Responses Per Respondent: 1.

Annual Responses: 10,120.

Hours Per Request: ½ hr.

Annual Burden Hours: 5,060.

Frequency of Report: Annually.

David B. Nelson,

Acting Chief Information Officer, Office of the Administrator.

[FR Doc. 99–19182 Filed 7–27–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 592, ''NRC's Handling of Your Concerns''.

2. *Current OMB approval number:* None.

3. *How often the collection is required:* One time, as allegations are closed.

4. *Who is required or asked to report:* Individuals who have submitted an allegation to the NRC.

5. *The number of annual respondents:* 240.

6. *The number of hours needed annually to complete the requirement or request:* 240 hours (one hour per response).

7. *Abstract:* NRC Form 592 is used to conduct a voluntary survey of allegers who bring health and safety concerns to the NRC. The survey is used to determine the level of satisfaction or dissatisfaction with NRC's handling of their allegation. The survey will be sent to allegers in various categories (allegers whose allegations were resolved but not substantiated, resolved and substantiated, or resolved and partially substantiated) whose allegations were filed in each of the four NRC regional offices and the two major program offices, the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards. The results of this survey will be used by NRC management to gauge the effectiveness of its existing program and to develop programmatic revisions, as needed, to improve its handling of allegations.

Submit, by September 27, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 22nd day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19255 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corp.; Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 50, § 50.60(a) to the Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, Oconee County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain provisions of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, appendix G. The NRC has established requirements in 10 CFR part 50 to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. As part of these requirements, 10 CFR part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that ''[t]he appropriate requirements * * * on pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G limits.

Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the RCPB from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief on the RCPB during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the Oconee Unit 1, 2, and 3 TS.

Therefore, in order to address provisions of amendments to the TS P–T limits and LTOP curves, the licensee requested in its submittal dated May 11, 1999, that the staff exempt Oconee Units 1, 2, and 3 from application of specific requirements of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, appendix G, and substitute use of three ASME Code Cases as follows:

1. N–514 as an alternate methodology for determining the low temperature overpressure protection system enable temperature,

2. N–588 for determining the reactor vessel P–T limits derived from postulating a circumferentially-oriented reference flaw in a circumferential weld, and

3. N–626 as an alternate reference fracture toughness for reactor vessel materials for use in determining the P–T limits. (As a result of recent ASME code committee action, the designation for Code Case N–626 was changed to N–640. Therefore, Code Case N–640 will be discussed below rather than Code Case N–626, the designation referenced in the submittal.)

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated May 11, 1999, and is needed to support the TS amendments that are contained in the same submittal and are being processed separately. The proposed amendments will revise the P–T limits of TS 3.4.3 for Oconee Units 1, 2, and 3 related to the heatup, cooldown, and inservice test limitations for the Reactor Coolant System of each unit to a maximum of 33 Effective Full Power Years (EFPY). It will also revise TS 3.4.12, Low Temperature Overpressure Protection System, to reflect the revised P–T limits of the reactor vessels.

The Need for the Proposed Action

During staff review of this submittal, the staff determined that granting of an exemption for the use of Code Case N–514 was not necessary.

ASME Code Case N–588 and Code Case N–626 (which is now Code Case N–640) are needed to revise the method used to determine the RCS P–T limits, since continued use of the present curves unnecessarily restricts the P–T operating window. Application of the code cases will, therefore, relax the LTOP operating window and reduce potential challenges to the reactor coolant system power operated relief valves. In addition, the present restrictions require that, under certain low temperature conditions, only one reactor coolant pump in a reactor coolant loop may be operated. The licensee has found from experience that the effect of this restriction is degradation of the reactor coolant pump impellers from cavitation sustained when either one pump or one pump in each loop is operating. Application of the Code Cases will allow operation of two reactor coolant pumps in a single loop, which will eliminate this condition.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the Oconee Units 1, 2, and 3 reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3, dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on July 15, 1999, the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Division of Radioactive Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes

that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 11, 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 Oconee County Library, 501 West South Street, Walhalla, South Carolina.

Dated at Rockville, MD, this 23rd day of July 1999.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Section Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19256 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Thursday, July 29, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)
(Contact: Larry Camper, 301–415–7231)

4:00 p.m.
Affirmation Session (Public Meeting)
*(PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a: Final Rule: Certification Renewal and Amendment Processes, 10 CFR Part 76

* * * * *

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, DC 20555 (301–415–1969).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 22, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–19361 Filed 7–26–99; 10:30 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 26, August 2, 9, and 16, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 26

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)
Contact: Larry Camper, 301–415–7231)

4:00 p.m.
Affirmation Session (Public Meeting)
* PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a: Final Rule: Certification Renewal and Amendment Processes, 10 CFR Part 76

Friday, July 30

9:30 a.m.
Briefing on Performance Assessment Progress in LLW, HLW, and SDMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285)

Week of August 2—Tentative

Thursday, August 5

10:00 a.m.
Briefing on EEO Program (Public Meeting)
(Contact: Irene Little, 301–415–7380)

3:30 p.m.
Affirmation Session (Public Meeting) (If needed)

Week of August 9—Tentative

Thursday, August 12

11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of August 16—Tentative

There are no meetings scheduled for the Week of August 16.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/sm;/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to received it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 23, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–19362 Filed 7–26–99; 10:31 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any

* 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.

amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 3, 1999, through July 16, 1999. The last biweekly notice was published on July 14, 1999 (64 FR 38022).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 27, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which much include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Stream Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 26, 1999.

Description of amendment request: The proposed change provides a Required Action and Completion Time for the Ultimate Heat Sink (UHS) in the event that service water temperature exceeds the current 95°F surveillance limit. It involves an allowance to continue operation for a period of 8 hours with the UHS at a temperature greater than the temperature limits provided in Technical Specification (TS) Limiting Condition of Operation 3.7.8, ''Ultimate Heat Sink (UHS)'' and provides an upper UHS temperature limit beyond which plant shutdown is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change will allow plant operation for a short period of time when the service water temperature exceeds 95°F. If the service water temperature is restored within the allowed time, a plant shutdown is not required. This minimizes plant transients, which reduces the probability of a reactor trip and the resulting challenges to mitigating systems. A service water temperature of up to 99°F does not increase the failure rate of systems, structures or components because the systems, structures, and components are designed for higher temperatures than at which they operate.

The Service Water (SW) System temperature is not assumed to be an initiating condition of any accident evaluated in the safety analysis report. Therefore, the allowance of a limited time for service water temperature to be in excess of 95°F does not involve an increase in the probability of an accident previously evaluated in the safety analysis report (SAR). The SW System supports operability of safety related systems used to mitigate the consequences of an accident. The service water temperature is not expected to increase significantly beyond 95°F due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. The capability of components to perform their safety related function is not affected up to a service water temperature of 99°F with the exception of the Containment Air Recirculation Fan Coolers. The heat removal capacity of the Containment Air Recirculation Fan Coolers is not expected to be significantly reduced by a small increase in service water temperature. If heat removal is not significantly reduced, containment pressure and leakage will not be significantly increased, and the doses from containment leakage will not be significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. A service water temperature of up to 99°F does not introduce new failure mechanisms of systems, structures or components not already considered in the SAR because the systems, structures, and components are designed for higher temperatures than at which they operate. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in service water temperature above the design basis limit for the SW System and delay by 8 hours the requirement to shutdown the plant when the service water system design limit is exceeded. There are design margins associated with systems, structures and components that are cooled by the service water system that are affected. The capability of components to perform their safety related function is not affected up to a service water temperature 99°F with the exception of the Containment Air Recirculation Fan Coolers. The Containment Air Recirculation Fan Coolers remove heat from containment to mitigate containment pressure and temperature following a MSLB (main streamline break) inside containment or a Large Break LOCA (loss-of-coolant accident) inside containment. An increase in service water temperature in excess of the design limit due to hot weather conditions is expected to be small due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, the effect on the Containment Air Recirculation Fan Coolers' heat removal capacity and the resulting containment pressure and temperature is expected to be small. Therefore, there is no significant reduction in margin of safety associated with this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 29, 1999.

Description of amendment request: This amendment request proposes to increase the notch testing surveillance interval of partially withdrawn control rods in Technical Specification Surveillance Requirement 3/4.3.C,

''Reactivity Control—Control Rod Operability,'' from an interval of once in 7 days to once in 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change extends the Surveillance Frequency for partially withdrawn control rods. The change does not affect equipment design or operation. The affected Surveillance is not considered to be an accident initiator. Therefore, this change will not significantly increase the probability of an accident previously evaluated. Furthermore, extension of the Surveillance Frequency will not impact the ability to perform its function following an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The extension of the Surveillance Frequency does not involve physical modification to the plant and does not introduce a new mode of operation.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The change in the Surveillance Frequency only provides a minor reduction in the probability of finding an inoperable control rod. Most of the control rods will continue to be tested on the current Frequency. However, if one stuck rod is identified, all rods must be checked promptly.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: April 1, 1999.

Description of amendment request: The proposed license amendment would modify the Technical Specifications (TSs) to incorporate certain improvements from the Revised Standard Technical Specifications for B&W Plants (NUREG–1430) that would add limiting conditions for operation action statements, make surveillance requirements more consistent with the revised standard TSs, correct conflicts or inconsistencies from earlier TS revisions, correct administrative errors, and revise the spent fuel pool sampling from monthly and after adding chemicals to weekly.

The staff's proposed no significant hazards determination below does not address the licensee's proposed changes with respect to a high pressure injection system operation in a low temperature overpressure environment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment makes administrative corrections, adds conditions to the limiting conditions of operation [LCOs], revises selected time clocks and surveillance requirements consistent with NUREG 1430, and adds a time clock to a unique LCO. These changes have no effect on the plant design or operation. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by proposed changes. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because no new accident initiators would be created.

3. Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because no changes to plant operating limits or limiting safety system settings are proposed.

The NRC staff has reviewed the licensee's analysis and based on the review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 22037.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 4, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSS) proposes to revise the definition of operating personnel in section 6.2.2.g to make it consistent with the Standard Technical Specifications and to remove a footnote.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licenses has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No, these TS changes are administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specifications is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2.1 defines the minimum operations shift crew composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, ''For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO [senior reactor operator] license at a Pressurized Water Reactor other than Indian Point Unit 3'', was a relaxation of the requirements of 6.2.2i.

Therefore, these changes will not increase the probability or consequences of an accident previously evaluated, because they are administrative and affect neither accident initiation or mitigation.

2. Does the proposed license amendment create the possibility of a new or different

kind of accident from any accident previously evaluated?

No, these TS changes are administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specifications is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2–1 defines the minimum operations shift crew composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, ''For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO license at a Pressurized Water Reactor other than Indian Point Unit 3'', was a relaxation of the requirements of 6.2.2.i.

These changes are administrative, and do not affect how the plant is operated. They also follow the guidance of the Standard Technical Specifications. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No, these TS change is administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specification is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2–1 defines the minimum operations shift new composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, ''For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO license at a Pressurized Water Reactor other than Indian Point Unit 3'', was a relaxation of the requirements of 6.2.2.i.

These changes are administrative, and do not affect how the plant is operated. They also follow the guidance of the Standard Technical Specifications. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for Licensee; Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Description of amendment requests: The licensee proposed changes to Technical Specification (TS) 3.3.5 ''ESFAS Instrumentation'' to include restrictions on operation with a channel of the refueling water storage tank level-low input to the recirculation actuation signal (RAS) and the steam generator pressure-low input or steam generator pressure difference-high input to the emergency feedwater actuation signal (EFAS) in the tripped condition. The current TS allows plant operation in this condition indefinitely. The licensee has determined that unacceptable consequences could result from a spurious trip of RAS or EFAS due to operation with a channel in trip condition. The licensee states that the proposed TS changes would improve plant operational safety and, thereby, reduce plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change provides limits for operating with a channel of the Refueling Water Storage Tank (RWST) Level-Low input in the Recirculation Actuation Signal (RAS) or the Steam Generator (SG) Pressure-Low or SG Pressure Difference (SGPD)-High input to the Emergency Feedwater Actuation Signal (EFAS) in trip.

As a result of this change, the potential for an inadvertent actuation of either of these two signals is reduced. The proposed Completion Times are based on Probabilistic Risk Assessment (PRA) considerations, and are conservative compared to the current unlimited Completion Times.

The consequences of an inadvertent actuation of EFAS or RAS are unaffected by this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change provides additional time limits on operation with a channel of the RWST Level-Low input to RAS or the SG Pressure-Lower SGPD-High inputs to EFAS in trip. Operation in this condition is currently allowed indefinitely. The proposed restrictions reduce the possibility of an inadvertent actuation of RAS or EFAS, and do not allow operation in any configuration not currently allowed by the Technical Specifications (TSs).

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides additional time limits on operation with a channel of the RWST Level-Low input to RAS or the SG Pressure-Low or SGPD-High inputs to RAS or EFAS in trip. The proposed limits are conservative compared to the current requirements, where the time limit is unrestricted. The overall impact of the change will be [an] increase in the margin of safety.

Therefore, there will be no significant reduction in a margin of safety as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendments: June 7, 1999 (TS 99–09).

Brief description of amendments: The proposed amendment would change the Sequoyah Unit 2 Technical Specification (TS) requirements by adding a new temporary Figure 3.4–1a and temporary footnotes to TS 3.4.8, ''Specific Activity,'' Table 4.4–4, and to corresponding Bases in order to raise the reactor coolant specific activity limit to 1.0 microcurie per milligram Dose Equivalent iodine-131 for the remainder of Unit 2 Cycle 10 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority, the licensee, has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change increases the allowed reactor coolant specific activity for iodine-131 and decreases the leakage quantity that would be postulated to occur at the faulted steam generator (SG) during a main steam line break (MSLB) accident. The described changes will return these parameters to the same values under which the plant operated prior to the implementation of TS Change 98–02 submitted on June 26, 1998. The June 26, 1998 submittal was a voluntary change that allowed for a greater leakage quantity during an MSLB accident as described in Generic Letter 95–05. Returning these parameters to their previous values does not affect or increase the probability of any accidents previously evaluated.

An increase in the consequences of an accident would not occur because the proportional increase in reactor coolant specific activity, while proportionally decreasing the allowable primary-to-secondary leakage during a postulated MSLB accident to values under which the plant was previously operated, was evaluated in [Topical Report No.] WCAP–13990 during the establishment of the original primary-to-secondary leak limits. No changes to the physical plant, to the plant operation, or maintenance practices have been implemented that would invalidate the limits defined in WCAP–13990.

The control room dose, the low population zone dose, and the dose at the exclusion area boundary remain bounded by the acceptance criteria of the Updated Final Safety Analysis Report. Therefore, the proposed TS change does not result in an increase in the consequences of an accident previously analyzed.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change does not alter the configuration of the plant. The changes do not directly affect plant operation. The change will not result in the installation of any new equipment or systems or the modification of any existing equipment or systems. No new operating procedures, conditions, or modes will be created by this proposed change. SG tube structural integrity, as defined in draft Regulatory Guide 1.121, remains unchanged. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Raising the allowed reactor coolant specific activity, while decreasing the allowed primary-to-secondary leakage during a postulated MSLB accident, keeps the amount of activity released to the environment unchanged. Design basis and offsite dose calculation assumptions remain satisfied. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 24, 1999, as supplemented by letter dated July 9, 1999.

Brief description of amendments: The proposed license amendments would remove several cycle-specific parameter limits from the Technical Specifications (TSs). These parameter limits would be added to the Core Operating Limits Report (COLR). Appropriate references to the COLR would be inserted in the affected TSs. In addition, the core safety limit curves would be replaced with safety limits more directly applicable to the fuel and fuel cladding fission product barriers. The affected Technical Specifications are: (1) TS 2.0, ''Safety Limits (SLs),'' (2) TS 3.3.1, ''Reactor Trip System Instrumentation Setpoints,'' (3) TS 3.4.1, ''RCS pressure temperature and flow from Nucleate Boiling (DNB) Limits,'' and (4) TS 5.6.5, ''Core Operating Limits Report.'' The May 24, 1999, application was previously noticed and published in the **Federal Register** on June 30, 1999 (64 FR 53213).

The July 9, 1999, supplement provided proposed additional information that would: (a) Add the Reactor Core Safety Limit figures to the COLR, (b) clarify that the overpower N–16 setpoint remains in the TSs, and (c) reflect NRC approval of the topical reports used to determine the core operating limits presented in the COLR. The supplemental information is being noticed herein to address the issue of no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes remove cycle-specific parameter limits from the Technical Specifications, add them to the list of limits contained in the Core Operating Limits Report (COLR), and revise the Administrative Controls section of the Technical Specifications. The proposed changes also insert the original minimum RCS flow limits into the Technical Specifications. The changes do not, by themselves, alter any of the parameter limits. The changes are administrative in nature and have no adverse effect on the probability of an accident or on the consequences of an accident previously evaluated. The removal of parameter limits from the Technical Specifications does not eliminate the requirement to comply with the parameter limits.

The parameter limits in the COLR may be revised without prior NRC approval. However, [Technical] Specification 5.6.5c continues to ensure that the parameter limits are developed using NRC-approved methodologies and that applicable limits of the safety analyses are met. While future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits, the differences would not be significant and would be bounded by the requirement of specification 5.6.5c to meet the applicable limits of the safety analysis.

Based on the above, addition of the minimum RCS flow limit into the Technical Specifications, removal of the parameter limits the Technical Specifications and the addition of the described limits in the COLR, thus allowing revision of the parameter limits without prior NRC approval, has no significant effect on the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes add the minimum RCS flow limit into the Technical Specifications, remove certain parameter limits from the Technical Specifications and add these limits to the list of limits in the COLR, thus removing the requirements for prior NRC approval of revisions to those parameters. The changes do not add new hardware or change plant operations and therefore cannot initiate an event nor cause an analyzed event to progress differently. Thus, the possibility of a new or different kind of accident is not created.

3. Do the proposed changes involved a significant reduction in a margin of safety?

The margin of safety is the difference between the acceptance criteria and the associated failure values. The proposed changes do not affect the failure values for any parameter. Though the accident analyses, all applicable limits (i.e., relevant event acceptance criteria as described in the NRC-approved analysis methodologies) are shown to be satisfied; therefore, there is no impact

on event acceptance criteria. Because neither the failure values nor the acceptance criteria are affected, the proposed change has no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: May 26, 1999.

Description of amendment request: The licensee proposed revising the suppression pool water temperature surveillance requirements to specify monitoring the temperature every 5 minutes when performing testing that adds to the suppression pool. In addition, the licensee proposed revising the requirement to check the suppression chamber water level and temperature from ''once per shift'' to ''daily'' and specify that it is the average temperature that is checked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the NCR its analysis of the issue of no significant hazard consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Vermont Yankee has determined that the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises the surveillance frequency for ''once per shift'' suppression pool water level and temperature monitoring. Additionally, the surveillance requirement for suppression pool water temperature monitoring when there are indications of relief valve operation that add heat to the suppression pool is also revised. The proposed change will revise the surveillance wording such that routine suppression pool monitoring will be ''daily'' and an operator will verify pool temperature every 5 minutes only during testing that adds heat to the suppression pool. Also clarified, is that the parameter being monitored is ''average'' suppression pool water temperature.

The consequence of an accident previously evaluated is not significantly increased since the initial suppression pool water temperature limit, which is an input valve for accident analyses, is not changed.

The proposed change affects only surveillance requirements and does not require any hardware or equipment modification. Equipment operation, plant limiting conditions for operation, and accident analyses will be unchanged. Therefore, the proposed change does not involve a significant increase in the probability or consequences of accidents.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Vermont Yankee has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change involves revision of Technical Specification surveillance requirements. There are no hardware modifications or equipment changes involved and operation of plant equipment will be unchanged. Thus, no new or different accident precursors will be created by this change.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin or safety. VY has determined that the proposed change does not involve a significant reduction in a margin of safety. The proposed change involves revision of Technical Specification surveillance requirements. There are no hardware modifications or equipment changes involved and plant operation and accident analyses are unchanged. The initial suppression pool water temperature limit, which is an input value for accident analyses, is not changed. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attoney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 29, 1999.

Description of amendment request: The licensee proposed revising the leak rate requirements of Technical Specifications 3.7.A.4 and 4.7.A.4 for the main steam line isolation valves. Specifically, a total leakage rate allowable value for the sum of the four main steam lines is proposed that is equal to four times the current individual main steam line isolation valve leakage rate allowable value. The individual main steam line isolation valve leakage rate allowable value is proposed to be one half of the total leakage rate allowable value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to the initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change does not affect the leak-tight integrity of the containment structure that is designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The primary containment must maintain functional integrity during and following the peak transient pressures and temperatures that result from any LOCA, thereby limiting fission product leakage following the accident. Because the proposed change does not alter any of the fission product lead rate assumptions used in the design basis LOCA analysis, the analyzed consequences of the Loss of Coolant Accident are not changed.

The control room radiological habitability analysis uses as an input assumption main steam line leakage rate at four times the current Technical Specifications limit. An allowable value for total main steam line

leakage rate equivalent to four times the current Technical Specifications limit for a single main steam line isolation valve is being added by this change. Thus, there is no effect on the main control room radiological habitability calculation.

Based on the above VY [Vermont Yankee] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that could contribute to the initiation of any accident. The methods of performing the tests are not changed. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of this change. Restating the acceptance criteria while maintaining the assumptions of all affected calculations has no influence over nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously evaluated.

Based on the above VY has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Restating the acceptance criteria for the main steam line isolation valve leakage rate while maintaining the assumptions of all affected calculations does not impact the margin of safety. The $0.6L_a$ maximum and minimum pathway leakage rate acceptance criteria provide the previously analyzed margin of safety. The testing method for determining the leak-tightness of the main steam line isolation valves has not changed. The leak rate test results are presently added to the Types B and C tests summation. The $0.6L_a$ maximum and minimum pathway leak rate acceptance criteria and the proposed Technical Specifications requirements provide assurance that component degradation does not impact the assumptions used to determine, nor provide a reduction in, and the analyzed margin of safety.

Based on the above VY has concluded that the proposed change will not cause a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trobridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: July 12, 1999.

Description of amendment request: The amendment would revise the value for the Safety Limit Minimum Critical Power Ratio (SLMCPR) and delete the wording specifying these as Cycle 20 values.

Basis for proposed no significant hazards consideration determination: As required by to CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The basis of the SLMCPR is to ensure no mechanistic fuel damages is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and probability of fuel damage is not increased. The derivation of the revised SLMCPR for Vermont Yankee for incorporation into the Technical Specifications, and its use to determine plant and cycle-specific thermal limits, have been performed using NRC approved methods. These plant-specific calculations are performing each operating cycle and if necessary, will require future changes to these values based upon revised core designs. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Based on the above, Vermont Yankee has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a specific analysis for the Vermont Yankee core reload design and deletion of a cycle specific reference for the values. These changes do not involve any new or different method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes.

Based on the above, Vermont Yankee has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The new SLMCPR is calculated using NRC approved methods with plant and cycle specific parameters for the current core design. The SLMCPR value remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure margin when the cycle specific transients are evaluated.

As a result, Vermont Yankee has determined that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 22, 1999 (TSCR 210).

Description of amendment request: The proposed amendments reflect changes to the Point Beach Nuclear Plant (PBNP) Units 1 and 2 Technical Specifications (TSs) in order to incorporate the Westinghouse 422V+ fuel assemblies into the PBNP reactor cores. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The accidents which are potentially affected by the parameters and assumptions associated with this amendment have been evaluated/analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design and construction standards that were applicable prior to the change are altered. Therefore, the changed occurring with this amendment will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The proposed changes associated with this amendment do not affect plant systems such that their function in the control of

radiological consequences is adversely affected. The safety evaluation (included in Attachment 2 of this submittal) documents that the design standards and applicable safety criteria limits continue to be met and therefore fission barrier integrity is not challenged. The proposed changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. Existing system and component redundancy and operation is not being changed by these proposed changes. These changes will therefore not affect the mitigation of the radiological consequences of any accident described in the FSAR [final safety analysis report].

In some cases, the results of the revised radiological analyses are greater than those of the current FSAR analysis. In other cases, the new and old analyses are not directly comparable because the radiological bases for the new analyses have been upgraded to meet more current NRC requirements. However, in all cases, the calculated doses are well within the regulatory acceptance criteria and do not constitute an unacceptable significant increase in consequences. Since the actual plant configuration, performance of systems, and initiating event mechanisms are not being changed as a result of this evaluation, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The changes described in the amendment are supported by the analyses and evaluations described in Attachment 2 (safety evaluation). The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

All equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. Existing component redundancy is not being changed by these proposed changes. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. Since all of the appropriate acceptance criteria for the various analyses and evaluations have been met as discussed in Attachment 2 (Safety Evaluation) of this submittal and provided for information in Attachment 4 (PBNP FSAR Chapter 14 ''Safety Analysis'' changes required as a result of the analyses performed for the upgraded fuel) of this submittal, by definition there has not been a significant reduction of any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: July 1, 1999 (TSCR 214).

Description of amendment request: The proposed amendments reflect a change to Point Beach Nuclear Plant (PBNP) Units 1 and 2 Technical Specification (TS) Section 15.5.4. The amendment request proposes to remove one of the two separate methods for verifying the acceptability of reactor fuel for placement and storage in the spent fuel pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative only in that they remove the ability to use the reference K_{oo} method for determining the acceptability of fuel for placement and storage in the spent fuel pool and new fuel storage vault at the Point Beach Nuclear Plant. Use of the remaining approved method and requirements ensure that fuel placed or stored in the spent fuel pool and new fuel storage vault continues to be in accordance with their respective design and licensing basis. That is, fuel in the storage array will continue to meet the design basis requirement that K_{eff} remain less than 0.95. No modifications are being made to the spent fuel pool and its cooling system or to the new or spent fuel storage racks. Since the design basis of the fuel and storage racks continue to be met, operation in accordance with the proposed amendments cannot create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No physical modifications are being made to the spent fuel pool and cooling system or to the new or spent fuel storage racks. All design basis requirements for ensuring the safe storage of fuel in the spent fuel pool continue to be met. Therefore, operation in accordance with the proposed amendments cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

Technical Specification requirements for placing and storing fuel in the spent fuel pool continue to ensure that the design basis requirement, K_{eff} for the fuel array in the spent fuel pool and new fuel storage remains less than 0.95, is maintained. The existing margin of safety established by this design requirement is maintained. Therefore, operation in accordance with the proposed amendments cannot create a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for license: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

Texas Utilities Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 27, 1999, as supplemented by letter dated May 28, 1999

Description of amendment request: The proposed amendments would add a footnote to Technical Specification (TS) 4.8.2.1e, ''D.C. Sources-Operating,'' which would, on a one-time basis for Unit 1 Battery BT1ED2, allow the licensee to substitute a performance discharge test ''* * * in lieu of the battery service test required by Specification 4.8.2.1d, twice within a 60 month interval.''

Date of publication of individual notice in **Federal Register:** June 14, 1999. (64 FR 31881).

Expiration date of individual notice: July 14, 1999.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 21, 1998, as supplemented on January 28, February 18, April 2, April 15, and April 16, 1999.

Brief description of amendment: This amendment makes changes to Facility Operating License No. DPR–35, the Technical Specifications, and Materials License No. 20–07626–04 to reflect the transfer of the licenses from Boston Edison Company to Entergy Nuclear Generation Company.

Date of issuance: July 13, 1999.

Effective date; As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** January 26, 1999 (64 FR 3984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 3, 1999.

Brief description of amendment: The amendment modified Technical Specification Table 4.6–3, ''Reactor Vessel Material Surveillance Program Withdrawal Schedule.'' The amendment changed the withdrawal schedule for the upcoming reactor vessel surveillance capsule pull from approximately 15 effective full power years to approximately 18 effective full power years.

Date of issuance: July 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 182.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1999 (64 FR 27316). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St Lucie County, Florida

Date of application for amendments: December 1, 1997, supplemented August 26, 1998.

Brief description of amendments: Revised the Technical Specifications (TS), Appendix B, Environmental Protection Plan (Non-Radiological), to implement the terms and conditions of the incidental Take Statement included in the Biological Opinion issued by the National Marine Fisheries Service, regarding endangered sea turtles.

Date of Issuance: July 2, 1999.

Effective Date: July 2, 1999.

Amendment Nos.: 162 and 103.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of initial notice in **Federal Register:** December 31, 1997 (62 FR 68305). The supplemental letter dated August 26, 1998, provided clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New Location County, Connecticut

Date of application for amendment: June 5, 1998, as supplemented January 13, 1999.

Brief description of amendment: The proposed revision to the Millstone Unit 3 licensing basis would address a recent steam generator tube rupture (SGTR) analysis that was determined to be an unreviewed safety question. The SGTR analyses described in the Final Safety Analysis Report (FSAR) include an offside dose analysis and a margin to overfill analysis. Both of the analyses have been updated. The offsite dose analysis was updated to reflect a larger capacity for the steam generator atmospheric dump valve (ADV) and a decrease in the operator response time to close the ADV block valve. The

margin to overfill analysis was updated to reflect a new single failure.

Date of issuance: July 2, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 172.

Facility Operating License Nos. DPR–49: Amendments authorizes revisions to the FSAR,

Date of initial notice in **Federal Register:** July 1, 1998 (63 FR 35992).

The January 13, 1999, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Northeast Nuclear Energy Company, et al., Docket No. 50–335, Millstone Nuclear Power Station, Unit No. 2, New Location County, Connecticut

Date of application for amendment: March 19, 1999.

Brief description of amendment: The amendment relocated Technical Specifications Sections 3.3.3.2, ''Instrumentation, Incore Detectors,'' 3.3.3.3, ''Instrumentation, Seismic Instrumentation,'' and 3.3.3.4, ''Instrumentation, Meteorological Instrumentation,'' to the Millstone, Unit No. 2, Technical Requirements Manual. Index page V and TS Bases have been revised to reflect the above relocations.

Dated of issuance: July 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 237.

Facility Operating License Nos. DPR–65: Amendment Revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 21, 1998 (64 FR 19560).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: November 26, 1999, which was superseded by letter dated June 1, 1998, as supplemented by letters dated October 30, 1998, March 29, 1999, April 20, 1999, and May 28, 1999.

Brief description of amendment: These amendment would replace the current ultimate heat sink average water temperature limit for all combination of plant operations.

Dated of issuance: July 6, 1999.

Effective date: Both units, effective as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 182 and 156.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1998 (63 FR 27764). The October 30, 1998, March 29, 1999, April 20, 1999, and May 28, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilker-Barre, PA 18701.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: November 23, 1999.

Brief description of amendments: The amendments modified the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications limiting condition for operation, 3.8.3, and surveillance requirements, 3.8.3.1, to increase the minimum fuel oil storage tank volume ranges.

Dated of issuance: July 7, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 183 and 157.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1999 (64 FR 4160).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference, Department, 71 South Franklin Street, Wikes-Barre, PA 18701.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: October 17, 1997, as supplemented March 2 and November 28, 1998.

Brief description of amendments: These amendments authorize changes to the updated Final Safety Analysis Report (FSAR) to permit installation of digital radiation monitors for both the containment purge isolation and the control room isolation signals.

Date of issuance: July 12, 1999.

Effective date: July 12, 1999; implementation shall include submission by the licensee of the revised description authorized by these amendments with the next update of the FSAR in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 2–154; Unit 3–145.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the FSAR.

Date of initial notice in **Federal Register:** January 28, 1998 (63 FR 4324).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendments: January 12,1999, as supplemented by letters dated May 11, and June 30, 1999.

Brief description of amendments: The amendment revised Technical Specification 3/4.7.5, Ultimate Heat Sink, by adding a new action statement to be used in the event the plant inlet water temperature exceeds 90° F. The amendment is effective only through September 30, 1999, and is only for the current TSs. The amendment is also limited to a maximum plant inlet water temperature of 94° F. The proposal to raise this temperature to 95° F will be addressed in a future letter.

Date of issuance: July 8, 1999.

Effective date: July 8, 1999, shall be implemented within 30 days of the date of issuance.

Amendment No.: 125.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9203). The May 11 and June 30, 1999, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination, except that the licensee proposed a maximum plant inlet water temperature of 95° F. where the letters of January and May 11, 1999, proposed only 94° F. The amendment is limited to a maximum temperature of 94° F.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 21st day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 99–19133 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

On July 14, 1999 (64 FR 38040), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses. On page 38040, the line that reads ''Amendment No.: 179.'' should read ''Amendment No.: 180.''

Dated at Rockville, Md., this 22nd day of July 1999.

For the Nuclear Regulatory Commission,

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19257 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Survivor Death Benefits: OMB 3220–0031.

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee *only* if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was ''insured'' under the RRA at the time of death. If a decreased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes Form(s) AA–11a (Designation for Change of Beneficiary for Residual Lump-Sum), AA–21 (Application for Lump-Sum Death Payment and Annuities Unpaid at Death), G–131 (Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment), and G–273a (Funeral Director's Statement of Burial Charges), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

The RRB is proposing the addition of an electronic version of Form AA–21 to the collection. The information collected will mirror that obtained on the manual Form AA–21. Upon completion of the electronic AA–21, the applicant will receive Form AA–21cert for review and signature. The AA–21cert will summarize information provided by/or verified by the applicant. In addition, the RRB is proposing editorial and formatting changes to Form AA–11a, manual Form AA–21, G–131, and G–273a.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
AA–11A	400	10	67
Electronic AA–21 (with assistance)	9,700	20	3,230
Manual AA–21 (without assistance)	300	40	200
G–131	600	5	50
G–273A	9,600	10	1,600
Total	20,600	.....	5,147

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–19211 Filed 7–27–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23917; 812–11628]

Deutsche Bank Securities Inc.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Deutsche Bank Securities Inc. (''Deutsche Securities'') requests an order with respect to the METS trusts (''METS Trusts'' [1] and future trusts that are substantially similar to the METS Trusts and for which Deutsche Securities will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from Deutsche Securities at the time of a Trust's initial issuance of Securities.

FILING DATE: The application was filed on May 19, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Deutsche Securities with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1999, and should be accompanied by proof of service on Deutsche Securities, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, 1 South Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 9420634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Deutsche Securities will serve as a principle underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[2] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries'', which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Deutsche Securities. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) periodic cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (e.g., one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[3] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[4]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Deutsche Securities currently intends, but will not be obligated, to

[1] ''METS'' is an acronym for Mandatory Exchangeable Trust Securities.

[2] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

[3] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[4] The Contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by Deutsche Securities or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by Deutsche Securities, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities'' [5] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights will respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Deutsche Securities, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Deutsche Securities).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is expected from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent, the exemption is consistent with the public interest and protection of investors.

3. Deutsche Securities states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Deutsche Securities states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Deutsche Securities asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimate be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Deutsche Securities argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). Deutsche Securities requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. Deutsche Securities states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Deutsche Securities also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Deutsche Securities asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Deutsche Securities argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Deutsche Securities also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Deutsche Securities states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and

[5] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the Outstanding Securities.

because generally these fees and expenses will be borne, directly or indirectly, by Deutsche Securities or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Deutsche Securities asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Deutsche Securities, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. Deutsche Securities asserts that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Deutsche Securities asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. Deutsche Securities believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing a eligible trust securities shall be exempt from net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commence of a public offering.

2. Deutsche Securities argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed a disclosed portfolio that is held until maturity. Deutsche Securities believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Deutsche Securities states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Deutsche Securities states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Deutsche Securities also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Deutsche Securities request that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Deutsche Securities believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Deutsche Securities.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Deutsche Securities requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from Deutsche Securities.

3. Deutsche Securities states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. Deutsche Securities argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Deutsche Securities argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Deutsche Securities states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Deutsche Securities also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Deutsche Securities argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Deutsche Securities believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Deutsche Securities agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as rare deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Deutsche Securities, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Deutsche Securities will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19223 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (IAT Resources Corporation (Formerly The Producers Entertainment Group Ltd.), Common Stock, Par Value $.001; Redeemable Common Stock Purchase Warrants Expiring June 11, 2001; and Series A 8½% Convertible Preferred Stock) File No. 1–12015

July 21, 1999.

IAT Resources Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'').

The Securities of the Company have been listed for trading on the BSE and have been designated for quotation on the Nasdaq SmallCap Market (''Nasdaq''). In making its decision to withdraw its Securities from listing and registration on the BSE, the Company considered the direct and indirect costs and expenses attached to maintaining the listing of such Securities on the BSE simultaneously with their designation for quotation on the Nasdaq. Moreover, the Company does not see any particular advantage in having its Securities trade in two markets.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts in support thereof.

The BSE has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

The Company's application relates soley to the withdrawal of the Securities from listing and registration on the BSE and shall have no effect upon their continued designation for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file with the Commission any reports required under Section 13 of the Act.

Any interested person may, on or before August 11, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19227 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23915; 812–11012]

IDS Bond Fund, Inc., et al.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies to deposit their uninvested cash balances in joint accounts investing in short-term investments.

APPLICANTS: IDS Bond Fund, Inc., IDS Discover Fund, Inc., IDS Equity Select Fund, Inc., IDS Global Series, Inc., IDS International Fund, Inc., IDS Market Advantage Series, Inc., IDS Money Market Series, Inc., IDS Precious Metals Fund, Inc., IDS Progressive Fund, Inc., IDS Strategy Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS Tax-Free Money Fund, Inc., IDS Utilities Income Fund, Inc., IDS California Tax-Exempt Trust, IDS Special Tax-Exempt Series Trust, Growth Trust, Growth and Income Trust, Income Trust, Tax-Free Income Trust, orld Trust, IDS Life Investment Series, Inc., IDS Life Managed Fund, Inc., IDS Life Moneyshare Fund, Inc., IDS Life Special Income Fund, Inc., IDS Life Series Fund, Inc., IDS Life Variable Annuity Fund A, and IDS Life Variable Annuity Find B (the ''investment Companies''), and American Express Financial Corporation (''AEFC'').

FILING DATES: The application was filed on February 18, 1998 and amended on October 26, 1998 and June 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certifiate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Christopher R. Long, AEFC, IDS Tower 10, Law Department, T–27/52 Minneapolis, MN 55440–0010.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investmnt Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Each Investment Company is registered under the Act as an open-end management investment company. AEFC, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to the Investment Companies. AEFC also provides investment advisory services to other clients, including employee benefit plans and accounts (collectively, with any account advised by another registered investment adviser controlling, controlled by, or under common control with AEFC (''AEFC Adviser''), the ''Private Accounts'').[1]

2. At the end of each trading day, applicants expect that the Investment Companies and the Private Accounts (collectively, the ''Participants'') will have uninvested cash balances in their accounts with their custodians that would not otherwise be invested in portfolio securities. Applicants propose to deposit these uninvested cash balances into one or more joint trading accounts (''Joint Accounts'') and to invest the daily balance of the Joint Accounts in repurchase agreements, commercial paper, and/or other short term investments that will have, with rare exceptions, an overnight, over-the-weekend or over-the-holiday maturity, and in no event will have a maturity of more than seven days (''Short Term investments''). Repurchase agreements will be ''collateralized fully,'' as defined in rule 2a–7 under the Act.[2] A Joint Account would consist of a separate cash custodial account established at a custodian bank.

3. Participants would only invest through a Joint Account to the extent that the investments made through the Joint Account are consistent with their respective investment objectives, policies, and restrictions. A Participant's decision to use the Joint Accounts will be based on the same factors as its decision to make any short-term investment.

4. AEFC will administer the investment of the cash balances in and operation of the Joint Accounts as part of its duties under the general terms of each Participant's investment management agreement and will not collect any additional or separate fees for the management of the Joint Account. AEFC will be responsible for investing amounts in the Joint Account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

5. Any repurchase agreements entered into through the Joint Accounts will comply with the standards and guidelines of Investment Company Act Release No. 13005 (February 2, 1983) and any other applicable future positions of the SEC or its staff regarding repurchase agreements. In the event the SEC or its staff sets forth guidelines with respect to other Short Term Investments, all such investments made through the Joint Accounts will company with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, from participating in any joint enterprise or arrangement in which such investment company is a participant, unless an application regarding the joint arrangement has been filed with and approved by the SEC. In passing on such applications, the SEC considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly owing, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling,

[1] Applicants request that the relief also apply to all other registered management investment companies that in the future are advised or sub-advised by an AEFC Adviser (''Future Funds''). Any Future Fund and Private Account that relies on the requested order will do so only in accordance with the terms and conditions of the application.

[2] A Joint Account will not enter into hold-in-custody repurchase agreements, whereby the counterparty retains custody of the securities that are the subject of the repurchase transaction.

controlled by, or under common control with, the other person, and in the case of an investment company, its investment adviser. Applicants state that, under section 2(a)(3) of the Act, the Participants may be deemed ''affiliated persons'' because they may be deemed to be under the common control of AEFC. Applicants state that the Participants, by participating in the Joint Accounts, and AEFC, by managing the Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d)(1) of the Act. In addition, applicants state that the Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act.

3. Applicants believe that no Participant will receive fewer relative benefits from the operation of the Joint Accounts than any other Participant. Applicants also believe that the operation of the Joint Accounts will not result in any conflicts of interest among Participants. Applicants state that each Participant's liability on any Short Term Investment held in a Joint Account will be several in proportion to its pro rata interest in the total assets in the Joint Account and not joint.

4. Applicants believe that the proposed Joint Accounts could result in certain benefits to Participants. The Participants may earn a higher return on investments through the Joint Accounts relative to the returns they could earn individually. Applicants state that, under most market conditions, it is possible to negotiate a higher rate of return on larger Short Term Investments than the rate available on smaller Short Term Investments. Applicants also assert that each Participant will have the opportunity to benefit from the fact that an institution entering into a larger investment transaction is more likely to be able and willing to increase the amount covered by the transaction near the end of the day, thus reducing the possibility a Participant might have cash uninvested, which possibly may not exist with smaller transactions. Applicants state that the Joint Accounts also may result in savings in transaction fees.

5. For the reasons set forth above, applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial account will be established for each Joint Account into which a participant may transfer some or all of its uninvested cash balances after the conclusion of its daily trading activity. In the event that any Participant has a custodian different from the custodian at which the Joint Account is maintained and elects to participate, the Participant will appoint the custodian of the Joint Account as a sub-custodian. Each Investment Company that appoints such a custodian will have taken all necessary actions to authorize the custodian as its legal custodian, including all actions required under the Act. The Joint Accounts will be the same as other custodial accounts maintained by the Participant except that monies of the Participant will be deposited on a commingled basis. The Joint Accounts will be structured to avoid any indicia of separate legal existence. The sole function of the Joint Accounts will be to provide a convenient way to manage uninvested cash balances.

2. Cash in a Joint Account will be invested in one or more Short Term Investments that will have, with rare exceptions, an overnight, over-the-weekend or over-the-holiday maturity and in no event will have a maturity of more than seven days as calculated in accordance with rule 2a–7 under the Act.

3. Each Participant will participate in a Joint Account only to the extent consistent with its investment objectives, policies, and restrictions.

4. Each Participant, through AEFC Adviser and/or custodian, will document daily its investments through such Joint Accounts. Such records will be maintained in conformity with section 31 of the Act and the rules and regulations thereunder documenting, for any given day, such Participant's aggregate investment in a joint account and its pro rate share of each investment made though the joint account. Each Participant that is not a registered investment company or registered investment adviser will make available to the SEC, upon request, such books and records with respect to its participation in a Joint Account.

5. Repurchase agreements in the Joint Account will be ''collateralized fully'' as defined in rule 2a–7 under the Act.

6. No Participant will be allowed to create a negative balance in a Joint Account for any reason, although it will be permitted to draw down its entire balance at any time. No Participant will be obligated either to invest in the Joint Accounts or to maintain any minimum balance in the Joint Accounts. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

7. AEFC will administer the investment of the cash balances in and operation of the Joint Accounts as part of its duties under the general terms of each Participant's existing or any future investment management agreement and will not collect any additional or separate fees for the management of the Joint Accounts.

8. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

9. The board of directors or trustees of each Investment Company (the ''Board'') participating in a Joint Account will adopt procedures pursuant to which the Joint Account will operate. The procedures will be consistent with the requirements of the application and no change shall be made in the procedures without prior approval of the Board. AEFC will be responsible for operating the Joint Account in accordance with such procedures and shall provide to the Board such reports as are necessary for the Board to determine that the procedures have been followed. In addition, each Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the procedures adopted and will only permit an Investment Company to continue to participate therein if it determines that there is a reasonable likelihood that the Investment Company and its shareholders will benefit from continued participation.

10. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

11. Each Participant valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

12. Every Participant in the Joint Accounts will not necessarily have its cash invested in every Short Term Investment. However, to the extent that a Participant's cash is applied to a particular Short Term Investment, the Participant will participate in and own its proportionate share of such Short Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with money contributed by the Participant.

13. Each Short Term Investment held in a Joint Account generally will be held to maturity, except if: (i) AEFC believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a credit downgrade or otherwise; or (iii) the counterparty to a repurchase agreement defaults. AEFC may, however, sell any Short Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the Short Term Investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case will an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investment in the Joint Account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19224 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23916; 812–11542]

Nuveen Unit Trusts and John Nuveen & Co., Inc.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants Nuveen Unit Trusts (''Trust'') and John Nuveen & Co., Inc. (the ''Sponsor'') request an order (a) under section 12(d)(1)(J) of the Act that would permit each series of the Trust and any future trusts sponsored by the Sponsor (''Series'') to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) and (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit the Trust to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act.

APPLICANTS: Nuveen Unit Trusts and John Nuveen & Co., Inc.

FILING DATES: The application was filed on December 4, 1998, and amended on June 16, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Mary Kay Frech, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a unit investment trust (''UIT'') registered under the Act. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934 and member of the National Association of Securities Dealers, Inc. (''NASD''), is the sponsor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The trust agreement and the master trust agreement are referred to collectively as the ''Trust Agreement.''

2. Each Series will contain a portfolio of shares of registered investment companies or series thereof (the ''Funds''). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates (''Affiliated Funds''). However, applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor (''Unaffiliated Funds''). Applicants state that the Trust's investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load restriction in section 12(d)(1)(F)(ii). Applicants believe that the proposed structure of the Series will provide investors with a cost-effective means of investing in a diversified pool of securities of registered investment companies that has been professionally selected by the Sponsor.

3. Each of the Funds will be registered as a closed-end investment company, an open-end investment company, or a UIT. In addition, certain of the Funds may be either an open-end investment company or a UIT that has received exemptive relief under the Act to sell its shares at negotiated prices on an exchange (''Exchange Funds''). The shares of the Funds will be deposited in each Series at net asset value,[1] or, if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System (''Nasdaq-NMS''), at their market value.[2] Market value will be determined by an evaluator, and will be based on the closing sale prices (or, if unavailable, the closing ask prices) for the securities traded on an exchange or on the Nasdaq-NMS.

4. Simultaneously with the deposit of Fund shares into a Series, the Trustee will deliver to the Sponsor registered certificates for units (''Units'') that represent the entire ownership of the Series. During the initial public offering, these Units will be offered at prices based on the aggregate underlying value of the Fund shares, plus a sales charge. The sales charge (either a front end or a deferred sales load, or a combination thereof)[3] shall not, when aggregated

[1] Funds eligible for inclusion in a Series will either be no-load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Series.

[2] Applicants state that a Series will purchase and sell shares of Exchange Funds through market transactions on a securities exchange or on the Nasdaq-NMS.

[3] The Trust has received exemptive relief to assess a sales load on a deferred basis. *See John*

Continued

with any sales charge or service fees paid by the Series with respect to shares of the Funds, exceed the limits set forth in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules'').

5. No Series will invest in a Fund with a rule 12b–1 plan, unless the Fund limits the plan fees to a maximum annual rate of .25% of the Fund's average daily net assets. If the Trustee receives service fees under a rule 12b–1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Series, the Trustee will reduce its regular fee to the Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Series. Any fees so rebated will be utilized by the Series to absorb other bona fide Series expenses. To the extent that these fees exceed the total Series expenses, the excess will be distributed along with other income earned by the Series.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote is acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in the Funds in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from section 12(d)(1)(F) to permit a Series to offer and sell Units to the public with a sales load that exceeds 1.5%.

4. Applicants have agreed, as a condition to the relief, that any sales charges, distribution-related fees, and service fees relating to Units, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Trust relating to its acquisition, holding, or disposition of shares of the Funds, will not exceed the limits set forth in Rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's Rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F) because the proposed limit would cap the aggregate sales charges of the Units and the underlying Funds, and because the proposed limit is consistent with the limit recently adopted in section 12(d)(1)(G) of the Act. Applicants assert that the NASD's specific sales charge rules more accurately reflect today's regulatory environment with respect to the methods by which investment companies finance sales expenses. Applicants contend that section 12(d)(1)(F), on the other hand, was adopted more than a quarter of a century ago and does not reflect the changes in the pricing practices of the industry.

5. Applicants state that, with respect to shares of closed-end Funds and Exchange Funds held by a Series, no front-end sales loads, contingent deferred sales charges or redemption fees will be charged in connection with the purchase or sale of these Funds by a Series. Additionally, applicants state that with respect to closed-end Funds, no rule 12b–1 fees, or other distribution fees will be charged. Applicants state that, although the Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds and Exchange Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

6. Applicants also agree as a condition to the requested relief that no Series will invest in any underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by the Series could be deemed to be principal transactions between affiliated persons under section 17(a).

8. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

9. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Series to purchase and redeem shares of the Affiliated Funds.

10. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Affiliated Funds will be sold and redeemed at their net asset values or, if traded on an exchange or on NASDAQ–NMS, at their market value. Applicants also state that the investment by the Series in the Affiliated Funds will be effected in accordance with the

Nuveen & Co. Inc., Investment Company Act Rel. Nos. 22492 (Feb. 4, 1997) (notice) and 22545 (Mar. 5, 1997) (order).

investment restrictions of the Series and will be consistent with the policies as set forth in the registration statement of the Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to Units of a Series, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of securities of the underlying Funds, shall not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Series will acquire securities of any Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. No Series will terminate within thirty days of the termination of any other Series that holds shares of one or more common Funds.

5. The prospectus of each Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that holders of Units who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19226 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23918; 812-11270]

Smith Breeden Trust, et al.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act of invest in securities and other instruments.

APPLICANTS: Smith Breeden Trust (''Trust''), Smith Breeden Series Fund (''Series Fund''), and Smith Breeden Associates, Inc. (''SBA'').

FILING DATES: The application was filed on August 25, 1998 and amended on December 22, 1998 and April 16, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants 100 Europa Drive, Suite 200 Chapel Hill, NC 27514.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Trust and the Series Fund is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company. The Trust currently offers five series, including Smith Breeden U.S. Equity Market Plus Fund (''Equity Fund''), Smith Breeden European Market Fund (''Europe Fund''), and Smith Breeden Asian/Pacific Market Fund (''Asia Pacific Fund'') (collectively, the ''Index Plus Funds''). The series Fund currently offers two series, one of which is Smith Breeden Short Duration U.S. Government Fund (''Short Fund''). SBA, as investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of the Trust and of the Series Fund (each a ''Fund''). Applicants request that the relief also apply, to any existing or future open-end management investment company or series thereof advised by SBA (together with the Index Plus Funds, the ''Upper Tier Funds'') that wishes to invest in a registered open-end management investment company or series thereof that is advised by SBA and is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the trust and of the Series Fund, excluding the Index Plus Funds, the ''Underlying Funds'') as the investing Upper Tier Fund.[1]

2. The Equity Fund seeks to provide a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index. To achieve this objective, the Equity Fund proposes to invest in shares of the Short Fund while also investing in futures and options, equity swap contracts, and other investments (collectively, ''Index Securities''). Similarly, the Europe Fund and the Asia Pacific Fund each propose to invest in both shares of the Short Fund and Index Securities in order to obtain a total return greater than that of indices reflecting, respectively, the major equity markets of Europe and of the Asia/Pacific region. The Short Fund seeks to provide a high level of current income by investing primarily in mortgage-backed securities issued by the U.S. Government, its agencies, and instrumentalities. Applicants state that, by purchasing shares of the short Fund, each Index Plus Fund will avoid the need to duplicate the strategies and positions of the Short Fund and will lower the transaction cost incurred by the Index Plus Funds. The Index Plus Funds and other Upper Tier Funds also want the flexibility to invest in other securities and financial instruments, including financial futures and options, swaps, and reverse repurchase agreements (''Other Securities'').

3. Applicants state that it is SBA's practice to reduce its advisory fees and bear certain expenses to the extent that a Fund's total annual operating expenses (excluding extraordinary expenses) exceed a specified percentage of net assets. Applicants represent that

[1] All existing entities that currently intend to rely on the order are named as applicants. Any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

SBA will waive the duplicative portion of an Index Plus Fund's advisory fee to the extent that an Index Plus invests in shares of the Short Fund. Applicants further represent that the Index Plus Funds will not pay any sales charges or distribution fees in connection with their investment in shares of the Short Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that each Index Plus Fund's policies contemplate that it will invest in Index Securities and Other Securities while also investing in shares of the Short Fund.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants assert that permitting the Index Plus Funds and other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of an Index Plus or other Upper Tier Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Index Plus Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 129d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts an Index Plus Fund or Other Upper Tier Fund from investing in Index Securities and Other Securities as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19225 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41625; File No. SR–CBOE–99–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

July 19, 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 17, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE is proposing to make changes to its fee schedule pursuant to CBOE rule 2.40, *Market-Maker Surcharge for Brokerage*.[3]

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 CBOE 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 CBOE 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

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee (''Committee'') approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
AboveNet Communications ...	$0.08	$0.00
Prodigy Communications Corp.	0.03	0.00

The fees for AboveNet will be effective retroactive to May 10, 1999, and the fees for Prodigy will be effective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

retroactive to May 18, 1999.[5] Both fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

These fees are being implemented mid-month because both of these fees are for new options classes, which have not traded before. As a result, changes had to be made to the billing program to account for these new classes in the middle of the month.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[7] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor 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)(ii)[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–25 and should be submitted by August 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19264 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

[5] At its May 20, 1999, meeting, the Committee approved these fees retroactive to the respective dates the fees began. Although the fees are planned to be calculated for activity that occurred as of the dates referred to above, the actual bills for payment will be sent in June.

[6] Through miscommunication, certain Exchange Staff believed these fees could be instituted in mid-month and presented in a filing at the end of the month since the actual charges would not be invoiced until that point. However, CBOE has instituted procedures to ensure that a filing be done prior to the fees being implemented, regardless of whether the fees are being implemented mid-month or at the beginning of the next month. Telephone conversation between Michael Walinskas, Associate Director, Division of Market Regulation, Commission, and Timothy Thompson, Director, Regulatory Affairs, CBOE, on May 27, 1999.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41640; File No. SR–DTC–99–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding a Year 2000 Compliance Acknowledgment

July 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 6, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will require that its participants who provide settlement information solely through DTC's proprietary Participant Terminal System (PTS) submit to DTC, no later than September 15, 1999, a Year 2000 compliance acknowledgment demonstrating their operational capability.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 1, 2000, we will experience the first century change since the advent of computers and related technology. Because certain computer programs may misinterpret the Year 2000 as 1900, the U.S. financial industry has undertaken efforts to prepare for the impending date change. As the new millennium approaches, DTC must assess its own Year 2000 readiness, as well as seek comfort as to the Year 2000 readiness of all its participants.

Under the proposed rule change, DTC is setting forth a policy statement with respect to DTC's Rule 2. That rule provides the standards and obligations that entities must meet to become DTC participants and to retain their status as participants. Pursuant to Rule 2, a participant must furnish to DTC, upon DTC's request, information that

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

demonstrates the participant has satisfactory operational capability.

DTC's Rule 2 has been interpreted to require participants who provide settlement input to DTC through a computer to computer link to conduct a Year 2000 validation test with DTC at some point during the first nine months of 1999.[3] The validation test requires participants to process a series of scripted transactions and to balance with DTC's position and settlement statements. Each participant is being required to provide DTC with a standard testing acknowledgment signed by a senior internal auditor stating that it has balanced to the position and settlement statements and had done so in a Year 2000 compliance environment.[4] The validation test is designed to test the Year 2000 compliance of the computer to computer interface between DTC and the participant. The Year 2000 testing acknowledgment confirms the successful completion of the validation test and provides some comfort as to the ability of the participant to transact business with DTC in a Year 2000 compliant manner.

Participants who provide settlement information solely through DTC's PTS [5] are not required to perform validation testing as DTC has already tested PTS and found it to be Year 2000 compliant. Although DTC is comfortable that the interface used to communicate with PTS-only participants is Year 2000 compliant, under the proposed rule filing these participants will be required to submit to DTC, no later than September 15, 1999, a Year 2000 compliance acknowledgement which relates to their organization as a whole. The Year 2000 compliance acknowledgment is identical to that required from participants who are subject to the validation testing requirement except that the language regarding testing has been deleted.

In DTC's view a participant's failure to provide DTC with a standard Year 2000 compliance acknowledgment will constitute a failure to demonstrate the sufficient operational capability required by DTC's Rule 2. DTC recognizes the importance in obtaining assurances that participants are individually prepared to operate normally before, during, and after the first few days of Year 2000. DTC believes that the industry as a whole has an interest in assuring itself that each participant (and/or participant's processing agent) can interact with and complete the depository's settlement process throughout the day in terms of both the participant's connectivity to the depository and also its internal processing systems and capabilities. Considering the potential for the widespread and detrimental consequences of a participant's failure to be adequately prepared for the impending date change, DTC believes that its rules can be reasonably interpreted as requiring an assurance that the participant is prepared for the Year 2000 as set forth in the Year 2000 compliance acknowledgment.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because the Year 2000 compliance acknowledgement will help ensure that DTC participants have sufficient operational capability.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The language contained in the Year 2000 testing acknowledgment, relating to DTC's validation testing requirement, was reviewed without comment by the Securities Industry Association's Legal and Compliance subcommittee, as well as the New York Clearing House Year 2000 Committee. The Year 2000 compliance acknowledgment is identifical to the Year 2000 testing acknowledgment except that the language regarding testing has been deleted.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the Year 2000 compliance acknowledgment should allow DTC to address any potential problems associated with the participants' Year 2000 readiness. As a result, DTC should be able to continue to provide for the prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should allow DTC to implement its requirement of a Year 2000 compliance acknowledgment in a timely manner.

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. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–99–18 and should be submitted by August 18, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–DTC–99–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19263 Filed 7–27–99; 8:45 am]

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[3] Securities Exchange Act Release No. 40696 (November 20, 1998), 63 FR 65829 [File No. SR–DTC–98–18].

[4] If a participant does not have an internal auditor, the testing acknowledgment may be executed by a senior compliance officer or other equivalent officer.

[5] References to PTS also include PTS Jr. PTS Jr. is a dial-up system (*i.e.*, utilizing a PC, modem, and non-dedicated phone line) that offers all of the functionary (at reduced speed) of a regular, dedicated PTS terminal. PTS Jr. is designed for low-volume users or those participants who choose not to utilize a more costly, dedicated PTS terminal.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41635; File No. SR–DTC–99–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding a New Service for the Deposit of Securities Subject to Transfer Restrictions

July 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 30, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–99–10) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule filing is to allow for the deposit and processing of restricted securities using DTC's Restricted Deposit Service (''RDS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's proposed RDS will: (i) Allow participants to deposit restricted securities in a participant's segregated account within DTC's existing Custody Service, (ii) facilitate the processing of a transfer of all or a portion of the securities once the restriction is lifted, (iii) subsequently register the unrestricted securities (or portion thereof) in the name of Cede & Co., DTC's nominee, and (iv) if requested, deliver the restricted portion of the securities as directed by the depositing participant.[3]

Under the proposed rule change, a participant may deposit restricted securities into the participant's segregated account until the applicable restriction has been lifted and the full or partial sale of the securities is complete. Securities credited to this account will not be registered in the name of Cede & Co. and therefore will not be available for book-entry transfer.

The process will be initiated when a participant enters and transmits restricted securities deposit information to DTC through the new Restricted Deposit Service by Participant (''RDSP'') function on DTC's Participant Terminal System (''PTS'').[4] This information will include the CUSIP number, quantity and certificate number of each certificate to be deposited, deposit type (*e.g.*, partial sale), the sold and unsold quantities of the securities, registration instructions for the restricted and unsold portion of the securities, and whether the issuer's opinion of counsel will accompany the deposit or will be sent directly to the transfer agent. After DTC reviews the deposit information,[5] an RDS deposit ticket will be transmitted to the participant's PTS printer. The RDS deposit ticket and the securities will then be delivered to DTC.

After receiving and examining the deposited securities, DTC will credit the participant's segregated account for the quantity of the deposit. DTC will use two subaccounts in the process. One subaccount will be used for the quantity of unrestricted (sold) securities and the other for the quantity of restricted (unsold) securities. At this stage, no positions in either subaccount will be available for book-entry transfer by the participant. The securities and detailed transfer instructions will then be sent to the transfer agent for processing.[6] The transfer agent will continue to approve the transfers contemplated by the new service based on the same requirements that exist today (*e.g.*, receipt of opinion from issuer's counsel).

An inquiry option of the RDSP PTS function will enable the depositing participant to view the current status of the securities, including information DTC has received from the transfer agent as to when the transfer is expected to be completed. DTC believes that this option will give the participant greater control over the processing of the securities than that which exists today.

For deposited securities in DTC-eligible issues, the sold and unrestricted portion of the transferred securities will be registered in DTC's nominee name, Cede & Co. When the transfer is completed and the newly transferred securities are returned to DTC, the quantity of unrestricted securities registered in DTC's nominee name, Cede & Co., will be removed from the participant's segregated account and added to the participant's general free account. The quantity of restricted securities, if any, will also be removed from the participant's segregated account. At the same time the restricted portion of the securities will be sent to the destination specified by the depositing participant in its original RDSP instruction. That is, the restricted securities will either be made available for pick-up by the participant, mailed directly to the registered holder, or deposited into DTC's Custody Service for the account of the depositing participant.

Additionally, DTC believes that the service will accommodate certificate denomination breakdowns for restricted securities, transfer agent approval reregistrations of restricted securities (*e.g.*, ''gifting'' transactions, where the restricted security may be reregistered into the name of the spouse of the original owner), and reregistrations of unrestricted securities into Cede & Co.'s name once the restriction is lifted.

The proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to DTC because it will facilitate the efficient processing of partial and full sale of restricted securities where the applicable restriction has been lifted by or on behalf of the issuer by streamlining the mechanics of the physical process that currently occurs outside of DTC. Under the proposed rule change, the current control on the transfer of restricted securities will remain with the transfer agent. The proposed rule change will improve the safeguarding of securities and funds in

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC will charge its customary fee for restricted transfers of $45.48.

[4] In the future DTC plans to enhance the Custody Service to provide participants with the capability to transmit RDS instructions via the ''CUST'' function on PTS and via computer-to-computer transmissions.

[5] DTC will review the deposit information entered by the participant to make sure that the security in question is DTC-eligible and that all appropriate fields have been populated.

[6] While the securities are still at the agent, the participant may enter and transmit amended transfer instructions through the RDSP PTS function (*e.g.*, the sold portion of the deposit has been increased). DTC will then communicate the amended transfer instructions to the transfer agent.

[7] 15 U.S.C. 78q–1.

DTC's custody or control or for which it is responsible because it will give participants greater control over the processing of full or partial sales of restricted securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The substance of the proposed rule change is supported by and was developed in conjunction with a group of participants and transfer agents. Additionally, the substance of the proposed rule change was presented to and endorsed by DTC's Operations Advisory Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–10 and should be submitted by August 18, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19265 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41626; File No. SR–NYSE–99–19]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Interpretation of Rule 35 (''Floor Employees To Be Registered'')

July 20, 1999.

I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new interpretation of Exchange Rule 35 (''Floor Employees to be Registered''). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed new interpretation of Rule 35 is to prescribe the qualification requirements (*i.e.*, training and examination) for Front Line Specialist Clerks (''FLS Clerks''). In addition to dictating the terms under which employees of members or member organizations may be admitted to the Exchange Trading Floor, Rule 35 mandates compliance by both employer and employee with such requirements as the Exchange may determine. The proposed interpretation of Rule 35 will require FLS Clerks to pass a new examination, developed by the Exchange in cooperation with a committee of Floor representatives (members, Specialists, and FLS Clerks) called the Front Line Specialist Clerk Qualification Examination (''Series 21''). The examination is intended to ensure that FLS Clerks have the basic knowledge and skills necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, opening the display book, preparing for the market close, and generating trade reports. Though the requirement to take and pass the proposed Series 21 examination will apply to all prospective and current FLS Clerks, qualification requirements will differ as follows:

Prospective FLS Clerks

Individuals not currently functioning as FLS Clerks will be required to pass the Series 25 qualifying examination as a prerequisite to taking the Series 21 examination. Upon passing the Series 25, the prospective FLS Clerk must complete a training program to become eligible for the Series 21 examination. The training program shall consist of a minimum of six months of ''on-the-job'' experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision require during the training period.

Current FLS Clerks

Individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 examination (Trading Assistant Qualification Examination) is a prerequisite to taking the Series 21 examination, but no training program will be required for these individuals since they already are acting in the capacity of FLS Clerks.

III. Discussion

The Commission finds that the require is consistent with the requirements of the Act and the rules and required thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41514 (June 10, 1999), 64 FR 32912 (June 18, 1999).

[4] In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(c)(3)(B) of the Act,[5] which provides that the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange. The Commission finds that requiring the FLS Clerks to take the Series 21 examination and to under on-the-job training is consistent with Section 6(c)(3)(B) because it provides the Exchange with a means to measure an FLS Clerk's ability and qualifications and to ensure that the Clerks are trained in an on-the-job setting. The Series 21 Examination covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports, all topics designed to measure the Clerk's ability to perform his or her assigned tasks. Requiring all current and future FLS Clerks to pass the Series 21 Examination will help ensure that they are adequately trained and qualified to perform their duties competently.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–99–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19266 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(c)(3)(B).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intention to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 27, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Micheal J. Murray, Financial Operations Analyst, Office of Field Operations, Small Business Administration, 409 3rd Street SW., Suite 7125, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Michael J. Murray, Financial Operations Analyst, 202–205–6598 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Pre-qualification Loan Application.''

Form No: 2114.

Description of Respondents: New Market Customers.

Annual Responses: 5,965.

Annual Burden: 14,912.

Dated: July 23, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–19319 Filed 7–27–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5996]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters relating to recreational boating safety.

DATES: Application forms must reach us on or before September 30, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–OPB–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0950; or by faxing 202–267–4285. Send you application form to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202 267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications for the following eight positions that expire or become vacant in December 1999: Four representatives of State officials responsible for State boating safety programs; two representatives of recreational boat and associated equipment manufacturers; and two representatives of the national recreational boating organizations. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of 3 years unless filling an unexpired term. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected, we may require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 19, 1999.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 99–19178 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted

below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, (64 FR, page 24447).

DATES: Comments must be submitted on or before August 27, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Financial Responsibility for Licensed Launch Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0601.

Form(s): N/A.

Affected Public: Respondents are all licensees authorized to conduct licensed launch activities. We estimate 7.

Abstract: The information will be used to determine if licensees have complied with financial responsibility requirements (including maximum probable loss determination,) as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation.

Estimated Annual Burden Hours: 1827 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 22, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–19315 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Contract Tower Cost-Sharing Program

AGENCY: Federal Aviation Administration DOT.

ACTION: Notice of cost-sharing program.

SUMMARY: This notice announces the creation of the Federal Contract Tower Cost-Sharing program. Cost-Sharing is a federally funded program that incorporates an airport's Benefit/Cost (B/C) Ratio, utilizes that B/C as a percentage, and provides qualified control towers that percentage of federal funds for the operation of their air traffic services. The airports are responsible for the remaining percentage of air traffic funding. Applying for this program is the same process as applying for the fully funded contract tower program. If you are interested in participating in this program, contact the FAA Regional Headquarters responsible for your area and request an application package.

Issued in Washington, DC on July 22, 1999.

Eric Harrell,

Manager Enroute/Terminal Operations & Procedures Division, Contract Tower Program.

[FR Doc. 99–19314 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–13–U–00–CHO) To Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 99–15123 beginning on page 32094 in the issue of Tuesday, June 15, 1999, under Supplementary Information, last paragraph, the Class or classes of air carriers which the public agency has requested not be required to collect PFCs should read, ''Air Taxi Commercial Operators filing FAA form 1800–31 and Charters''.

DATES: Comments must be receive on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Art Winder, Washington Airports District Office, PO Box 16780, Washington, DC 20041–65780. The application may be reviewed in person at this same location.

Issued in Washington, DC on July 19, 1999.

Laurence Schaefer,

Acting Manager, Planning & Programming, Eastern Region.

[FR Doc. 99–19317 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–04–C–00–ABE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael C. Burris, Director of Finance and Administration of the Lehigh Northampton Airport Authority at the following address: Lehigh Northampton Airport Authority, 3311 Airport Road, Allentown, PA 18103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh Northampton Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Wren, Administrative Support Assistant, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, 717–730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lehigh Northampton Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 2, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–ABE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: February 1, 2001.

Total estimated PFC revenue: $1,500,000.00.

Brief description of proposed project(s):

—Renovate Original Satellite.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lehigh Northampton Airport Authority.

Issued in Camp Hill, PA on July 6, 1999.

Sharon A. Daboin,

Manager, Harrisburg ADO, Eastern Region.

[FR Doc. 99–19180 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Carter, Reynolds, Wayne, Bollinger, and Cape Girardeau Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to the transportation system in Carter, Reynolds, Wayne, Bollinger, and Cape Girardeau Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, P.O. Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to improve the transportation system in the vicinity of Route 34 in Carter, Reynolds, Wayne, Bollinger and Cape Girardeau Counties, Missouri. The proposed project will involve the examination of transportation improvements to Route 34, including improvements to Route 21 from the intersection of Route 21 and U.S. Route 60 to the intersection of Routes 21 and 34, extending eastward to the intersection of Routes 34 and 72 in Cape Girardeau County. The proposed project will include the study of a terminus of Route 34 at I–55 in the vicinity of Jackson, Missouri.

The proposed location study and accompanying EIS are the result of MoDOT's identification of Route 34 in southeast Missouri for improvement as part of the current and ongoing transportation program. Given the current and projected traffic volumes, and the existing geometric deficiencies and substandard bridges, improvements to the corridor are considered necessary to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the area. The proposed improvements should also be environmentally sound. System improvements will be examined based on the purposes of addressing roadway deficiencies, improving safety, reducing traffic congestion, and enhancing system linkage.

Alternatives under consideration include: (1) Taking no action, (2) transportation system management, (3) upgrading and improving the existing roadways, and (4) constructing a two-lane highway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied for the various build alternatives.

A coping process has been initiated that involves all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Several public meetings have been held to engage the regional community in the decision making process and to obtain public comment. Subsequent public meetings will be conducted as the location study process progresses. In addition, a public hearings will be held to present the findings of the draft EIS (DEIS) and the location study. Public notice has been, and will be given concerning the time and place of informational meetings and the public hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 15, 1999.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 99–19202 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–5685, Notice No. 2]

Federal Transit Administration

RIN 2130—AB33

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCY: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of a proposed policy statement published on May 25, 1999 (64 FR 28238), FRA and FTA proposed how they intend to coordinate use their respective safety authorities to

address safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system of transportation. The proposal also summarized how the process of obtaining waivers of FRA's safety regulations may work, particularly where the light rail and conventional rail operations occur at different times of day. In that notice, FRA established a deadline for the submission of written comments of July 30, 1999. Due to the need to ensure that all interested parties have sufficient amount of time to fully develop their comments, and because FRA has not yet seperately issued a proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations, this document announces an extension of the deadline for the submission of written comments.

DATES: Written comments must be received by October 29, 1999. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at http://doms.dot.gov. (Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notification of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: (202) 493–6029).

SUPPLEMENTARY INFORMATION: In the proposed joint policy statement issued on May 25, 1999 by FRA and FTA, the agencies explained that the proposal is intended to delineate the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment and summarize the application of FRA safety rules to such shared-use operations. The proposal will help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coodinated. The proposed statement noted that FRA soon intended to issue its own proposed statement of agency policy concerning its safety jurisdiction over railroad operations, which would discuss the extent and exercise of FRA's jurisdiction, provide guidance on which would discuss the extent and exercise of exercise of FRA's jurisdiction, provide guidance on which of FRA's safety rules are likely to apply in particular operational situations, and summarize how the process of obtaining waivers of FRA's safety regulations may work. The expectation of the two agencies was that commenters would then have the ability to study and analyze FRA's proposed policy statement before July 30, 1999, the deadline for sumbitting written comments on the proposed joint statement.

While FRA still intends to issue a separate proposed policy statement, regrettably that document will not be published before the close of the comment period for the proposed joint statement. Due to the complexity and importance of adopting a joint policy concerning shared use of the general railroad system by conventional railroads and light rail transit systems, especially to communities that are planning or developing light rail systems, FRA and FTA do not wish to inhibit the ability of any party to fully develop its comments and seek to provide sufficient time for all interested parties to gather necessary information. Consequently, FRA and FTA believe it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to October 29, 1999. It should be noted that since FRA expects to issue its proposed policy statement before the October 29, 1999 deadline, FRA and FTA do not anticipate any futher extension of the comment period in this proceeding. The two agencies will consider comments submitted after October 29, 1999, only to the extent possible without causing additional expense or delay.

Jolene M. Molitoris,

Federal Railroad Administrator.

Gordon J. Linton,

Federal Transit Administrator.

[FR Doc. 99–19369 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–58]

Cancellations of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' Licenses Cancellations.

I, the Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

Port	Individual	License No.
Ogdensburg	F. W. Myers & Co., Inc.	0729

Dated: July 22, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–19241 Filed 7–27–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99-59]

Treasury Decisions; Retraction of Revocations of Customs Brokers' Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses revocations retraction.

The following Customs brokers' licenses were erroneously included on a list of revoked Customs brokers' licenses published in the **Federal Register**. The licenses listed below are valid.

Port	Individual	License No.
San Francisco	Lawrence George Johnson	09413
Miami	Lincoln Blackwood	11262
New York	Norman Isacoff	04970
Buffalo	Cynthia Kavanaugh	10495
Miami	Cynthia Metcalf	09612

Dated: July 22, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–19242 Filed 7–27–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

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 Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Owner's Affidavit of Partial Destruction of Mutilated Currency.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.

OMB Number: 1520–0001.

Form Number: BEP 5283.

Abstract: The Office of Currency Redemption and Destruction Standards, Bureau of Engraving and Printing, requests owners of partially destroyed U.S. currency to complete a notarized affidavit (form BEP 5283) for each claim submitted when substantial portions of notes are missing.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 180.

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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: July 14, 1999.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 99–19212 Filed 7–27–99; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

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 Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

OMB Number: 1520–0002.

Form Number: BEP 5287.

Abstract: Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households, Business or other for-profit/Not-for-profit institutions and State, Local or Tribal Government].

Estimated Number of Respondents: 180.

Estimated Total Annual Burden Hours: 165.

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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: July 14, 1999.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 99–19213 Filed 7–27–99; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305–SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: 5305–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 4 hr., 57 min.

Estimated Total Annual Burden Hours: 495.000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–19198 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2120

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2120, Multiple Support Declaration.

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Multiple Support Declaration.

OMB Number: 1545–0071.

Form Number: 2120.

Abstract: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent for tax purposes provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 27 min.

Estimated Total Annual Burden Hours: 4,950.

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 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–19201 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations for Members of Public Advisory Committee; Internal Revenue Service Advisory Council (IRSAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting nominations for members to serve on the Internal Revenue Service Advisory Council (IRSAC). Nominations will be accepted for current vacancies and vacancies that will or may occur during the next 12 months. To ensure appropriate balance of membership, final selection from among qualified candidates will be determined based on experience, qualifications, and other expertise.

DATES: The deadline for submitting applications is Tuesday, August 31, 1999.

ADDRESSES: Send all applications to—Merci del Toro, Office of Public Liaison and Small Business Affairs, CL:PL, Room 7559 IR, 1111 Constitution Avenue, NW, Washington, DC 20224, Fax: 202–622–5886, E-mail: Public-Liaison@m1.irs.gov. The application package will be uploaded to the IRS web site with fill in the blank capabilities at the following addresses: Tax Professionals Corner—http://www.irs.ustreas.gov/prod/bus__info/tax__pro/index.html; and the Small Business Corner—http://www.irs.ustreas.gov/prod/bus__info/sm__bus/index.html.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds, Telephone: 202–622–6440, not a toll-free number.

SUPPLEMENTARY INFORMATION: IRS is requesting nominations for members to serve on the advisory committee listed below.

Internal Revenue Service Advisory Council (IRSAC)

The IRSAC provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. Through the years, IRSAC has focused on broad tax administration policy matters. Various groups have suggested operational improvements, offered constructive observations about IRS' current or proposed policies, programs, and procedures, and advised the Commissioner of Internal Revenue on particular issues having substantive effect on Federal Tax Administration. It is important that IRSAC membership continue to represent the range and make-up of broad and diverse taxpayer and key stakeholder base.

Criteria for Members

Applicants shall be well-rounded, with excellent communication skills, bring years of practical experience and knowledge to the group, and able to interact well in a diversified environment. Applicant's background should include several of the following experiences: developing and implementing customer service initiatives and tools, systems management and improvement, and change management; small business owners and entrepreneurs; those who have established successful strategic partnerships; as well as those who have the ability to examine situations and issues from a ''macro'' viewpoint.

Nomination Procedures

Interested persons may nominate themselves and/or one or more qualified persons for membership on the IRSAC. Application packages are available on the IRS' Internet Site, on the Tax Professionals Corner—http://www.irs.ustreas.gov/prod/bus__info/tax__pro/index.html; or the Small Business Corner—http://www.irs.ustreas.gov/prod/bus__info/sm__bus/index.html.

Applicants may also request an application package by calling Lorenza Wilds at 202–622–6440 (not a toll-free number). Federal income tax, FBI, and practitioner checks (if applicable), are required of all applicants. This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 15, 1999.

Susanne M. Sottile,

National Director, Public Liaison and Small Business Affairs.

[FR Doc. 99–19199 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest District Citizen Advocacy Panel will be held in Anchorage, Alaska.

DATES: The meeting will be held Saturday, August 14, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah A. Diamond at 1–888–912–1227 or 206–220–6099.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Saturday, August 14, 1999, 9:00 a.m. to noon at the Hampton Inn, 4301 Credit Union Drive, Anchorage, AK. Due to limited conference space, notification of intent to attend the meeting must be made with Deborah Diamond. Ms. Diamond can be reached at 1–888–912–1227 or 206–220–6099. The public is invited to make oral comments from 9:30 a.m. to 11:30 a.m. Saturday, August 14, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6099, or write Deborah Diamond, CAP Office, 915 2nd Avenue; M/S W–406, Seattle, WA 98174.

The Agenda will include the following: subcommittee reports and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 20, 1999.

John J. Mannion,

Chief, Special Projects.

[FR Doc. 99–19200 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition Determination: ''Comtesse de la Rue''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object ''Comtesse de la Rue'' to be included in the exhibit ''Portraits by Ingres: Image of an Epoch'', imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY., from on or about September 27, 1999, until on or about January 2, 2000, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information, contact Neila Sheahan Assistant General Counsel, Office of the General Counsel at 202/619–5030. The address is Room 700, US Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 22, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–19240 Filed 7–27–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 144

Wednesday, July 28, 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 DEFENSE

Department of the Army

Committee Meeting Notice

Correction

In notice document 99–18740, appearing on page 39494, in the issue of Thursday, July 22, 1999, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, ''Office'' should read ''Official''.

[FR Doc. C9–18740 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation: Meeting

Correction

In notice document 99–18741, beginning on page 39493, in the issue of Thursday, July 22, 1999, make the following correction:

On page 39494, in the first column, the paragraph that begins, ''**FOR FURTHER INFORMATION CONTACT:**'' is corrected to read as follows:

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 617–9788.

[FR Doc. C9–18741 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Meeting

Correction

In notice document 99–18744, appearing on page 39494, in the issue of Thursday, July 22, 1999, make the following correction:

In the second column, a paragraph is added after the fourth line to read as follows:

''2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.''

[FR Doc. C9–18744 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

Correction

In notice document 99–18707 beginning on page 39503 in the issue of Thursday, July 22, 1999, make the following correction:

On page 39503, in the second column, in the application description, line ''b. *Project No.*: 1171-000'' should read ''b. *Project No.*: 11761-000''.

[FR Doc. C9–18707 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Correction

In notice document 99–18579 beginning on page 39134 in the issue of Wednesday, July 21, 1999, make the following correction:

On page 39134, in the third column, in the third line, ''b. Project No. P-11730-000'' should read,''b. Project No. P-11739-000''.

[FR Doc. C9–18579 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
July 28, 1999

Part II

Environmental Protection Agency

40 CFR Part 90

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines At or Below 19 Kilowatts; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–6374–7]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: In this action, EPA is reproposing a second phase of emission regulations to control emissions from new nonroad spark-ignition handheld engines at or below 19 kilowatts (25 horsepower). The engines covered by this proposal are used principally in handheld lawn and garden equipment applications such as trimmers, leaf blowers and chainsaws. EPA originally proposed standards for these engines in January 1998, however, recent dramatic advancements in small engine emission control technology have led EPA to repropose significantly more stringent standards for handheld engines than originally proposed. The newly proposed standards are expected to result in an estimated 78 percent reduction of emissions of hydrocarbons plus oxides of nitrogen from those achieved under the current Phase 1 standards applicable to handheld engines. The proposed standards for handheld engines are scheduled to be phased in beginning with the 2002 model year. The standards would result in important reductions in emissions which contribute to excessively high ozone levels in many areas of the United States.

Today's action also includes two provisions that would affect Phase 2 nonhandheld engines. EPA is proposing standards for two additional classes of nonhandheld engines that would apply to engines below 100 cubic centimeters displacement used in nonhandheld equipment applications. EPA is also proposing an option that allows manufacturers to certify engines greater than 19 kilowatts and less than or equal to one liter in displacement to the small engine Phase 2 standards. EPA recently adopted Phase 2 regulations for small SI engines used in nonhandheld equipment generally, and today's proposed standards for additional classes of nonhandheld engines and the option to include engines greater than 19 kilowatts and less than or equal to one liter in displacement would partially modify the scope of the recent final rule.

DATES: Written comments on this SNPRM must be submitted on or before September 17, 1999. EPA will hold a public hearing on August 17, 1999 starting at 10:00 a.m.; requests to present oral testimony must be received on or before August 13, 1999.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–55, Room M–1500 (mail code 6102), 401 M Street, SW, Washington, DC 20460, and to the EPA contact person listed below. Materials relevant to this supplemental proposed rulemaking are contained in this docket and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Ann Arbor, MI at the National Vehicle and Fuel Emission Laboratory, 2000 Traverwood; call (734) 214–4270 for further information.

For further information on electronic availability of this supplemental proposed rulemaking, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Philip Carlson, U.S. EPA, Office of Mobile Sources, Engine Programs and Compliance Division, (734) 214–4270; carlson.philip@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new small spark-ignition handheld or nonhandheld nonroad engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers or importers of new nonroad small (at or below 19 kW) spark-ignition handheld or nonhandheld engines and equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in § 90.1 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, proposed regulatory language and Supplemental Draft Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for Internet connectivity. The electronic version of this supplemental proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/(either select desired date or use Search feature).

2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

A. Background

On January 27, 1998, EPA issued a Notice of Proposed Rulemaking (NPRM) proposing a second phase of regulations to control emissions from new handheld and nonhandheld nonroad SI engines at or below 19 kilowatts (25 horsepower) hereafter referred to as ''small SI engines'' (63 FR 3950). This action was preceded by a March 27, 1997, Advance Notice of Proposed Rulemaking (62 FR 14740). EPA solicited comment on all aspects of the January 1998 NPRM. EPA held a public hearing on February 6, 1998, and the public comment period for the January 1998 NPRM closed March 13, 1998. EPA finalized Phase 2 standards and compliance program requirements for Class I and Class II nonhandheld engines on March 30, 1999 (64 FR 15208). In the final rule for nonhandheld engines, EPA noted that it planned to address the Phase 2 program for handheld engines in future **Federal Register** documents. The purpose of today's supplemental proposal is to propose revised Phase 2 standards and compliance program requirements for handheld engines. Today's supplemental proposal also includes proposed standards and compliance program requirements for two newly designated classes of nonhandheld engines with displacements below 100 cubic centimeters (cc), hereafter referred to as Class I-A and Class I-B engines.

Today's proposed action is taken in response to section 213(a)(3) of the Clean Air Act which requires EPA's standards for nonroad engines and vehicles to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. The standards and other compliance program requirements being proposed today are intended to satisfy this Clean Air Act mandate.

The January 1998 NPRM contained lengthy discussion of the first set of proposed standards, the expected costs of their implementation, the technologies that EPA expected manufacturers would use to meet the standards, and the potential costs and benefits of adopting more stringent standards such as those that were then under consideration by the California Air Resources Board (ARB). In the January 1998 NPRM, EPA explicitly asked for comment regarding the level of the proposed standards and the impacts and timing for implementing more stringent standards, so as to allow EPA to establish the most appropriate standards in the final rule. In particular, EPA requested comment on the impacts and timing for implementing emission standards that would require the same types of technology as anticipated by proposed rules under consideration at that time by the California ARB.

After the close of the comment period and upon reviewing the information supplied during and after the comment period, EPA determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting standards more stringent than those contained in the January 1998 NPRM. EPA's January 1998 NPRM already contained estimates of the costs and feasibility of more stringent standards. Some commenters had charged that, based on these 1998 NPRM discussions, EPA's proposed standards would not be stringent enough to satisfy the stringency requirements of Clean Air Act section 213(a)(3). For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, EPA had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing engine and equipment manufacturers, with developers of emission control technologies and suppliers of emission control hardware, with representatives of state regulatory associations, and with members of Congress. EPA also sought information relating to the impact on equipment manufacturers, if any, of changes in technology potentially required to meet more stringent standards than were contained in the January 1998 NPRM. Additionally, EPA received numerous comments on the January 1998 NPRM requesting closer harmonization with the compliance program provisions that were ultimately adopted by the State of California. In some cases, EPA also discussed these harmonization issues with manufacturers and industry association representatives to improve the Agency's understanding of the needs and benefits to the industry of such harmonization.

As stated on prior occasions, in adopting final Phase 2 requirements for small SI engines, EPA wished to consider all relevant information that became available during the rule development process. This includes information received during the comment period on the January 1998 NPRM, and, to the extent possible, important information which became available after the formal comment period had concluded on the January 1998 NPRM. To the extent that post-NPRM information has expanded or updated the knowledge of the Agency regarding technological feasibility, production lead time estimates for incorporating improved designs, costs to manufacturers, costs to consumers and similar factors, it is reasonable to expect that the improved information may result in changing assessments of how a pending rule can best achieve regulatory goals compared to what had been expected at the time of the January 1998 NPRM. This is especially true in the case of a rulemaking concerning an industry, like the small SI engine industry, that is undergoing relatively rapid technological innovation.

EPA published a Notice of Availability on December 1, 1998 highlighting the additional information gathered in response to the January 1998 NPRM (see 63 FR 66081). After analyzing this information, the Agency concluded that more stringent standards for Class I nonhandheld engines, used in applications such as lawn mowers,

consistent with those adopted by California were indeed achievable on the national scale with existing, well-understood overhead valve technology. EPA had discussed issues regarding the use of this technology in nonhandheld equipment in the January 1998 NPRM. In response to the additional information and to the comments on the NPRM, EPA adopted a final rule for nonhandheld engines that included emission standards considerably more stringent than those proposed for Class I nonhandheld engines in the January 1998 NPRM. In the same final rule, EPA also adopted standards for Class II engines at the levels proposed in the January 1998 NPRM that were based on the use of the same overhead valve technology.

However, since the publication of the January 1998 NPRM, there have been rapid and dramatic advances in emission reduction technologies for handheld engines used in applications such as trimmers, brush cutters, and chainsaws. EPA had not been able to fully evaluate these technologies or discuss their possible availability at the time of the January 1998 NPRM. Having reviewed the available information regarding these new technologies, EPA now believes this new information supports proposed Phase 2 standards for handheld engines that are significantly more stringent than those proposed in the January 1998 NPRM. In light of this information, and in the interest of providing an opportunity for public comment on the stringent levels being considered for the Phase 2 handheld engine emission standards and the technologies available for meeting these standards, EPA is reproposing the Phase 2 regulations for handheld engines in this Supplemental Notice of Proposed Rulemaking (SNPRM).

With today's SNPRM, EPA is also proposing standards for two new classes of small displacement nonhandheld engines. EPA requested comment on the need for such standards in the January 1998 preamble and received comments from a number of engine manufacturers supporting such standards. Originally, the Agency did not propose different standards for small displacement nonhandheld engines citing the availability of the averaging, banking and trading program as a reason for not proposing separate standards. However, because the standards EPA recently finalized for nonhandheld Class I engines are more stringent than originally proposed in the January 1998 NPRM and because it is technologically more difficult to meet a given level of emissions as the engine displacement is decreased, manufacturers who would likely produce such small displacement engines would not likely be able to meet the Phase 2 Class I standards recently finalized and would not be able to produce such small displacement nonhandheld engines even if they could take advantage of the averaging, banking and trading program. Therefore, EPA is proposing standards for two classes of small displacement nonhandheld engines. The first small displacement class would cover nonhandheld engines with displacements below 66 cc and would be referred to as Class I-A engines. The second small displacement class would cover nonhandheld engines at or above 66 cc and below 100 cc and would be referred to as Class I-B engines.

In response to a request from small SI engine manufacturers, today's SNPRM is proposing to allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations for nonhandheld engines beginning with the 2001 model year. Because of their size, these engines would not need to be certified under the current Phase 1 small SI engine program. However, because there are a small number of these engines that are primarily derivatives of other certified small SI engines at or below 19 kW, EPA believes it would be appropriate for manufacturers to have the option to certify these engines to the Phase 2 requirements for small SI engines. Engines certified under this option would be required to certify for the longest useful life period of 1,000 hours. This requirements of this option would be consistent with a recently adopted requirement by the California ARB that allows engines above 19 kW and less than or equal to one liter in displacement to certify as small SI engines with a useful life of 1,000 hours.

EPA is also proposing a number of changes to the compliance program for handheld engines originally proposed in the January 1998 NPRM. Most of these proposed changes are to make the Phase 2 handheld engine compliance program the same as the compliance program requirements recently finalized for Phase 2 nonhandheld engines. The proposed requirements for handheld engines are intended to establish a consistent approach to the compliance program for all nonroad small SI engines.

The reader is referred to the March 1999 final rule for nonhandheld engines, the December 1998 Notice of Availability, the January 1998 NPRM, as well as to the docket for this rulemaking, for the range of information upon which the Agency has relied in reproposing Phase 2 standards and compliance program requirements for small SI handheld engines, and for proposing standards for Class I–A and I–B nonhandheld engines.

B. Overview of Re-Proposed Program

The following provides an overview of the reproposed Phase 2 provisions for handheld engines and the proposed provisions for Class I–A and Class I–B nonhandheld engines. Additional detail explaining the program as well as discussion of information and analyses which led to the selection of these proposed requirements is contained in subsequent sections. The reader should note there are a number of provisions contained in the January 1998 NPRM that EPA is not revising in this SNPRM. Thus, those proposed provisions remain as part of EPA's proposed Phase 2 program for handheld engines. Such provisions may not be addressed in detail in this SNPRM, but they could become part of the final program for Phase 2 handheld engines and will be addressed in the final rulemaking document that establishes the Phase 2 requirements for handheld engines, as appropriate.

Consistent with Phase 1 rules, the recently finalized Phase 2 program for nonhandheld engines and this SNPRM distinguish between engines used in handheld equipment and those used in nonhandheld equipment. In today's action, Phase 2 emission standards are proposed for distinct engine size categories referred to as ''engine classes'' within the handheld engine equipment designation. Table 1 summarizes the re-proposed hydrocarbon plus oxides of nitrogen (HC+NOx) emission standards for Class III, Class IV, and Class V handheld engines in grams per kilowatt-hour (g/kW-hr) and when these standards are proposed to take effect under this SNPRM. For comparison purposes, Table 2 contains the Phase 2 standards for handheld engines originally proposed in the January 1998 NPRM. The standards originally proposed in the January 1998 NPRM would have required manufacturers to certify a specified percentage of their sales to the proposed Phase 2 standards during the 2002 to 2005 model years. (The proposed percentages were 20 percent in 2002, 40 percent in 2003, 70 percent in 2004, and 100 percent in 2005.) Table 2 also lists the effective standards factoring in the mix of Phase 1 and Phase 2 engines assuming the proposed phase in schedule contained in the January 1998 NPRM.

TABLE 1.—RE-PROPOSED PHASE 2 HC+NOX EMISSION STANDARDS FOR HANDHELD ENGINES

Engine Class	Re-Proposed HC+NOx Standards (g/kW-hr) by Model Year						
	2002	2003	2004	2005	2006	2007	2008 and later
Class III	226	200	150	100	50	50	50
Class IV	187	168	129	89	50	50	50
Class V	.....	.....	138	129	110	91	72

TABLE 2.—ORIGINALLY PROPOSED PHASE 2 HC+NOX EMISSION STANDARDS FOR HANDHELD ENGINES AND EFFECTIVE DATES

Engine Class	Originally Proposed HC+NOx Standards (g/kW-hr) in January 1998 NPRM*	Effective HC+NOx Standards (g/kW-hr) by Model Year			
		2002	2003	2004	2005 and later
Class III	210	282	264	237	210
Class IV	172	231	217	194	172
Class V	116	156	146	131	116

*The originally proposed Phase 2 standards were to be phased in at 20% in 2002, 40% in 2003, 70% in 2004 and 100% in 2005 and later model years.

After complete phase-in, the re-proposed emission standards contained in this SNPRM for handheld engines (see Table 1) are considerably more stringent than the proposed standards included in the January 1998 NPRM (see Table 2). In addition, except for Class V, the reproposed standards are more stringent during all years of the phase-in than were originally proposed in the January 1998 NPRM. For Class V, the reproposed standards have been delayed until 2004 to allow manufacturers additional time to comply with the significantly more stringent standards included in today's SNPRM. EPA believes that the limited emission reductions forfeited in the short term with the delayed implementation date for Class V engines would be offset in the long term by significantly greater emission reductions once the reproposed standards take effect due to the increased stringency of the reproposed Phase 2 standards.

The more stringent reproposed standards reflect the Agency's analysis of the information received in direct response to the questions posed in the January 1998 NPRM concerning the desirability and feasibility of more stringent standards than the levels first proposed, as well as other information made available to the Agency since the January 1998 NPRM. When fully phased in, these newly proposed Phase 2 standards are expected to result in an estimated 78 percent annual reduction in combined $HC+NO_x$ emissions from small SI handheld engines compared to the Phase 1 emission requirements for such engines. The $HC+NO_x$ reductions expected from the standards contained in today's SNPRM represent more than a 100 percent increase in reductions over the standards proposed in the January 1998 NPRM once the Phase 2 standards are fully phased in.

One feature of the newly proposed Phase 2 handheld standards is that they would decline over a number of model years, allowing manufacturers to transition orderly and efficiently from their existing Phase 1 engine designs and technologies to those necessary to meet the new Phase 2 requirements. In addition, as described later, EPA is proposing a certification averaging, banking and trading (ABT) program that would include handheld engines. As an example, under today's proposal, a manufacturer of Class III engines would be required to meet a gradually decreasing standard on average for this segment of its product line during model years 2002 through 2006. During this time frame, EPA anticipates that a manufacturer would begin selling engine designs certified to meet the California ARB's Tier 2 $HC+NO_x$ standard of 72 g/kW-hr nationwide while continuing to change more and more of its Class III engine designs to designs capable of meeting a 50 g/kW-hr standard, averaging emission performance with older designs and thus meeting on average the declining standard in effect for that model year as noted in Table 1. Finally, EPA expects that the manufacturer would have had sufficient time and resources to change the remainder of its engine designs and production tooling to meet a 50 g/kW-hr standard on average for all of its Class III engines by 2006 or shortly thereafter. Because the reproposed standards are a fleet average standard, a manufacturer could continue selling Class III engines certified above the 50 g/kW-hr $HC+NO_x$ standard even after the 2006 model year provided it has sufficient ABT credits from engines certified below the standard in the same model year, credits banked from previous model years, and/or credits obtained from another small SI engine manufacturer.

As noted earlier, EPA is also proposing to add two new classes of small SI nonhandheld engines that were not proposed in the January 1998 NPRM. As proposed, Class I–A would cover engines with displacement less than 66 cc that are installed in nonhandheld equipment. Class I–B would cover engines equal to or greater than 66 cc but less than 100 cc that are installed in nonhandheld equipment. Table 3 contains the proposed $HC+NO_x$ standards for Class I–A and Class I-B engines. Without these added classes and their specific standards, all engines less than 225 cc would be included in Class I and would have to meet the recently finalized Phase 2 standard adopted for Class I engines (also noted in Table 3).

TABLE 3.—PROPOSED PHASE 2 $HC+NO_x$ Emission Standards for Class I–A and Class I–B Engines and the Final Phase 2 $HC+NO_x$ Emission Standard for Class I Engines

Engine Class	$HC+NO_x$ Standard g/kW-hr	Time frame
Class I–A	50	2000
Class I–B	40	2000
Class I	I6.1	2007

EPA is proposing the Class I–A and Class I–B designations in response to comments submitted on the January 1998 NPRM indicating that new applications for nonhandheld equipment were being developed which would use engines in these displacement ranges. Because it is generally more technically difficult to control emissions of smaller engines, at this time EPA believes it is too costly to require manufacturers to design engines under 100 cc for use in nonhandheld equipment to achieve the Phase 2 Class I $HC+NO_x$ standard of 16.1 g/kW-hr and still have the power and performance capabilities to be useful in powering such equipment. Although EPA does not anticipate that significant numbers of equipment in this category will be produced in comparison to the other engine classes, EPA believes it is reasonable to provide the opportunity to market such equipment since, if sold, such equipment will have reasonably demonstrated consumer value. Further, at the low production volumes anticipated, the contribution to the emissions inventory from such small engines would be extremely small.

As noted above, EPA is proposing to allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations beginning with the 2001 model year. Because of their power rating, these engines are currently unregulated by EPA and therefore are not required to meet any emission standards at the federal level. EPA recently issued a Notice of Proposed Finding (see 64 FR 6008) which announced EPA's intent to propose regulations for ''large nonroad SI engines.'' EPA is expecting to issue a NPRM for large nonroad SI engines sometime in 2000. Based on information released along with the Notice of Proposed Finding, EPA expects to propose that engines greater than 19 kW and less than one liter in displacement would be required to comply with the small SI nonroad engine requirements. Therefore, allowing manufacturers to optionally elect to certify engines above 19 kW with displacement less than or equal to one liter is consistent with the program EPA expects to propose for large SI nonroad engines. If for some reason, EPA does not finalize such a requirement for engines above 19 kW and less than or equal to one liter in displacement as part of the large SI nonroad engine program, EPA would expect to consider reasonable approaches to minimize disruption to the affected engine industry. In addition, interested parties would be able to suggest any approaches they believed were appropriate in comments on the large SI nonroad engine NPRM.

To offer an incentive for the early introduction of clean engines and to provide engine manufacturers with additional flexibility in meeting the reproposed Phase 2 handheld standards, EPA is proposing to make the recently adopted ABT program for Phase 2 nonhandheld engines also available to handheld engines, as well as to Class I–A and Class I–B engines. EPA did not originally propose an ABT program for handheld engines in the January 1998 NPRM. However, because of the increased stringency of the proposed handheld engine standards contained in this SNPRM, and after manufacturers have indicated an interest in such a program, EPA believes that an ABT component can be an integral part of the Phase 2 standards being proposed for Classes III, IV, and V as well as Classes I–A and I–B.

The standards and the compliance program elements being reproposed today also consider expected in-use deterioration. In contrast to the Phase 1 rules which only regulate the emission performance of engines when new, the Phase 2 standards being proposed today would require manufacturers to account for expected deterioration in emission performance as an engine is used. Manufacturers would be required to evaluate the emission deterioration performance of their engine designs and certify their designs to meet the proposed standards after factoring in the anticipated emission deterioration of a typical in-use engine over its useful life. As contained in today's SNPRM, a handheld engine manufacturer would select from one of three different useful life categories based on the type of engine and equipment in which the engine is installed. Under the proposed program, handheld engines would be certified to the emissions standards for a period of 50, 125, or 300 hours of use based on design features and the intended use of the installation. (A high priced piece of industrial equipment would more likely be equipped with an engine with design features intended to make it most durable and thus certified to the emission standards assuming a useful life period of 300 hours, for example.) For Class I–A engines, EPA is proposing the handheld engine useful life periods of 50, 125, and 300 hours. For Class I–B engines, EPA is proposing that a manufacturer would choose to certify for a useful life period of 125, 250, or 500 hours.

The proposed certification program would require manufacturers to determine an appropriate methodology for accumulating hours of operation to ''age'' an engine in a manner which duplicates the same type of wear and other deterioration mechanisms expected under typical consumer use which could affect emission performance. EPA expects bench testing would be used to conduct this aging operation because this can save time and perhaps money, but actual in-use operation (e.g., trimming grass) would also be encouraged. Emission tests would be conducted when the engine is new and when it has finished accumulating the equivalent of its useful life. The engine would have to pass standards both when it is new and at the end of its designated useful life to qualify for certification. Additionally, the new engine and fully aged engine emission test levels would be compared to determine the expected deterioration in emission performance for other engines of this design; such engines could be tested as they come off the end of a production line, in which case their new engine emission levels would be adjusted by the deterioration factor determined from the certification engine to predict the emission performance or the engine at the end of its useful life.

Selection of engines for testing as they come off the production line would be conducted according to the provisions of the proposed Production Line Testing (PLT) program. This program is explained in more detail in a following section but, briefly, its intent is to allow a sampling of production line engines to be tested for emission performance to assure that the design intent as certified prior to production has been successfully transferred by the manufacturer to mass production. The volume of PLT testing required by the manufacturer would depend on how close the test results from the initial engines tested are to the standards; if these test engines indicate the design is particularly low emitting, few engines would need to be tested, while those designs with emission levels very close to the standards would need additional tests to make sure the design is being

produced with acceptable emission performance.

While the proposed compliance program would not require the manufacturer to conduct any in-use testing to verify continued satisfactory emission performance in the hands of typical consumers, an optional program for such in-use testing is being proposed. EPA believes it is important for manufacturers to conduct in-use testing to assure the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. While not proposing to mandate such a program, the proposal would encourage such testing by allowing a manufacturer to avoid the cost of the PLT program for a portion of its product line by instead supplying data from in-use engines. Under this voluntary in-use testing program, up to twenty percent of the engine families certified in a year could be designated for in-use testing by the manufacturer. For these families, no PLT testing would be required for two model years including that model year. Instead, the manufacturer would select a minimum of three engines off the assembly line or from another source of new engines and emission test them when aged to at least 75 percent of their useful life under typical in-use operating conditions for this engine. The information relating to this in-use testing program would be shared with EPA. If any information derived from this program indicates a possible substantial in-use emission performance problem, EPA anticipates the manufacturer would seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. EPA would offer its assistance in analysis of the reasons for unexpectedly high in-use emission performance and what actions might be appropriate for reducing these high emissions.

As proposed in the January 1998 NPRM, EPA could choose to conduct its own in-use compliance program whether or not a manufacturer chose to conduct such a voluntary in-use testing program. If EPA were to determine that an in-use noncompliance investigation was appropriate, the Agency expects it would conduct its own in-use testing program, separate from any voluntary manufacturer testing program, to determine whether a specific class or category of engines is complying with applicable standards in use.

All of the general provisions of this proposed compliance program have been adopted as part of California's compliance program for these classes of small engines.[1] Importantly, the testing and data requirements, engine family descriptors, compliance statements and similar testing and information requirements of these proposed federal Phase 2 handheld regulations are, to the best of EPA's knowledge, the same general compliance program requirements adopted by the California ARB. This will be advantageous to manufacturers marketing the same product designs in California as in the other states, as they would need to prepare only one set of certification application information, supplying one copy to the California ARB for certification in the State of California and one copy to EPA for federal certification. This similar treatment under the regulations would also extend to the proposed PLT program and would also likely extend to the proposed optional in-use testing program, such that any test data and related information developed for the California ARB should also satisfy the federal regulatory requirements being proposed today.

In addition to the regulatory provisions outlined above, this proposal includes special provisions for small volume engine manufacturers, small volume engine families produced by other engine manufacturers, small volume equipment manufacturers who rely on other manufacturers to supply them with these small SI handheld engines, and small volume equipment models. These special small volume handheld provisions are intended to lessen the demonstration requirements and in some cases delay the effective dates of the standards so as to smooth the transition to these Phase 2 requirements. This is especially important for small volume applications because the eligible manufacturers involved may not have the resources to ensure that engines complying with the proposed Phase 2 standards will be available within the time frames otherwise envisioned under these regulations. Since these proposed flexibility provisions are limited to small volume applications, the risk to air quality should be negligible. However, without these provisions, the economic impacts to small volume manufacturers could be increased and the possibility of reduced product offering would be greater, especially for those products intended to serve niche markets which satisfy special needs. The proposed small volume flexibilities are explained more fully in section II.D. of today's SNPRM and are detailed in the proposed regulations.

[1] While the voluntary in-use test program has not been codified in the California ARB Tier 2 rules for these engines, EPA has discussed the program with the California ARB. EPA expects that the California ARB would consider allowing manufacturers to participate in the voluntary in-use test program and receive the same decreased PLT testing as contained in this proposal.

II. Content of the Supplemental Proposed Rule

The following sections provide additional detail on the provisions of the supplemental proposed rule outlined above.

A. Emission Standards and Related Provisions

1. Class Structure

This SNPRM retains the same basic class structure for small SI engines as implemented in the Phase 1 regulations and proposed in the January 1998 NPRM with the addition of the proposed designations of Class I–A and Class I–B engines. The Phase 1 rules established separate classes based on engine size in recognition of the greater difficulty in controlling emissions from smaller displacement engines compared to larger displacement engines. The Phase 1 program also separated engine classes into those intended for use in equipment typically carried by the operator during its use such as chain saws or string trimmers (referred to as handheld equipment) and those engines normally used in equipment which is not carried by the operator such as lawnmowers and generators (referred to as nonhandheld equipment). These usage distinctions seemed appropriate because the small engine industry is for the most part split between these two categories, with very few manufacturers making both handheld engines and nonhandheld engines. In addition, the nature of these two industry segments is quite different. For example, handheld engine manufacturers produce engines primarily for use in equipment they also manufacture. In contrast, nonhandheld engine manufacturers typically supply engines to separate nonhandheld equipment manufacturers and do not make their own equipment.

As noted above, EPA is proposing standards for two new classes of nonhandheld engines in this SNPRM. Under the existing Phase 1 program, Class I includes all nonhandheld engines with displacements below 225 cc. EPA received several comments on the January 1998 NPRM supporting the adoption of standards for additional nonhandheld categories below 225 cc. EMA requested the creation of a new class of small displacement nonhandheld engines in order to fill a void in the equipment market left by

products that would no longer be able to utilize 2-stroke engines if the proposed Phase 2 Class I standards were adopted. They noted that production of some 4-stroke side valve (SV) engines under 76 cc had already been discontinued with the advent of Phase 1 standards due to practicality, and that with the more stringent standards proposed for Phase 2, even greater numbers of these engines would be eliminated from the market. EMA also noted that the California ARB had proposed an $HC+NO_X$ standard of 72 g/kW-hr for engines below 60 cc, recognizing that engines below 60 cc are designed for functionally different types of equipment than those above 60 cc. Honda commented that the Phase 1 standards and the proposed Phase 2 standards for Class I are not appropriate for the smallest engines in the class because of the increased difficulty in reducing emissions with small displacement engines. Honda recommended the addition of a small displacement nonhandheld engine class with the emission standard harmonized with the California ARB's standard for 0–60 cc engines. Suzuki recommended the addition of a small displacement nonhandheld class of 100 cc and less, arguing that overhead valve (OHV) engines in this size already have difficulty meeting the Phase 1 $HC+NO_X$ standards because of large combustion chamber surface-to-volume ratios. They commented that the addition of a new class of small displacement nonhandheld engines would allow the use of lightweight 4-strokes in applications that require mobility but do not qualify as multi-positional under the handheld classification. Suzuki recommended that the $HC+NO_X$ standard should be 40 g/kW-hr, with the same durability classes and in-use programs as proposed for Class I engines. Tecumseh noted that they foresee a need for 4-stroke engines in the 50–100 cc range, which would not be able to meet the proposed Phase 2 Class I standard. They commented that an additional class below 225 cc was needed and they also suggested a 40 g/kW-hr $HC+NO_X$ standard for 50–100 cc engines.

Based on the fact that it is more difficult for smaller displacement engines to meet the same emission standards as larger displacement engines, EPA believes that a standard which is technically feasible and economically viable for the larger displacement Class I 4-stroke engines (which have displacements typically above 125 cc and are primarily used in lawnmowers), could be too costly for manufacturers to be achievable for smaller displacement engines that manufacturers would need to use in new equipment applications requiring the use of much smaller displacement nonhandheld engines. Therefore, it appears that the span of engine displacements within Class I is too large to allow for a technologically appropriate engine standard for both the larger and smaller engines in that class. Although this has not significantly affected manufacturers' ability to produce engines for applications under the Phase 1 rules, EPA believes this may not be the case in the future based on the comments noted above. If EPA were to retain the broader Class I category, products like those noted by manufacturers in their comments above would need to be dropped or could not be introduced. Thus, to allow for the marketing of a wide range of nonhandheld products, including applications that could be powered by the smallest displacement engines, EPA is proposing to subdivide the Class I engine category by adding two new nonhandheld engine classes and redesignating the span of displacements covered by Class I. Under today's proposal, Class I–A would include nonhandheld engines below 66 cc, Class I–B would include nonhandheld engines equal to or greater than 66 cc but less than 100 cc, and Class I would cover engines equal to or greater than 100 cc but less than 225 cc. The proposed displacement range for Class I–A would harmonize the requirements with those adopted by the California ARB. Based on the comments submitted by manufacturers, EPA believes the proposed displacement range for Class I–B is appropriate and should not compromise the emissions benefits of the recently finalized Phase 2 program for Class I engines since more than 99 percent of the currently certified Class I engines (based on estimated production levels submitted by manufacturers to EPA) have displacements greater than 100 cc. EPA requests comments on EPA's proposal for Class I–A and I–B engines and new information regarding manufacturer's plans to develop and market such engines.

If the proposed Class I–A and I–B standards are adopted, EPA would not expect that manufacturers would shift significant production from Class I to the smaller displacement engines. In addition, EPA would not expect that manufacturers would certify 2-stroke engines to the proposed Class I–A and I–B standards and use such engines in popular Class I equipment applications such as walk-behind mowers. If such a change in the market were to occur, the benefits of the recently finalized Phase 2 program for Class I engines which anticipates a turnover to clean 4-stroke OHV technology would be seriously compromised. EPA requests comments on the potential for 2-stroke engines to meet the proposed Class I–A and I–B standards and the potential for such engines to be used in existing nonhandheld applications such as mowers.

As noted above, EPA is proposing an option that would allow manufacturers to certify engines above 19 kW and less than one liter in displacement to the small SI engine program beginning with the 2001 model year. Such engines would need to be certified to the Phase 2 requirements for the appropriate class of nonhandheld engines, which is expected to be the Class II requirements (i.e., engines above 225 cc in displacement), for a useful life period of 1,000 hours. EPA requests comment on the requirements of this proposed option.

2. Emission Standards

As noted earlier, EPA is proposing more stringent $HC+NO_X$ emission standards for all three classes of handheld engines than were originally proposed in the January 1998 NPRM. The Clean Air Act at section 213(a)(3) requires the Agency to adopt standards that result in the greatest emission reductions achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. As a result of information now available, much of it in the form of comments received during and after the comment period on the January 1998 NPRM, and due to the rapid technological advances the industry is making in an effort to design engines which are more environmentally friendly, EPA believes that standards more stringent than those originally proposed are achievable during the next decade. Extensive discussions over several months with several manufacturers of handheld engines and equipment have provided EPA with information to decide on the standards and phase in schedules being proposed today. (Records of these discussions have been included in the docket for this rule.) Specific advances for 2-stroke engines include stratified scavenged engines and novel approaches to improve fuel metering, both of which should allow 2-stroke engines to have substantially lower emissions and remain viable

powerplants for handheld equipment. In addition, there have been recent technical advances for handheld engines including the feasibility of catalysts and the expanded application of the mini 4-stroke design.

While not all technologies under consideration have been fully proven on a production engine operated under typical in-use conditions, EPA is confident that these and other technologies will be proven in the near future providing the industry with several alternatives for emission control. Certification or manufacturer prototype information as listed in Chapter 3 of the Supplemental Draft RIA, demonstrates that currently available technology can achieve lower emission levels than the standards set by the California ARB, especially if one considers the use of a low-efficiency catalyst. For low engine out emissions, prototypes of the LE Engine technology developed by John Deere and the stratified scavenging design developed by Komatsu Zenoah have shown the ability for 2-stroke engines to achieve very low emission levels in the range of 36 g/kW-hr to 66.8 g/kW-hr with the John Deere technology [2] (assuming a emissions deterioration factor of 1.1 over the useful life of the engine) and 67 g/kW-hr with the Komatsu Zenoah technology (based on California ARB certification information for the 2000 model year). A low efficiency catalyst could lower these emission levels by 20 g/kW-hr and result in emission levels of 16 g/kW-hr to 47 g/kW-hr $HC+NO_X$. In addition, mini 4-stroke engines in Class IV have been certified to a range of new engine values from 15.7 g/kW-hr to 37.6 g/kW-hr. With an assumed emissions deterioration factor of 1.5 over the useful life of the engine, the mini 4-stroke engines would yield emissions at a full useful life of 23.6 g/kW-hr to 56.4 g/kW-hr. Use of a catalyst that achieves a 20 g/kW-hr reduction on the highest emitting 4-stroke engine would yield an emissions level of 36.4 g/kW-hr $HC+NO_X$. These stringent emission levels show that very low emission standards for handheld engines are feasible especially given the inherently low deterioration of 2-stroke emissions, and the ability to use a low efficiency catalyst or thermal reactor on some engine families.[3] EPA requests comment on the ability of the John Deere LE technology, the Komatsu Zenoah stratified scavenging design, or mini 4-stroke technologies to accommodate a catalyst. Specific areas on which EPA is requesting comment include the ability to provide sufficient engine and muffler cooling with each of the technologies, catalyst conversion efficiencies, and engine or equipment design changes needed to accommodate a catalyst specifically in response to the U.S. Department of Agriculture (USDA) Forest Service requirements for equipment used on Federal land.

The emissions information cited above is from engines designed for use in Class III or Class IV applications. In most cases, EPA believes similar designs should be able to be designed for Class V applications as well. However, because most Class V engines are used in higher power commercial applications, the ability to utilize a ''low'' efficiency catalyst (and the related muffler skin and exhaust plane temperatures that result from the throughput of exhaust emissions through the catalyst) may be inhibited due to the USDA Forest Service requirements for equipment used on Federal land. In addition, the high power equipment in Class V requires additional cooling compared to the amount of cooling typically required in Class III and IV engines. Cooling may be achieved by directing more of the fuel/oil mixture through the crankcase. For the John Deere LE technology, this will result in higher level of emissions than for Class IV engines, since more fuel/oil will be scavenged. These factors may affect the ability of some designs to be applied to the largest of Class V applications or for such designs to meet a 50 g/kW-hr $HC+NO_X$ standard. EPA therefore believes that a $HC+NO_X$ standard of 72 g/kW-hr is most appropriate for Class V engines. EPA requests comment on the ability of 4-stroke engines, redesigned 2-stroke engines, or other technologies, such as electronic fuel injection or the application of catalysts, to achieve a 50 g/kW-hr $HC+NO_X$ standard.

Based on the information noted above, EPA is proposing emission standards that require handheld engines in Class III and Class IV, on average, to meet an $HC+NO_X$ standard of 50 g/kW-hr and handheld engines in Class V, on average, to meet an $HC+NO_X$ standard of 72 g/kW-hr by the end of the applicable phase-in period. For a full discussion of the technologies EPA believes could be employed to achieve the proposed handheld engine standards, the reader is directed to Chapters 3 and 4 of the Supplemental Draft RIA.

A number of issues have been raised by various parties regarding the technologies noted above which could affect the potential for manufacturers to use these technologies to achieve the proposed standards. A list of the most important issues is noted below. While EPA believes that a number of important issues have been highlighted and would need to be addressed before successful introduction of these technologies, EPA also believes that given the amount of leadtime before manufacturers would be required to certify their entire product range to the proposed $HC+NO_X$ standards, the variety of technology options available, and the work manufacturers have already performed in anticipation of the California ARB Tier 2 regulations, that the reproposed set of standards are achievable, especially given the provisions of the proposed ABT program which allow for early credits generation and the exchange of credits across engine classes and the proposed flexibilities for small volume engine families and small volume engine manufacturers. Specifically, manufacturers are anticipated to sell in the initial years of the program engine families with emission levels substantially below the phase in standards. Many could accumulate a large number of banked credits by, for example, offering their designs certified to the California ARB standards for sale in the other 49 states. EPA requests comments on these assumptions and on the issues listed below, including the potential for addressing these concerns and any resulting impact on manufacturers' ability to meet the standards contained in this SNPRM which, as noted earlier, allow for the use of the ABT program.

With regard to the John Deere LE technology, a number of concerns have been raised including the ability of the design to provide adequate lubrication to the crankcase, the ease of use and operation of the fuel system in real world conditions, the potential for increased PM emissions, the need for redesign of equipment to incorporate the technology, durability due to the potential for carbon buildup in the transfer ports (as described in the Supplemental RIA, Chapter 2, section 3.2.5), and the applicability to Class V engines, especially professional chainsaws, which have unique operating characteristics (e.g., cold weather operation) and cooling requirements. However, John Deere has made substantial progress toward resolving such potential problems as

[2] The reader is directed to items IV–G–30, IV–G–32, and IV–B–05 of Docket A–96–55 for further information on the John Deere technology.

[3] In addition to the technologies described in today's notice other potential emission control technologies have been examined by EPA. Two of these technologies, a spark ignition technology by Pyrotek and a vaporizing carburetor technology by Boswell, are described in further detail in Chapter 3 of the Draft Supplemental RIA.

adequate performance across the range of operating conditions and speeds. Indeed, EPA expects John Deere to market in California handheld equipment (Class IV trimmers and chainsaws) using this technology beginning with the 2000 model year. Comments are requested on the likelihood that cost-effective solutions can be made available over the next two to three years across the full range of handheld engines and applications.

In addition to these technically related concerns, a number of engine manufacturers have raised concerns about the level of the licensing fees that John Deere has stated that it would charge for use of the patented equipment designs. The fees noted by John Deere in their literature to other handheld engine manufacturers noted a minimum licensing fee of $7.50 per engine with fees ranging as high as 5% of the wholesale price of the equipment for an application costing above $300 with a sales volume less than 50,000 units per year, which is a typical cost for Class V commercial applications. These manufacturers have suggested that the fees are higher than typically paid for patented technologies and noted that the fees suggested by John Deere may, in some cases, be as high as the profit margin on the equipment currently being sold.[4] EPA specifically requests comments on the licensing fees suggested by John Deere, the impact such fees would have on competition given the cost for other technology options, and the level of licensing fee necessary to allow this licensed technology to be a cost effective option for other manufacturers.

For the stratified scavenging engine technology, a number of concerns have been raised about the technology. These issues include the ability to design engines that achieve the amount of power necessary for all applications, the feasibility of providing additional cooling which may be required by the design, as well as the ability for all applications to provide sufficient cooling for a low efficiency catalyst. In fact, Komatsu has already certified a model year 2000 Class IV engine with both EPA and the California ARB at levels meeting the California ARB's Phase 2 standard. EPA expects Komatsu to market their stratified scavenging engine technology nationwide in certain handheld equipment (Class IV trimmers) using this technology beginning with the 2000 model year.

With regard to the mini 4-stroke technology, a number of concerns have been raised primarily regarding the application to Class V engines. These issues primarily relate to the limited ability to apply such technology because of the power, weight, and acceleration requirements of Class V handheld equipment applications. It can be noted that both Ryobi and Honda have introduced 4-stroke engines for Class IV handheld applications weighing about seven pounds which are comparable to the weight of 2-stroke engines used in similar handheld applications. Although these 4-stroke engines were once thought to be limited to trimmer type applications only, EPA is aware of developments of the use of 4-stroke engines to higher speed applications. Therefore, EPA believes that 4-stroke engines could be used for the majority of Class IV applications. Request comments on this assumption. As noted later in section III.B.2 of today's document, EPA has assumed that 4-stroke technology would likely only be applicable to the smallest of Class V engine designs.

However, to the extent that 4-stroke engines might replace some 2-stroke engines in certain applications, EPA is interested in receiving additional information to better compare their expected performance. EPA is specifically requesting information on the following areas: the durability of 4-stroke engines and how this might impact the certified useful life of such engines, the amount and cost of maintenance required to maintain performance, and the likelihood such maintenance would be performed (including a comparison to maintenance requirements and in-use maintenance experience for 2-stroke engines) and how the relative cost of the handheld piece of equipment might affect these considerations (e.g., is it more likely that maintenance will be performed on the engine of a more expensive piece of equipment than on the engine installed in a less expensive piece of similar equipment, even if the engines are certified to the same useful life?). Other information relevant to a comparison of 4-stroke engines versus 2-stroke engines such as weight and performance differences is also requested.

For the application of catalysts to handheld equipment, the concerns raised include user safety due to potential excessive heat generated by the catalyst, which may influence engine operation and durability, and the ability to provide additional cooling of the exhaust gas and catalyst area which may be necessary for operator safety or for manufacturers to meet the USDA Forestry Service requirements that apply to equipment used on Federal land. EPA is aware that manufacturers have been researching and developing catalyst technology for handheld engine applications and have already been working to address the issues noted above through innovative catalyst designs, use of low efficiency catalysts and more engine improvements, catalyst shielding, and catalyst placement. In addition, one handheld engine manufacturer, Husqvarna, is currently using low-efficiency catalysts on several of their 1999 model year Class IV engine families used primarily in commercial trimmer/edger applications. A second manufacturer, Tanaka, has publicized their PureFire technology which includes engine improvements and a catalyst. EPA requests comment on the status of catalyst technology development for handheld engine applications and the likelihood that catalysts will be able to be applied to the full range of handheld engine applications to meet the proposed standards and appropriate safety requirements.

As noted earlier, the proposed standards would be phased in through a set of declining average in-use standards by model year. For Classes III and IV, the standards would be phased in between the 2002 and 2006 model years. For Class V, the proposed Phase 2 standards would be phased in between the 2004 and 2008 model years. (Table 1, presented earlier, contains the actual emission standards by model year of the proposed Phase 2 standards for handheld engines.) EPA believes the proposed leadtime before the standards are scheduled to take effect is appropriate based on the fact that the proposed $HC+NO_X$ standards for Class III and Class IV are more stringent than the California ARB's $HC+NO_X$ standards for these engines (i.e., 72 g/kW-hr for engines 0–65cc with the exception of exempted applications), on which industry had been focusing and developing technologies over the past few years, and because many of the Class V engine families are used in certain farm and construction equipment applications which are exempted from meeting the California ARB standards as discussed below. In addition, EPA had been discussing standards similar in stringency to the California ARB's standards with the handheld industry in the time since the January 1998 NPRM through December 1998. EPA believes that industry needs sufficient time in the near term to finish developing products for the California market that meet the California ARB

[4] "Meetings with Husqvarna/Frigidaire Home Products on Small Engine Phase 2 Handheld Regulations," EPA memo from Phil Carlson to Docket A–96–55, June 29, 1999.

emission standards which take effect on January 1, 2000. However, not all engines will necessarily be redesigned to meet the California ARB standards due to the farm and construction equipment exemption noted above, and because some manufacturers have told EPA that they expect to provide a limited lineup of engines for the California market. Furthermore, EPA believes the proposed schedule of standards will allow manufacturers to sell their engines designed to meet the California ARB Tier 2 standards nationwide for a number of years, recouping the investments made for such designs, while redesigning their product offerings to meet the proposed $HC+NO_X$ standards on average.

Although the standards contained in today's SNPRM envision that manufacturers will phase in engines meeting a 50 g/kW-hr $HC+NO_X$ level in Class III and Class IV and a 72 g/kW-hr $HC+NO_X$ level in Class V, manufacturers of handheld engines would be required to certify all of their engine families in a given engine class (unless they qualify for some type of small volume provision as described later) for a specific useful life period in the first year of the applicable phase-in. (As noted earlier, EPA's Phase 1 program only requires compliance for new engines.) Manufacturers need enough time to perform the useful life tests on each of the engine families, with the exception of those already certified for California (since California also requires full useful life compliance) which the manufacturer is planning to sell outside of California, as well as to research, develop and adopt low emitting technology on engine families such that each manufacturer meets the average emission standards through the final year of the phase-in schedule.

EPA is proposing a two year delay in the effective date for the Class V engines. This delay is based on an analysis of EPA's Phase 1 certification database shows that a significant proportion of Class V engine production is likely to be exempted from California ARB regulation because of the type of equipment in which the engines are used. Manufacturers of these products, which have a long list of certified engine families, have not had to address these engines for California, and therefore will need additional time to comply with EPA's proposed Phase 2 standards. In addition, this delay takes into consideration leadtime concerns raised by the two major engine manufacturers in this class who manufacture professional high quality equipment in light of their extensive product development process. EPA requests comment on the appropriateness of the proposed two year delay for Class V engines.

For all categories of handheld engines, the $HC+NO_X$ standards being proposed today represent significant increases in stringency and will require virtually all of the currently certified Phase 1 engines to be redesigned. Under the proposed $HC+NO_X$ standards, EPA expects emissions from handheld engines on average will be reduced by approximately 78 percent compared to Phase 1 engines. Under this proposal, the nation should continue to benefit from improved emission performance for handheld engines at least through 2011 as these standards take effect and fleet turnover to cleaner engines occurs.

As noted earlier, the standards being proposed today are more stringent than the California ARB's Phase 2 standard. (California's Phase 2 standard for small SI engines is 72 g/kW-hr $HC+NO_X$, except for engines used in exempted farm and construction applications). EPA requests comments on the costs, feasibility, and other effects of complying nationwide with a 72 g/kW-hr $HC+NO_X$ standard for all three classes of handheld engines versus the standards being reproposed today.[5] Specific areas on which EPA is requesting comments include the engine designs and technologies that would be used to comply with a 72 g/kW-hr $HC+NO_X$ standard, the cost of adopting such technologies (both relative to engines currently certified under the Phase1 program and as an extension of production of California compliant engines), and the potential for such Class III and Class IV engines to be modified to meet a 50 g/kW-hr $HC+NO_X$ standard. Recently, a number of handheld engine manufacturers indicated to EPA that they would prefer the following alternative set of $HC+NO_X$ standards: 72 g/kW-hr for Classes III and IV phased in between 2002 and 2007, and 87 g/kW-hr for Class V phased in between 2004 and 2007. These manufacturers do not presently employ the kinds of technology EPA expects would be used to meet EPA's reproposed standards, and they specifically raised questions regarding the applicability of light-weight 4-stroke technology and the developmental state of John Deere's LE technology. In addition to the information requested above, EPA requests comment on the alternative standard set nominated by this segment of the handheld industry. EPA is particularly interested in receiving information about the costs associated with this alternative set of standards. As part of the final rulemaking, EPA plans to consider this cost information and use it, as appropriate, in an analysis of the potential costs and emission reductions of these alternative standards for comparison with the additional emission reductions (and presumably higher costs) of the proposed standards. This information will be useful as the Agency determines the appropriate level of standards consistent with Clean Air Act section 213(a)(3).

EPA is not proposing tighter CO standards for handheld engines in this SNPRM. This proposal would maintain the same CO emission standards contained in the January 1998 NPRM. At this time, it does not appear that additional reductions in CO emissions from these engines will be needed to allow most areas of the country to attain the CO ambient air quality standard. Absent this air quality need, EPA does not believe that requiring manufacturers to achieve additional reductions in CO emissions by a more stringent standard is necessary. It should be noted that many of the emission control techniques likely to be adopted to meet the proposed Phase 2 $HC+NO_X$ standards on 2-stroke engines, including for example the use of improved fuel metering and combustion chamber improvements, have shown lower CO emissions than Phase 1 engines. Although EPA is not proposing tighter CO standards, EPA expects some CO emission reduction will occur as a result of the technologies likely to be adopted to meet the proposed Phase 2 $HC+NO_X$ standards. EPA is not able at this time, however, to quantify the expected level of CO reductions to a sufficiently precise degree that the Agency believes it can confidently propose a more stringent standard than that contained in the January 1998 NPRM.

Neither EPA's Phase 1 rule for small SI nonroad engines nor the recent Phase 2 rule for nonhandheld engines included particulate matter (PM) standards and today's proposal continues the same approach. EPA is not proposing PM standards for Phase 2 handheld engines. EPA believes that the types of technologies expected to be used to meet the proposed Phase 2 gaseous emission standards will result in reduced PM levels from handheld engines. EPA requests information on PM emissions from handheld engines and the need for PM standards for small SI nonroad engines in general. Relevant information might include PM emission rates from small SI engines, loading contributions to ambient PM concentrations from these engines, user

[5] Commenters are asked to consider energy, noise, and safety impacts in their comments.

health effects from direct exposure to PM contained in engine exhaust from small SI engines, and contribution from small SI engine PM emissions to visibility impairment.

For Class I–A engines (i.e, nonhandheld engines with displacement less than 66 cc), because these new nonhandheld equipment applications are expected to use engines with much the same displacement and design as their handheld Class IV counterparts, EPA is proposing to apply the Class IV standards of 50 g/kW-hr for $HC+NO_X$ and 610 g/kW-hr for CO. Although the California ARB's standards are less stringent than the standards contained in today's SNPRM, the addition of this class harmonizes the use of these engine sizes within this rulemaking between EPA and the California ARB. Because the Class I–A engines will be designs that are not currently certified as nonhandheld engines, EPA is proposing that the standards for Class I–A engines take effect immediately upon the effective date of finalization of these proposed standards, which EPA expects would occur during the 2000 model year. With regard to the test procedure manufacturers use for certification testing of Class I–A engines, EPA is proposing to adopt the handheld engine test procedure, typically referred to as cycle ''C''. EPA requests comment on the proposed requirements for Class I–A engines.

For Class I–B engines (i.e., nonhandheld engines with displacement from 66 cc to less than 100 cc), 4-stroke engines have certain disadvantages which make it more difficult for them to meet the recently adopted Phase 2 $HC+NO_X$ standard for nonhandheld engines compared to their larger size counterparts (i.e., nonhandheld engines with displacement above 100 cc in Class I and Class II). EPA recognized this difference when it adopted the Phase 2 $HC+NO_X$ emission standards for engines less than 225 cc (i.e., Class I where the standard is 16.1 g/kW-hr) and engines greater than 225 cc (i.e., Class II where the standard is 12.1 g/kW-hr). The current set of engines certified to EPA's Phase 1 standards includes three Class I engines (1 OHV engine and 2 SV engines) below 100 cc that are certified at new engine levels close to the Phase 1 $HC+NO_X$ standard (i.e., 16.1 g/kW-hr) ranging from 13.3 to 15.9 g/kW-hr. Assuming an in-use $HC+NO_X$ deterioration factor of 1.5, the Phase 2 emission values of the engines would be 19.9 and 23.9 g/kW-hr, respectively, which is above the Phase 2 standard of 16.1 g/kW-hr. In the January 1998 NPRM, EPA made the assumption that averaging of emission credits would allow these smaller size engines to utilize credits from an engine manufacturer's larger size engines. Comments on the NPRM suggested that this was not the case for all engine manufacturers. Comments from one of these manufacturers suggested that EPA establish a standard of 40 g/kW-hr because they produced a side valve engine under 100 cc which required this value to be able to certify. Due to the very small production estimates of engines in this size range (i.e., 0.1% of Class I), EPA is proposing standards for Class I–B engines of 40 g/kW-hr for $HC+NO_X$ and 610 g/kW-hr for CO. As proposed for Class I–A engines, EPA is proposing that the standards for Class I–B engines take effect immediately upon the effective date of finalization of these proposed standards, which EPA expects will occur during the 2000 model year. For the test procedure manufacturers use for certification testing, EPA is proposing to adopt the nonhandheld engine test procedures, typically referred to as cycle ''A'' and cycle ''B'.

Based on comments from manufacturers, EPA is establishing the Class I–B category to allow for the production of engines to meet niche markets. The Agency would not expect a migration into this category of current 4-stroke Class I engines, almost all of which are above 125 cc, because of the minimum size apparently necessary to meet the power demands of typical current applications such as walk behind lawnmowers. However, EPA is concerned that the relatively higher performance of 2-stroke engines could allow 2-stroke engines in the high end of the Class I–B category (e.g., between 90 cc and 100 cc) to meet the 40 g/kW-hr standard and create interest in using them in such current applications as small walk behind lawnmowers. EPA would not want to proliferate the use of such higher emitting engines in current applications and does not intend to allow migration of 2-stroke engines into nonhandheld applications. EPA requests comment on these assumptions and on ways to prevent this proliferation from occurring. EPA also requests comment on the level of the proposed Class I–B standards and the feasibility of achieving lower emission standards with OHV, SV, and 2-stroke engines.

3. $NMHC+NO_X$ Standard for Class I–B Natural Gas-Fueled Engines

In the recent final rule for small SI Phase 2 nonhandheld engines, EPA adopted separate standards for small spark ignition engines fueled by natural gas which manufacturers could certify to in lieu of the otherwise applicable $HC+NO_X$ standards. Because EPA believes it is possible that there could be Class I–B applications designed to run on natural gas, EPA is proposing similar separate standards for Class I–B spark ignition engines fueled by natural gas which could be certified to in lieu of the $HC+NO_X$ standards. EPA believes this option is necessary because the methane portion for gasoline fueled engines is around 5 to 10 percent of total hydrocarbons, whereas for engines fueled with natural gas, the methane portion can be around 70 percent. Because the methane from these engines has a very low ozone forming potential compared to the other hydrocarbons in the engine's exhaust, EPA believes it is appropriate to provide an alternative set of emission standards for engines fueled with natural gas. Otherwise, requiring such engines to meet the same HC standard as gasoline-fueled applications would result in a more stringent standard for natural gas-fueled engines. The proposed $NMHC+NO_X$ standard of 37 g/kW-hr for Class I–B natural gas-fueled applications would provide equivalent stringency to the $HC+NO_X$ standards for gasoline-fueled engines being proposed today. EPA is proposing standards for Class I–B only, as EPA does not expect that natural gas-fueled handheld engines or Class I–A engines might be built. EPA requests comment on the need to establish standards for Class I–A engines operated on natural gas. Aside from having the option to certify to $NMHC+NO_X$ standards, all other aspects of this proposal would pertain equally to engines fueled with natural gas as with gasoline-fueled engines.

4. Useful Life Categories

In the January 1998 NPRM, EPA proposed two useful life categories of 50 and 300 hours for handheld engines. EPA received several comments supporting the addition of a mid-range useful life category for handheld engines, with one manufacturer supporting a level of 125 hours. While EPA believes that 50 hours is appropriate for most of the products targeted at the home consumer, some engines targeted for home consumer use (including some new engines which are expected to enter the market in the next few years) are expected to have designs which tend to be more durable than the 50 hour level yet are not as durable as the commercial grade of 300-hour equipment. As a result, EPA is proposing to add a midrange to the useful life categories for handheld engines of 125 hours as recommended by one manufacturer. Therefore, under

today's proposal, a manufacturer would choose between three useful life categories for handheld engines of 50, 125, and 300 hours. A manufacturer would be responsible for demonstrating compliance with the proposed standards described above in section II.A.2. at whichever useful life level it designated for its engine families.

For the newly proposed category of Class I–A engines, EPA is proposing the handheld engine useful life categories of 50, 125 and 300 hours. EPA believes the engine designs in Class I–A will be similar to handheld engines in terms of durability of design. It should be noted that the proposed useful life designations for Class I–A engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range. For Class I–B engines, EPA is proposing the useful life categories of 125, 250 or 500 hours recently finalized for nonhandheld engines. EPA believes the engines designs in Class I–B will be similar to Class I nonhandheld engines in terms of durability of design. The proposed useful life designations for Class I–B engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range.

5. Selection of Useful Life Category

In the January 1998 NPRM, EPA proposed that the engine manufacturers would be responsible for assuring that the correct useful life was used for certification demonstration and labeling purposes. Specific criteria were proposed which the manufacturers would have had to evaluate and use in documenting their determinations of useful life category selection. Comments received suggested such a requirement was overly rigid and unnecessary. Given the comments received, EPA is still very concerned that manufacturers select the most appropriate useful life category for each engine to assure it is properly evaluated during certification. In addition, because EPA is proposing to include all handheld engines and Class I–A and Class I–B engines in the ABT program which allows the exchange of emission credits across engine families in different useful life categories, the proper selection of the useful life period is important to ensure that the credit program is fair and environmentally sound. However, so as not to add potentially unnecessary burden on the industry, today's SNPRM proposes a less rigid methodology for determining useful life categories that EPA recently finalized for Phase 2 nonhandheld engines. Rather than mandating a fixed set of criteria, this proposal rests the responsibility with the industry to make their best, most conscientious selection. For manufacturers of handheld engines, virtually all engines are placed in specific equipment also manufactured by the engine manufacturer or, in those cases where engines are supplied to another equipment manufacturer, into equipment well known by the engine manufacturer. Class III, IV and V engine manufacturers know the design features and performance characteristics of both their engines and the equipment in which they are installed, and understand the expected in-use operation of this equipment and thus the expected useful life of the engine. Additionally, based on design features these manufacturers build into their engines, they have a good idea of the expected useful life in such applications. Similarly, EPA expects that manufacturers of Class I–A and Class I–B engines will have a good idea of the types of equipment their engines are expected to be used in and, from their marketing information, a reasonably accurate projection of the relative volumes in such applications. Given that these engines will be used in new applications, manufacturers should have an even clearer understanding of these projections. Relying on this information, manufacturers should be able to make good selections of appropriate useful life categories for their engines. While this proposal leaves that responsibility to the manufacturer, EPA expects it would periodically review the manufacturers' decisions to ensure this regulation is being properly implemented and to determine whether modifications to the rules were appropriate. This proposed approach would result in the same regulatory requirement as the State of California, eliminating any extra burden in this regard due to federal rules.

B. Averaging, Banking, and Trading

In today's SNPRM, EPA is proposing to make the comprehensive certification averaging, banking, and trading (ABT) program recently adopted for nonhandheld Phase 2 engines available for Phase 2 handheld engines, Class I–A, and Class I–B engines. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families to Family Emissions Limits (FELs) above the applicable emission standard. However, the increased emissions would have to be offset by one or more engine families certified to FELs below the same emission standard, such that the average emissions in a given model year from all of the manufacturer's families (weighted by various parameters including engine power, useful life, and number of engines produced) are at or below the level of the emission standard. Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer.

The following section describes the proposed ABT program for handheld engines, Class I–A engines, and Class I–B engines. The basic framework of the ABT program is the same as that recently finalized for nonhandheld engines. The proposed program would be the first ABT program for handheld engines, since the Phase 1 rule did not include an ABT program. The January 1998 NPRM included an ABT program, however, the proposed program was limited to nonhandheld engines only. Given the level of the standards contained in the January 1998 NPRM for handheld engines, EPA did not believe an ABT program was necessary for handheld engines. However, because EPA is now proposing significantly more stringent Phase 2 standards for handheld engines, EPA believes an ABT program is an important element in making the stringent Phase 2 emissions standards proposed today achievable with regard to technological feasibility, lead time, and cost. The proposed ABT program is intended to enhance the flexibility offered to engine manufacturers that will be needed in transitioning their product lines to meet the stringent $HC+NO_X$ standards being proposed. The proposed ABT program would also encourage the early introduction of cleaner engines certified under the Phase 2 requirements, thus securing earlier emission benefits. EPA requests comments on the proposed ABT program as well as alternative programs that would provide incentives for manufacturers to achieve emission reductions earlier than required by the proposed standards.

EPA believes that the new ABT program is consistent with the statutory requirements of section 213 of the Clean Air Act. Although the language of section 213 is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 213. The statute does not specify that a specific standard or technology must be implemented, and it requires EPA to consider costs, lead time, and other factors in making

its determination of ''the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available.'' Section 213(a)(3) also indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

As noted above, the proposed ABT program would apply to all classes of handheld engines as well as Class I–A and Class I–B engines. The ABT program would be available for $HC+NO_X$ emissions but will not be available for CO emissions. The ABT program would also apply to natural gas-fueled engines. All credits for natural gas-fueled engines would be determined against the standards to which the engine certified (either the $HC+NO_X$ standard or the optional $NMHC+NO_X$ standards noted earlier). Under the proposal, manufacturers would be allowed to freely exchange $NMHC+NO_X$ credits with $HC+NO_X$ credits.

The ABT program contained in the January 1998 NPRM proposed some restrictions on cross-class averaging for nonhandheld engines. However, the recent final rule eliminated most of those restrictions. Given the level of the standards recently finalized for nonhandheld engines and the level of the standards contained in today's proposal, EPA is far less concerned that credits from one class could result in delays in technology improvement for other classes, and does not believe that any cross-class restrictions are necessary beyond those retained in the final nonhandheld Phase 2 rulemaking. Therefore, today's SNPRM proposes no additional restrictions on credit exchanges across any of the classes of small SI engines. Under the proposed program, manufacturers would be allowed to exchange credits from handheld engines to nonhandheld engines. EPA specifically requests comment on the cross-class exchange of credits between handheld and nonhandheld engines.

Under an ABT program, a manufacturer establishes a family emission limit (FEL) for an engine family that takes the place of the emission standard for all compliance determinations. As part of the ABT program, EPA is proposing upper limits on the FEL values that may be declared by manufacturers under the Phase 2 standards. For Classes III, IV and V, EPA is proposing FEL upper limits based on the Phase 1 standards, adjusted to account for expected average deterioration over the useful life period of these engines. The proposed $HC+NO_x$ FEL upper limits are 300 g/kW-hr for Class III engines, 246 g/kW-hr for Class IV engines, and 166 g/kW-hr for Class V engines. For the newly proposed categories of Class I–A and Class I–B engines, EPA is proposing $HC+NO_x$ FEL upper limits of 94 g/kW-hr and 50 g/kW-hr, respectively. The Class I–A level is based on the maximum certification level of current Phase 1 engines similar in size to those expected to be certified as Class I–A engines (a 26 cc Class IV engine certified to a new engine level of 37.6 g/kW-hr $HC+NO_x$), adjusted to account for an estimated maximum deterioration factor of 2.5 over the useful life of the engine. The Class I–B level is based on the maximum new engine emissions level expected from Class I–B engines (estimated to be 20 g/kW-hr $HC+NO_x$) adjusted to account for an estimated maximum deterioration factor of 2.5 over the useful life of the engine.

EPA is proposing that all credits should be calculated based on the difference between the manufacturer-established FEL and the Phase 2 $HC+NO_x$ standard for the applicable model year using the following equation.

$$\text{Credits} = (\text{Standard—FEL}) \times \text{Production} \times \text{Power} \times \text{Useful life} \times \text{Load Factor}$$

At the time of certification, manufacturers would be required to supply information to EPA on the terms used in the above noted equation. ''Production'' represents the manufacturer's U.S. production of engines for the given engine family, excluding exported engines and engines that will be sold in California. ''Power'' represents the maximum modal power of the certification test engine over the certification test cycle. ''Useful Life'' is the regulatory useful life established by the manufacturer for the given engine family. ''Load Factor'' is a constant that is dependent on the test cycle over which the engine is certified.

Under the proposed ABT program, credits would have an unlimited credit life for the duration of the Phase 2 program and would not be discounted in any manner.

Under the proposed ABT program, manufacturers of handheld engines would be allowed to use portions of the ABT program prior to implementation of the Phase 2 standards to provide an incentive to accelerate introduction of cleaner technologies into the marketplace. The Agency believes that making bankable credits available prior to the effective date of the new standards would reward those manufacturers who take on the responsibility of complying with the Phase 2 requirements sooner than required and would also result in early environmental benefits.

Under the proposed early banking provisions for handheld engines, manufacturers would be allowed to begin using the averaging and banking portions of the ABT program beginning with the 2000 model year for engines certified to the Phase 2 requirements and produced after the effective date of this action. Manufacturers would be allowed to generate early credits from those engine families with FELs below the initial Phase 2 $HC+NO_x$ standards for the appropriate engine class (i.e., 226 g/kW-hr for Class III engines, 187 g/kW-hr for Class IV engines, and 131 g/kW-hr for Class V engines). This proposed approach for early credits from handheld engines is different than the approach recently finalized for nonhandheld engines. Under the recently finalized Phase 2 rule for nonhandheld engines, early credits are only available for engines with FELs below the final standards, not the initial phase in standards. EPA believes a different approach is appropriate for handheld engines because the proposed Phase 2 handheld engine standards represent such dramatic reductions from the Phase 1 standards that will require the complete redesign of nearly every handheld engine currently produced. In contrast for nonhandheld engines, there are already a significant number of engines being produced that EPA believes would already meet the recently finalized Phase 2 standards. Because of the increased effort engine manufacturers will need to expend to meet the proposed Phase 2 handheld standards, EPA believes it is appropriate to allow manufacturers to generate early credits from engines certified with FELs below the initial Phase 2 standards rather than the final Phase 2 standards. If the final Phase 2 handheld engine standards were used for the determination of early credits, the ability of engine manufacturers to generate early credits would be so severely constrained as to make this option not useful; neither the manufacturer nor the environment would benefit from the such an early credit program design. Because the proposed Phase 2 standards for Class I–A and Class I–B engines are scheduled to take effect with the 2000 model year, there is no need to provide manufacturers with the ability to earn early credits from such engines.

All engines for which a manufacturer generates early credits would have to comply with all of the proposed requirements for Phase 2 engines (e.g., the Production Line Testing program

requirements). Manufacturers of handheld engines would not be allowed to trade their early engine credits to other manufacturers until the first effective model year of the Phase 2 standards for the applicable engine class. EPA requests comments on the design of the early credits provisions contained in today's proposal.

As discussed in section II.D. of today's document, EPA is proposing several compliance flexibility provisions for engine manufacturers and equipment manufacturers that allow the limited use of Phase 1 engines in the Phase 2 time frame. Phase 1 engines sold by engine manufacturers under the flexibility provisions would be excluded from the ABT program. In other words, engine manufacturers would not have to use credits to certify Phase 1 engines used for the flexibility provisions even though they would likely exceed the proposed Phase 2 standards.

As noted elsewhere in today's document, EPA is proposing a number of provisions that address post-certification compliance aspects of the proposed standards. In one specific case, EPA would allow manufacturers to use credits from the certification ABT program to address excess emissions situations determined after the time of certification. As noted in the discussion on compliance, EPA does not believe that the typical type of enforcement action that could be taken when a substantial nonconformity is identified (i.e., an engine family recall order) would generally be workable for small SI engines given the nature of the market. Instead, for the purposes of implementing the PLT program, EPA is proposing provisions to allow manufacturers to use engine certification ABT credits to offset limited emission performance shortfalls for past production of engines determined through the PLT program as described in section II.C. of today's SNPRM. Under the proposed provisions, manufacturers would be allowed to use small SI engine certification ABT credits available to them to offset such emission performance shortfalls.

Under today's proposal, EPA would not allow manufacturers to automatically use ABT credits to remedy a past production nonconformance situation in the Selective Enforcement Audit (SEA) program. As described in today's SNPRM, EPA expects to primarily rely on the PLT program to monitor the emissions performance of production engines. However, EPA expects that SEAs may be conducted in certain cases. Therefore, as discussed in section II.C., if EPA were to determine that an engine family is not complying with the standards as the result of an SEA, EPA would work with the manufacturer on a case-by-case basis to determine an appropriate method for dealing with such a nonconformity. The option(s) agreed upon by EPA and the engine manufacturer might, or might not, include the use of ABT credits to make up for any ''lost'' emission benefits uncovered by the SEA.

All of these aspects of the proposed handheld ABT program are consonant with the final ABT program recently adopted for nonhandheld Phase 2 engines.

C. Compliance Program

The compliance program being proposed today is comprised of three parts: a pre-production certification program during which the manufacturer would evaluate the expected emission performance of the engine design including the durability of that emission performance; an assembly line test program which would sample products coming off the assembly line to assure the design as certified continues to have acceptable emission performance when put into mass production; and a voluntary in-use test program during which participating manufacturers would evaluate the in-use emission performance of their product under typical operating conditions. EPA would also have the option to run an SEA program and its own in-use testing for small SI engines.

Under the proposed compliance programs for small handheld SI engines, a manufacturer would divide its product offering based upon specific design criteria which have a potential for significantly different emission performance; these subdivisions are called engine families. Each engine family would be required to meet the standard applicable for the class in which that engine resides unless the manufacturer chooses to participate in the ABT program also being proposed today. (See section II.B. of today's SNPRM for discussion of the proposed ABT program.) The other provisions of the compliance program are explained in more detail below. In all cases, to the best of EPA's knowledge, the requirements of this proposed federal compliance program would be sufficiently similar to the requirements of the California ARB program for these engines such that for engine families sold in both the State of California and federally, the engines selected for testing, the test procedures under which they are tested and the data and other information required to be supplied by regulations can be the same under both programs. Thus, EPA expects that a manufacturer would be able to compile one application for certification satisfying the information needs of both programs, saving the manufacturer time and expense. Similarly, EPA and the California ARB expect to share information from their compliance programs such that any production line testing or in-use testing conducted for one agency would satisfy the similar needs of the other agency, again minimizing the burden on the manufacturers.

1. Certification

This section addresses the proposed certification program for engine manufacturers covered by today's proposal. The certification process as required in the Act is an annual process and requires that manufacturers demonstrate that regulated engines will meet appropriate standards throughout their useful lives. The Act prohibits the sale, importation or introduction into commerce of regulated engines when not covered by a certificate.

Under the January 1998 proposal, manufacturers of handheld engines would have been required to establish deterioration factors for each engine family based on an analysis of technically appropriate data. This data could have included results from the proposed field/bench adjustment program, the proposed handheld engine in-use testing program, as well as other appropriate testing data. The proposed certification requirements for handheld engines were different than those proposed for nonhandheld engines.

Based on comments received on the January 1998 NPRM and EPA's further evaluation of the originally proposed certification program, EPA is revising the proposed certification program for Phase 2 handheld engines significantly. EPA received a significant number of comments regarding the complexity of the proposed certification program, the prohibitive expense of field aging engines, and the advantages of harmonizing EPA's final certification program with that of the California ARB. EPA now believes the complexity of the originally proposed program would make it difficult to manage and organize the certification program for both industry and EPA. EPA also believes that harmonizing its programs with the California ARB would allow the industry to more efficiently comply with the reproposed emission standards and requirements. Additionally, EPA is concerned the field/bench adjustment program may not be statistically reliable enough to establish appropriate

deterioration factors. (In an effort to control the cost of this program, only a minimum amount of data was proposed to be required; this small amount of data would hurt the statistical reliability of any resulting decision.)

In light of these comments and concerns, EPA is reproposing a significantly less complex certification program that would harmonize the handheld Phase 2 program with the requirements of the California ARB's Regulations for 1995 and Later Small Off-Road Engines, amended January 29, 1999. In the reproposed program, the requirements for manufacturers of handheld engines would be the same as those recently finalized for nonhandheld engines. Under today's proposal, manufacturers of handheld engines would be required to demonstrate that their regulated engines comply with appropriate emission standards throughout the engines' useful lives. To account for emission deterioration over time, manufacturers would need to establish deterioration factors for each regulated pollutant for each engine family. This proposal allows manufacturers to establish deterioration factors by using bench aging procedures which appropriately predict the in-use emission deterioration expected over the useful life of an engine or an in-use evaluation which directly accounts for this deterioration. As is the case with many EPA mobile source regulations, the multiplicative deterioration factors could not be less than one. Additionally, where appropriate and with suitable justification, deterioration factors could be carried over from one model year to another and from one engine family to another.

Today's proposal also provides flexibility for small volume engine manufacturers and small volume engine families. Under the proposed provisions, handheld engine manufacturers would be allowed the option of using assigned deterioration factors established by the Agency. The deterioration factors, either assigned or generated, would be used to determine whether an engine family complies with the applicable emission standards in the certification program, the production line testing program, and the Selective Enforcement Auditing program.

As in Phase 1, manufacturers would be allowed to submit certification applications to the Agency electronically, either on a computer disk or through electronic mail, making the certification application process efficient for both manufacturers and the Agency. Also, EPA and the California ARB expect to have a common application format allowing manufacturers to more easily apply for certification.

In today's SNPRM, EPA is also proposing a method by which manufacturers can separately certify configurations for use at high altitude. Manufacturers are currently required by the Phase 1 rule to certify engines for use at any altitude, but the rule does not specifically address separate high altitude and low altitude configuration testing. The existence of, and the need for the high altitude modifications has been a topic of recent discussions between EPA and manufacturers. To allow an engine to perform properly and meet emission standards while being operated at high altitudes, many manufacturers have developed special high altitude carburetor jets or high altitude kits. However, if an engine with such a kit installed is removed from high altitude, the kit would have to be removed and the engine returned to its original configuration for the engine to continue to perform properly and meet emission standards.

Today's proposal would allow manufacturers of both handheld and nonhandheld engines to certify an engine for separate standard and high altitude configurations. All engines would be required to meet, under all altitude conditions, the emission standards proposed today. The proposed method would be available for both Phase 1 and Phase 2 handheld and nonhandheld engines. Without such a certification option, installation of an altitude kit and other associated modifications might be considered tampering by EPA. No test data on engines with high altitude modifications performed would be required as a condition of certification, as this would add significantly to the manufacturer's certification compliance testing cost. Furthermore, no testing seems necessary since the altitude kits and associated modifications are intended to compensate for the change in air density when moving to high altitude by returning the engine to approximately the same operating point as evaluated during required certification testing. Similarly, no special labeling would be required for engines which have such altitude kits certified or for those in-use engines which have had altitude modifications performed. Consumers have a natural incentive to have the high altitude kit installed and adjustments performed when using an engine at altitude as this greatly improves performance; for the same reason EPA expects the modifications to be removed when returning the engine to low altitude. However, EPA believes some additional assurance is needed that the high altitude modifications are designed to provide good emission control and that the instructions for making these modifications are clear and readily available and thus likely to be performed correctly.

To provide this assurance, this proposal would require a manufacturer to list these altitude kits with their appropriate part numbers along with all the other certified parts in the certification application. In the application, the manufacturer would have to declare the altitude ranges at which the appropriate kits would be installed on or removed from an engine for proper emission and engine performance. The manufacturer would also be required to include a statement in the owner's manual for the engine or engine/equipment combination (and other maintenance-related literature intended for the consumer) that also declared the altitude ranges at which the appropriate kits must be installed or removed. Finally, the manufacturer, using appropriate engineering judgement which, at the manufacturer's option, could also include test data, would be required to determine that an engine with the altitude kit installed would meet each emission standard throughout its useful life. The rationale for this assessment would need to be documented and provided to the Agency as part of the certification application.

2. Production Line Testing—Cumulative Summation Procedure

This section addresses the proposed production line testing (PLT) program for engines covered by today's SNPRM. The proposed PLT program contained is the same as that adopted recently for nonhandheld engines and would require manufacturers to conduct manufacturer-run testing programs using the Cumulative Summation Procedure (CumSum).[6] The CumSum program, as proposed today, would require manufacturers to conduct testing on each of their engine families (unless they were relieved of this requirement under provisions granting flexibility). The maximum sample size that would be required for each engine family is 30 engines or 1 percent of a family's projected production, whichever is smaller. However, the actual number of

[6] The CumSum procedure has been promulgated for marine engines in EPA's spark-ignition marine rule at 40 CFR part 91 (61 FR 52088, October 4, 1996). In this section, ''PLT'' refers to the manufacturer-run CumSum procedure. ''PLT'' does not include Selective Enforcement Auditing (SEA), which is addressed separately in section II.C.4. of this preamble.

tests ultimately required would be determined by the results of the testing. With the proposed program, the EPA PLT program and the corresponding California ARB program would be harmonized, requiring manufacturers to use the same CumSum procedure for testing production engines for both agencies. Manufacturers would be able to submit PLT reports to EPA electronically, either on a computer disk or through electronic mail, which should save both the industry and EPA time and money.

As mentioned in the discussion of the proposed ABT program, above, manufacturers could, for a limited amount of production, use ABT credits to offset the estimated excess emissions of previously produced noncomplying engine designs as determined in the PLT program. (The amount of excess emissions would be determined based on the difference between the new FEL established by the manufacturer as a result of the PLT program and the original FEL established prior to the PLT program.) Under today's proposal, a manufacturer could raise the FEL for one engine family per model year. If a PLT program failure required a manufacturer to raise the FEL for more than one engine family per model year, the manufacturer could do so only if the applicable engine family represented no more than ten percent of the manufacturer's production for that model year. For any additional engine families that were found to be in noncompliance as a result of the PLT program, the engine manufacturer would need to conduct projects approved by EPA that were designed to offset the excess emissions from those engines.

With regard to future production of engines identified to be in noncompliance as a result of PLT testing, the manufacturer would be expected to correct the noncompliance problem causing the emission noncompliance either by changing the production process, changing the design (which would require recertification) or raising the FEL to compensate for the higher emissions (also requiring recertification). In the event a manufacturer raised an FEL as a result of a PLT failure, it could do so for future production as well as past production as described above which would require a calculation of credits the manufacturer would need to obtain for the past production engines. EPA expects few instances in which the manufacturer would need to correct a PLT failure through raising the FEL since that would imply the manufacturer incorrectly set the initial FEL for that family. Frequent use of this remedy would suggest the manufacturer was incapable of correctly setting the FELs for its product, in which case EPA would have to reconsider allowing a manufacturer to participate in the ABT program at its option. It should also be noted that compliance with the applicable standard (or the applicable FEL) will be required of every covered engine. Thus, every engine that failed a PLT test would be considered in noncompliance with the standards and must be brought into compliance. EPA's rules allowing the use of the average of tests to determine compliance with the PLT program is intended only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards or applicable FEL.

As discussed in the flexibilities section, EPA is proposing that small volume manufacturers and small volume engine families need not be included in the PLT program at the manufacturer's option.

3. Voluntary In-Use Testing

This section addresses the proposed voluntary in-use testing program. The January 1998 proposal would have required manufacturers of handheld engines to conduct in-use testing on a maximum of 25 percent of their engine families each model year. The proposal would also have allowed these handheld engine manufacturers to fulfill the in-use testing requirements by testing bench-aged engines, provided the manufacturer has successfully completed the field/bench adjustment program. Finally, under the January 1998 proposal, handheld engine manufacturers would have been allowed to participate in an in-use averaging, banking, and trading program.

The foundation of the in-use compliance program for manufacturers of handheld engines in the January 1998 proposal was the Field/Bench Adjustment Program. Based on a thorough evaluation of the proposed program, EPA does not believe the Field/Bench Adjustment Program would be statistically reliable enough on which to build an in-use testing compliance program due to the relatively small amount of data which would have been required. Additionally, in developing this SNPRM, EPA has attempted to harmonize this proposal as closely as possible with the California ARB's Regulations for 1995 and Later Small Off-Road Engines, amended January 29, 1999, allowing the industry to more efficiently comply with the standards and requirements. Based on these factors, as well as industry comments regarding the prohibitive expense of conducting field aged in-use tests, EPA is not including the in-use program contained in the January 1998 NPRM as part of today's reproposal.

However, EPA still desires meaningful in-use data so that it can more appropriately assess the actual emissions inventory of this industry. Therefore, EPA is proposing a voluntary in-use testing program. The proposed voluntary in-use testing program for engines covered by today's SNPRM is the same as the voluntary in-use testing program recently finalized by the Agency for nonhandheld engines. The proposed voluntary in-use testing program would give engine manufacturers the option of using a portion of their PLT resources to generate field aged emissions data. At the start of each model year, manufacturers could elect to place up to 20 percent of their engine families in this voluntary program. For those families in this program, manufacturers would not be required to conduct PLT for two model years, the current year and the subsequent year. (The California ARB has indicated that they would also exempt families in such an in-use testing program from their PLT requirements.) Instead, manufacturers would place a minimum of three randomly selected production engines in existing consumer-owned, independently-owned, or manufacturer-owned fleets. Manufacturers would install the engines in equipment that represents at least 50 percent of the production for an engine family and age the engine/equipment combination in actual field conditions to at least 75 percent of each engine's useful life. Once an engine in this program had been sufficiently field aged, the manufacturer would conduct an emissions test on that engine. Manufacturers would have three calendar years from the date they notified the Agency of their intent to include a family in the program to complete testing.

While the compliance program proposed today would not require a manufacturer to conduct any in-use testing to verify continued satisfactory emission performance in the hands of typical consumers, EPA believes it is worthwhile to have an optional program for such in-use testing. EPA believes it is important for manufacturers to conduct in-use testing to assure the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. If any

information derived from this program indicates a substantial in-use emission performance problem, EPA anticipates the manufacturer would seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. EPA would offer its assistance in analysis of the reasons for unexpectedly high in-use emission performance and what actions might be appropriate for reducing such high emissions. Whether or not a manufacturer chose to conduct a voluntary in-use testing program, EPA could always choose to conduct its own in-use compliance program. If EPA were to determine that an in-use noncompliance investigation was appropriate, the Agency expects it would conduct its own in-use testing program, separate from this voluntary manufacturer testing program, to determine whether a specific class or category of engines is complying with applicable in-use standards.

4. Selective Enforcement Auditing

As noted in the January 1998 proposal, the SEA program is not the Agency's preferred production line testing program for small engines. The CumSum procedures, described above, are being proposed as the production line program that manufacturers would conduct. The SEA program is included in today's SNPRM as a ''backstop'' to the CumSum program and would be used in cases where EPA believes there is evidence of improper testing or of a nonconformity that is not being addressed by the CumSum program. The SEA program, as proposed, would also apply to engine families optionally certified to the small volume manufacturer provisions and the small volume engine family provisions, in cases where manufacturers elect not to conduct PLT testing for such families. However, as for other families, EPA does not expect families certified under the small volume provisions would be routinely tested through an SEA program.

Under today's SNPRM and in contrast to the PLT program, manufacturers who fail an SEA would not have the automatic option of using ABT credits to remedy noncomplying engines already introduced into commerce. The proposed PLT program is designed to allow a manufacturer to continually evaluate its entire production and quickly respond to the results throughout the model year. EPA believes that allowing a manufacturer to use credits, for a limited amount of engines, to remedy past production emission failures is consistent with the continual evaluation provided by the PLT program. The SEA program, in contrast, is designed to be a one time, unannounced inspection of a manufacturer's production line with definitive passing or failing results. EPA believes that in this type of a compliance program, where at most only a few engine families might be tested each year, manufacturers must place more emphasis on the transition from certification to the production line and must set initial FELs accurately. To encourage accurate FEL settings at the time of certification, the proposed SEA program would not allow manufacturers to automatically remedy SEA failures by retroactively adjusting FELs. EPA is proposing that remedies for an SEA failure would be best determined on a case-by-case basis which might or might not include the use of ABT credits depending upon EPA's assessment of the specific case.

D. Flexibilities

In the January 1998 NPRM, EPA proposed a number of flexibilities to ease the transition from the Phase 1 to the Phase 2 program, to ensure that the Phase 2 standards are cost-effective and achievable, and to reduce the compliance burden while maintaining the environmental benefits of the rule. Several comments were received on the flexibilities proposed, some supporting the proposals and others offering recommended changes. In addition, the need for modifications to the proposed set of flexibilities evolved out of the investigations which led to other changes to the proposal including the more stringent handheld engine standards, the addition of Class I–A and Class I–B engine classes, and the expanded ABT program provisions being proposed. The following section summarizes the revised flexibilities proposed with today's SNPRM. EPA requests comments on the proposed flexibilities.

1. Carry-Over Certification

Consistent with other mobile source emission certification programs, EPA is proposing to allow a manufacturer to use test data and other relevant information from a previous model year to satisfy the same requirements for the existing model year certification program as long as the data and other information are still valid. Such ''carry-over'' of data and information is common in mobile source programs where the engine family being certified in the current model year is identical to the engine family previously certified.

2. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families

EPA proposed a number of compliance flexibilities for small volume engine manufacturers and small volume engine families in the January 1998 NPRM. With today's SNPRM, EPA is proposing a slightly revised set of flexibilities for handheld engines that would be available to both small volume engine families and small volume engine manufacturers. The three proposed flexibilities that would be available to manufacturers of small volume engine families and small volume engine manufacturers are as follows: (1) The eligible family or manufacturer could certify to Phase 1 standards and regulations until the third year after the end of the proposed Phase 2 schedule (i.e., the 2009 model year for Classes III and IV and the 2011 model year for Class V engines); such engines would be excluded from the ABT program until they are certified to the Phase 2 standard, (2) the eligible family or manufacturer could certify using assigned deterioration factors, and (3) the eligible family or manufacturer could elect to not participate in the PLT program, however, the SEA program would still be applicable.

With regard to Class I–A and Class I–B, EPA is proposing only one of the flexibilities for small volume engine families and small volume engine manufacturers noted above. EPA is proposing to allow eligible Class I–A and Class I–B small volume engine families or manufacturers to elect to not participate in the PLT program, however, the SEA program would still be applicable. As noted earlier, the proposed Class I–A and Class I–B designations are new, and therefore there are no engine families currently certified as Class I–A or Class I–B engines. Because the engines that will be designated as Class I–A or Class I–B engines will be new designs or existing designs that are expected to be able to meet the proposed standards, EPA does not believe there is a need to offer delayed implementation of the proposed standards or allow manufacturers to use assigned deterioration factors. Therefore, EPA is not proposing either the delayed implementation flexibility or use of assigned deterioration factors flexibility for Class I–A or Class I–B.

EPA originally proposed allowing small volume engine manufacturers to continue producing Phase 1 engines until the last year of the phase in of the Phase 2 standard applicable to the engine's class. (For handheld engines,

the final year of the phase in would have been 2005 under the January 1998 NPRM.) However, since the proposed standards contained in today's SNPRM are significantly more stringent than the standards upon which the original proposed flexibility was based, the number of engine families expected to be modified and, especially, the degree of modification necessary has increased. This is expected to add significantly to the technical and resource burden on the engine manufacturers. As anticipated in the January 1998 proposal, EPA still expects the major engine manufacturers would choose to modify their small volume engine families last as these represent niche markets. Additionally, these niche applications may represent some of the more difficult engine applications due to their unique requirements. The experience gained in designing, producing and getting in-use feedback on their larger engine family designs should be helpful in minimizing the cost and assuring the performance of the small volume engines. Similarly, the design challenges for the small volume engine manufacturer because of the more stringent proposed Phase 2 standards are expected to increase, suggesting more time to accomplish the transition to Phase 2 standards would be warranted. EPA expects manufacturers would take advantage of the extra time being proposed today to smooth the transition to Phase 2 standards by bringing the small volume engines into compliance throughout this time period. Due to the fact that circumstances vary greatly from one manufacturer to another, EPA believes it would be inappropriate to mandate a percent phase-in schedule or some other mandatory rate of phase-in for these small volume engine families and small volume engine manufacturers. Therefore, EPA is proposing only a final compliance requirement that is effective three years after the end of the proposed Phase 2 phase-in schedule. EPA believes that a three year delay is appropriate based on discussions with manufacturers and given the number of engine families expected to be eligible for the proposed flexibilities. EPA has also considered the air quality impact of this proposed flexibility and believes that, under the reproposed provisions, less than two percent of the total small engine production would likely take advantage of this option to delay compliance with the Phase 2 standards with only a negligible impact on the emission benefits expected from the program.

3. Small Volume Engine Manufacturer Definition

As described earlier, EPA proposed a number of flexibilities for engine manufacturers defined as small volume engine manufacturers in the January 1998 NPRM (see section II.D.2.). EPA continues to believe flexibilities aimed at the small volume handheld engine manufacturer are appropriate and is retaining the proposed definition of small volume handheld engine manufacturers in this SNPRM. To qualify as a small volume engine manufacturer, a handheld engine manufacturer would need to produce no more than 25,000 handheld engines annually. In addition, for manufacturers of Class I–A and Class I–B nonhandheld engine families, where EPA is also proposing limited small volume engine manufacturer flexibility, a manufacturer of such engines would need to produce no more than 10,000 nonhandheld engines annually.

4. Small Volume Engine Family Definition

In the January 1998 NPRM, EPA proposed that manufacturers of small volume engine families also be provided the same flexibilities as small volume engine manufacturers (see section II.D.2.). To qualify as a small volume engine family, EPA proposed that a handheld engine family would need to have an annual production level of no more than 2,500 engines. Without such flexibilities, EPA believes the cost and other difficulties of modifying these small volume engine families to comply with the Phase 2 standards may be difficult enough that the manufacturer might either be unable to complete the modification of the engine design in time or may choose for economic reasons to discontinue production of the small volume engine family. The impact of such a scenario would of course fall on the engine manufacturer through reduced engine sales, but would also fall perhaps even more significantly on small volume equipment applications, the most typical use for these small volume engine families. Due to the unique character of these small volume equipment applications, it is quite possible that some equipment manufacturers might not be able to find a suitable replacement engine. In such a case, that equipment manufacturer would also be significantly impacted through lost sales, and consumers would be harmed through the loss in availability of the equipment.

In response to the January 1998 NPRM, the Portable Power Equipment Manufacturers Association (PPEMA) requested a ''slight upward adjustment'' of the proposed 2,500 unit cap for handheld engines. Based on PPEMA's comments, EPA has re-examined the production limits for small volume engine families and believes that the interests of preserving the availability of small volume engine families would be better served by revising the annual production cap to 5,000 units for handheld engine families. (The recent final rule for nonhandheld engines also adopted a production cap of 5,000 units for nonhandheld engines.) EPA believes this proposed change to the definition would allow a larger number of niche equipment applications to be served and the risk of loss in engine availability should be reduced. At the same time, EPA believes the potential for adverse emission impacts remains very small. Based on the higher cutoffs, EPA estimates that 98 percent of handheld engines would still be covered by the full compliance program and subject to the earliest practical implementation of the proposed rule.

Class I–A and Class I–B engine families would also be subject to a cap of 5,000 engines (the same level recently adopted for nonhandheld engines) in order to qualify as a small engine family and be eligible for the proposed small volume engine family flexibility described earlier.

5. Flexibilities for Equipment Manufacturers and Small Volume Equipment Models

In the January 1998 NPRM, EPA proposed three flexibilities aimed at assuring the continued supply under the Phase 2 regulations of engines for unique, typically small volume equipment applications. First, EPA proposed that small volume equipment manufacturers could continue using Phase 1 compliant engines through the third year after the last applicable phase-in date of the final Phase 2 standards for that engine class if the equipment manufacturer was unable to find a suitable Phase 2 engine before then. Second, EPA proposed to allow individual small volume equipment models to continue using Phase 1 compliant engines throughout the time period the Phase 2 regulation is in effect if no suitable Phase 2 engine was available and the equipment was in production at the time these Phase 2 rules were adopted. If the equipment is ''significantly modified'' then this exemption would end, since design accommodations could be made during such a modification to accept an engine meeting Phase 2 standards. Third, EPA proposed a hardship provision that would allow any equipment

manufacturer, regardless of size, for any of its applications, regardless of size, to continue using a Phase 1 engine for up to one more year beyond the last phase-in of the final standard for that engine class if the requirement to otherwise use a Phase 2 compliant engine would cause substantial financial hardship. For today's SNPRM, EPA is retaining the proposed flexibilities, except that the criteria for determining whether someone is a small volume equipment manufacturer is being revised (see section II.D.6. below).

Because the applications expected to use Class I–A or Class I–B engines will be new engines and equipment designs or designs that use engines that already exist under the Phase 1 program (and are expected to meet the proposed Phase 2 standards), EPA does not believe there is a need to provide flexibilities for small volume equipment manufacturers and small volume equipment models in the newly proposed engine classes which would allow delayed introduction of engines certified to the proposed Phase 2 standards. Therefore, no such flexibilities are being proposed for Class I–A or Class I–B.

6. Small Volume Equipment Manufacturer Definition

As part of the January 1998 NPRM, EPA proposed that small volume equipment manufacturers would be defined as those whose annual production for sale in the U.S. across all models was 5,000 or fewer pieces of equipment utilizing handheld engines.

EPA has reexamined the production cutoff level for handheld equipment manufacturers. EPA believes there would be advantages to increasing the production cutoff included in the definition for small volume handheld equipment manufacturers. (EPA's recently finalized rule for nonhandheld engines expanded the cutoff level for the definition of small volume nonhandheld equipment manufacturer to 5,000 units.) Such a change would expand the flexibilities to slightly larger manufacturers who are still, compared to the rest of the industry, among the smallest. Therefore, EPA is proposing a revised definition for small volume handheld equipment manufacturer that is based on an annual production cutoff of 25,000 or fewer units. EPA estimates that this limit would cover approximately two percent of the annual sales in the handheld category. Providing the proposed flexibilities described in the previous section should allow significant relief to these smallest equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

7. Small Volume Equipment Model Definition

EPA is retaining the small volume equipment model definition proposed in the January 1998 NPRM for today's SNPRM. As proposed, the small volume equipment model definition would cover handheld models of 2,500 or less annual production. Providing the proposed flexibilities described in the section on flexibilities for small volume equipment models should allow significant relief to equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

E. General Provisions and Recommendations

In the January 1998 NPRM, EPA discussed a number of general provisions that would impact Phase 2 engines. EPA received comments on several of these issues, as well as recommendations on other general issues. A number of these issues, including the handheld engine definition, use of engines in recreational equipment, engine labeling, and emissions warranty affect some or all of the engines covered by today's SNPRM. These general provisions and other recommendations are discussed in this section of the preamble.

1. Definition of Handheld Engine

With today's SNPRM, EPA is retaining the same definition for handheld engine as was in effect for Phase 1 and is not proposing a new definition for handheld engine, except as discussed below. It should be noted that in response to comments from Honda and others, EPA recently proposed modifications to criteria for determining whether an engine could be classified as handheld that, if finalized, would be applicable for the remainder of Phase 1 and also apply for the Phase 2 program (64 FR 5251, February 3, 1999). Under the proposed modification, a manufacturer would be permitted to exceed the weight limits (14 kg for generators or pumps, or 20 kg for one-person augers) in cases where the manufacturer could demonstrate that the extra weight was the result of using a 4-stroke engine or other technology cleaner than the otherwise allowed two stroke engine. Today's reproposed program would incorporate the Agency's decision reached in the rulemaking addressing the proposed modifications to the handheld definition.

2. Engines Used in Recreational Vehicles and Applicability of the Small SI Regulations to Model Airplanes

Today's SNPRM does not propose any revisions to the provisions relating to engines used in recreational vehicles established in the Phase 1 program, except as discussed below. It should be noted that EPA recently issued a proposal that addresses the applicability of the small SI regulations to engines used in model airplane applications (64 FR 5251). Under this recent proposal, EPA has proposed to consider engines that serve ''only to propel a flying vehicle * * * through air'' to be recreational engines provided they also meet the other existing criteria that apply to that term. As ''recreational'' engines they would be effectively excluded from the small SI program. Today's reproposed program would incorporate the Agency's decision reached in the rulemaking addressing the proposed modifications to the recreational vehicle definition.

3. Engine Labeling

Under the January 1998 NPRM, EPA proposed that manufacturers would be required to state the useful life hours on the engine label. For nonhandheld engines only, EPA proposed an alternative to this engine labeling requirement. Under the alternative proposal, nonhandheld engine manufacturers could use a designator of useful life hours (e.g., A, B, or C) and then include words on the label which would direct the consumer to the owner's manual for an explanation of the meaning of the useful life designator.

As indicated in the January 1998 NPRM, EPA believes that requiring manufacturers to include on the engine label the number of hours of emission compliance for which the engine is properly certified would provide an important tool to consumers in making their purchase decisions between competing engines. In addition, EPA anticipates manufacturers will use the useful life hours of the engine as a marketing tool. EPA originally included the alternative option noted above based on the concern expressed by nonhandheld engine manufacturers that consumers could be confused by the meaning of the useful life period if the specific number of hours was included on the label. However, as indicated in the preamble to the January 1998 NPRM, EPA was concerned that an alternative designation, such as ''A, B, or C'' may not provide the same useful information to the consumer as including the useful life hours directly

on the label. EPA is also aware of labeling options being considered by California that would allow removing the actual hours of operation from the engine label and including additional information on the product, perhaps not permanently affixed to the engine, which would satisfy the need to properly inform consumers. Allowing such labeling would also serve the goal of harmonization which was supported by PPEMA in their comments on the January 1998 NPRM.

With today's SNPRM, EPA is proposing to extend the alternative labeling option contained in the January 1998 NPRM, as noted above, to handheld engines. The Agency sees no reason why consumers would react differently to labeling information whether it is affixed to a handheld engine or a nonhandheld engine. Additionally, this SNPRM proposes to allow other labeling options provided the Administrator determines that such options satisfy the information intent of the label. This proposed option is intended to allow for the nationwide use of the California labeling system. In evaluating the adequacy of an alternative label, EPA would consider the extent to which the manufacturer's alternative engine label combined with other readily accessible consumer information adequately informs the consumer of the emission performance of the engine. The reproposed labeling requirements would be the same as those recently adopted in the final Phase 2 nonhandheld rulemaking.

It should be noted that EPA expects to work in partnership with the industry in developing consumer outreach material to better inform consumers of the emission improvements available through purchase of equipment using Phase 2 engines. EPA expects such outreach material will better serve the informational needs of consumers than just relying on any of the proposed labeling options.

4. Emission Warranty

Under the current regulations, the base emission performance warranty extends for a period of two years of engine use from the date of sale. However, since the January 1998 NPRM was issued, manufacturers of handheld engines have indicated to EPA that there are applications, particularly for commercial equipment, in which the useful life hours of the entire piece of equipment can be surpassed in one year of typical in-use operation. Therefore, EPA is proposing an option whereby manufacturers of handheld engines could request approval from EPA to adopt an emission warranty period of one year if they can demonstrate such a shorter warranty period would be appropriate for that engine/equipment combination. In addition, EPA is dropping the proposed warranty provisions from the January 1998 NPRM which would have required a different Phase 2 warranty statement compared to the Phase 1 warranty statement. Therefore, the Phase 2 provisions specifying what manufacturers must warrant, would remain unchanged from the existing Phase 1 program, and would match those contained in the recently adopted final Phase 2 nonhandheld rulemaking.

III. Projected Impacts

A. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for a number of criteria pollutants, including ozone (O_3), which adversely affect human health, vegetation, materials and visibility. Concentrations of ozone are impacted by HC and NO_X emissions. EPA believes that the standards proposed in this rule would reduce emissions of HC and NO_X and help most areas of the nation in their progress towards attainment and maintenance of the NAAQS for ozone. The following section provides a summary of the roles of HC and NO_X in ozone formation. The following section also addresses the estimated emissions impact of this rule, and the health and welfare effects of ozone, CO, and hazardous air pollutants.

1. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. EPA's primary reason for controlling emissions from small SI handheld engines is the role of their HC emissions in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and volatile organic compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC has resulted in urban and rural areas exceeding the national ambient ozone standard by as much as a factor of three. Thus it is important to control HC over wider regional areas if these areas are to come into and maintain compliance with the ozone NAAQS.

2. Health and Welfare Effects of Tropospheric Ozone

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[7] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extra pulmonary (nervous system, blood, liver, endocrine) function. Elevated ozone levels have also been shown to affect vegetation, including reduced agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increased tree and plant susceptibility to disease, pests, and other environmental stresses, and potential long-term effects on forests and ecosystems.

High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[8] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[9] The value of crops lost to ozone damage, while difficult to estimate precisely, has been estimated to be on the order of $2 billion per year in the United States.[10] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by

[7] United States Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989, pp. VI–11 to 13.

[8] U.S. EPA, *Review of NAAQS for Ozone,* p. X–10.

[9] U.S. EPA, *Review of NAAQS for Ozone,* p. X–10.

[10] U.S. EPA, *Review of NAAQS for Ozone,* p. X–22.

ambient levels of ozone.[11] Specifically, in the San Bernardino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[12]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface via the ''greenhouse effect,'' thereby contributing to global warming,[13] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[14]

3. Estimated Emissions Impact of the Supplemental Proposed Regulations

The emission standards contained in today's proposal are expected to reduce average in-use exhaust HC+NO_X emissions from small SI handheld engines by approximately 78 percent beyond Phase 1 standards for handheld engines by the year 2027, by which time a complete fleet turnover is expected. This translates into an annual nationwide reduction of roughly 264,000 tons of exhaust HC+NO_X in the year 2027 over that expected from Phase 1. Reductions in CO levels beyond Phase 1 levels, due to improved technology, are also to be expected but have not been estimated because EPA does not believe it can accurately quantify the expected benefit.

Along with the control of all hydrocarbons, the proposed standards should be effective in reducing emissions of hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual HAPs in the same proportion as total hydrocarbons.

These emission reduction estimates are based on in-use population projections using growth estimates, engine attrition (scrappage), activity indicators and new and in-use engine emission factors. Data on activity indicators were based on the Phase 1 nonroad small SI regulation. Estimates of engine populations were based on population data available from the PSR databases[15], data provided by small SI engine and equipment manufacturers to EPA, and on a study done for the California Air Resources Board by Booz Allen & Hamilton. Population projections into the future are based on a linear growth assumption. Attrition rates (based on the probability that an engine remains in service into a specific calendar year) for all engines included in this analysis are developed on the assumption that the equipment attrition function may be represented by a cumulative Normal distribution function. The in-use emission factors are based on a multiplicative deterioration factor which is a function of the cumulative hours of equipment usage.

Table 4 presents the emission inventories for the handheld engines covered by this proposed rule which were developed using EPA's NONROAD Model. The total annual nationwide HC and NO_X emissions from small SI handheld engines included in this proposal were estimated for both the baseline scenario (i.e., with Phase 1 controls applied) and the controlled scenario (i.e., the proposed Phase 2 controls). Because there are so few engines expected to be certified under the proposed Class I-A and Class I-B standards, EPA has not included any emissions from such engines in the inventory or benefit projections. The reader is directed to Chapter 6 of the Supplemental Draft RIA for a complete description of the inventory modeling analysis.

TABLE 4.—PROJECTED ANNUAL EXHAUST HC+NO_X Emissions from Handheld Equipment (Tons/Year)

Year	With Phase 1 Controls only	With the Proposed Phase 2 Program	Tons Reduced due to the Proposed Phase 2 Program	Percentage Reduction (percent)
2000	207,257	207,257	.....	.....
2005	227,039	126,602	100,437	44.2
2010	250,390	60,992	189,398	75.6
2015	274,072	61,583	212,489	77.5
2020	297,967	66,276	231,691	77.8
2025	321,400	71,436	249,964	77.8

4. Health and Welfare Effects of CO Emissions

CO is a colorless, odorless gas which can be emitted or otherwise enters into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important for small SI handheld engines because the operator of a handheld application is close to the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine.

The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes, have also been topics of substantial research efforts. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

5. Health and Welfare Effects of Hazardous Air Pollutant Emissions

The focus of today's proposal is reduction of HC emissions as part of the solution to the ozone nonattainment problem. However, direct health effects

[11] U.S. EPA, *Review of NAAQS for Ozone*, p. X–27.

[12] U.S. EPA, *Review of NAAQS for Ozone*, p. X–29.

[13] NRC, *Rethinking the Ozone Problem*, p. 22.

[14] *The New York Times*, September 15, 1992, p. C4.

[15] Power Systems Research, Engine Data and Parts Link data bases, St. Paul, Minnesota, 1992.

are also a reason for concern due to direct human exposure to emissions from small SI handheld engines during the operation of handheld equipment. Of specific concern is the emission of hazardous air pollutants (HAPs). In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's regulatory proposal should be effective in reducing HAPs such as benzene and 1,3-butadiene, in so far as these are components of the HC emissions being reduced by the Phase 2 standards.

Benzene is a clear, colorless, aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure. The International Agency for Research on Cancer (IARC), classified benzene as a Group I carcinogen, namely an agent carcinogenic to humans. Occupational studies continue to provide the bulk of evidence of benzene's carcinogenicity. Workers are exposed at much higher levels than is the general public. Human epidemiologic studies of workers in highly exposed occupations have demonstrated that exposure to benzene can cause acute nonlymphocytic leukemia and other blood disorders, that is, preleukemia and aplastic anemia. Additionally, changes in blood and bone marrow consistent with hematotoxicity are recognized in humans and experimental animals. Benzene has also been linked with genetic changes in humans and animals.

1,3-butadiene is a colorless, flammable gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3-butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions. The Health Risk Assessment of 1,3-Butadiene (EPA/600/P–98/001A, February 1998), concludes that 1,3-butadiene is a known human carcinogen, based on three types of evidence: (1) Excess leukemia in workers occupationally exposed to 1,3-butadiene (by inhalation), (2) occurrence of a variety of tumors in mice and rats by inhalation, and (3) evidence in animals and humans that 1,3-butadiene is metabolized into genotoxic metabolites. Other health effects due to very high levels of exposure include heart, blood and lung diseases.

Because air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish once the proposed program becomes effective. Consequently, exposure to HAPs from new handheld engines would be reduced, as would associated health and environmental effects. Although there is little data on direct health effects of small SI engines, one Swedish study concluded that benzene emissions from chainsaw engines were rather high.[16]

B. Cost and Cost-Effectiveness

EPA has calculated the cost-effectiveness of this proposed rule by estimating costs and emission benefits for these engines. EPA made best estimates of the combination of technologies that an engine manufacturer might use to meet the proposed standards, best estimates of resultant changes to equipment design, engine manufacturer compliance program costs, and engine fuel savings in order to assess the expected economic impact of the proposed Phase 2 emission standards for handheld engines. Emission benefits are taken from the results of the environmental benefit assessment (see section III.A. above). The resulting cost-effectiveness result of the proposed Phase 2 standards is approximately $2,146 per ton of $HC+NO_X$ if fuel savings are not taken into account. If fuel savings are considered as a credit against cost, the cost-effectiveness calculation results in approximately $1,911 per ton of $HC+NO_X$. This section describes the background and analysis behind these results.

The analysis for this proposal is based on data from engine families certified to EPA's Phase 1 standards, and information on the latest technology development and related emission levels that the Agency obtained prior to and since the publication of the January 1998 NPRM. The analysis does not include any production volumes that are covered by the California ARB's standards. The California ARB will implement emission standards for many of these engines prior to the proposed federal Phase 2 regulations. Therefore, this analysis only accounts for costs for each engine sold outside California and those engines sold in California that are not covered by the California ARB rules, such as those that California determined are used in farm and construction equipment. EPA assumed that any Phase 1 engine design that would need to be modified to meet Phase 2 standards was assumed to incur the full cost of that modification, including design cost. Similarly, the cost to equipment manufacturers was assumed to be fully attributed to this federal rule even if an equipment manufacturer would have to make the same modifications in response to the California ARB regulations. The details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 7 of the Supplemental Draft RIA for this rule. EPA requests comment on its cost effectiveness analysis and requests any relevant information that would assist the Agency in revising the analysis as appropriate.

1. Class I–A and Class I–B

No costs for Class I–A are included in this Phase 2 regulation. This is due to several factors. First, costs for research and development for engines in Class I–A are included in the research and development of handheld engine families (Classes III–V) since they are the same engine families, but would just be allowed to be used in nonhandheld applications. Second, certification and PLT testing for these engine families for use to handheld applications (Classes III–V) will likely be used toward certification for this class. In regards to benefits, no benefits for Class I–A engine families were estimated due to the anticipated limited use (i.e., small niche markets) of these engines in nonhandheld applications. Because no Class I engine families currently exist in this displacement range, EPA would not expect a loss in the Phase 2 Class I emission benefits from the adoption of the proposed Class I–A standards.

The costs for Class I–B include only certification to the Phase 2 regulation. The EPA Phase 1 certification database (as of September 1998) indicates there are only three engine families (two of these meet the proposed small volume engine family cutoff) that would be certified to this class, two are SV engines and one is an OHV engine, all with similar emission results for $HC+NO_X$. The engine families can currently meet the proposed emission standards for this class and therefore no additional variable costs or fixed costs were included for research and development or production. In addition, the Phase 2 program allows small volume engine families and manufacturers an option to perform PLT. No benefits are included for it is not known if all of the engine families in this newly proposed displacement

[16] ''Occupational Exposure to Chain Saw Exhausts in Logging Operations,'' American Industrial Hygiene Association, J48, 1987.

category will utilize the new class due to the fact that these engines must be certified to the California ARB standards (16.1 g/kW-hr $HC+NO_X$ for engines between 60 cc and 225 cc) if they are to be sold in California. Also, the low production estimates for engine families in this class are a very small fraction of the overall engine sales in this category which make up the benefits for the Phase 2 nonhandheld engine rulemaking and therefore should have no appreciable impact on the emission benefits of the Phase 2 rule for nonhandheld engines.

2. Handheld Engine Technologies

Table 5 lists the technologies that have been considered in the cost estimation for Class III–V engines in this proposed rulemaking. Additional detail regarding the impact of these modifications can be found in Chapter 3 of the Supplemental Draft RIA.

TABLE 5.—Potential Technology Improvements Per Class and Engine Design

Technologies	Class	Engine design
Compression Wave Technology with Catalyst	III	2-stroke
Compression Wave Technology with Catalyst Stratified scavenging with catalyst 4-stroke engine	IV	2-stroke
None	IV	4-stroke
Compression Wave Technology Stratified scavenging	V	2-stroke
Likely only applicable to the smallest Class V engines	V	4-stroke

3. Handheld Engine Costs

The engine cost increase is based on incremental purchase prices for new engines and is comprised of variable costs (for hardware, assembly time and compliance programs), and fixed costs (for R&D and retooling). Variable costs were applied on a per engine basis and fixed costs were amortized at seven percent over five years. Engine technology cost estimates were based on a study performed by ICF and EF&EE in October 1996 entitled ''Cost Study for Phase Two Small Engine Emission Regulations'' and cost estimates provided by industry in confidence. Details of the assumed costs and analysis can be found in Chapters 3 and 4 of the Supplemental Draft RIA.

Analysis of the EPA Phase 1 certification database, as of September 1998, was conducted to determine a potential impact of the proposed Phase 2 standards on each manufacturer assuming the proposed ABT program would be available to engine manufacturers. While the proposed ABT program would allow credit exchanges across classes, this analysis considered only ABT within each class since some manufacturers produce substantially in only one handheld class. The choice of technologies for emission improvement of these engine families was based on the engine family that would be most influential in reducing a manufacturer's overall average emission level within that class. The cost analysis was updated with consideration of cost information submitted in confidence by several engine manufacturers in order to most accurately reflect expected costs.

For Class III, review of EPA's Phase 1 database showed that 78 percent of the engine families would need to incorporate at least some of the technologies listed in Table 5. For Class IV, review of EPA's Phase 1 certification database shows that 84 percent of the engine families would need to incorporate emission improvements from amongst those listed in Table 5. For Class V, review of EPA's Phase 1 database showed that 65 percent of the engine families would need to incorporate at least some of the technologies listed in Table 5. (It should be noted that a small number of the engine families in Class V are lawnmowers or snowblowers which either have their own schedule for meeting emission standards from Phase 1 (existing handheld equipment with 2-stroke engines, such as some lawnmowers) or do not have to meet the $HC+NO_X$ standards due to sole wintertime use (such as snowblowers)). The incorporation of such technologies would require both variable and fixed expenditures.

The proposed Phase 2 emission standards for this diverse industry would impact companies differently depending on a company's current product offering and related deteriorated emission characteristics used in establishing FELs for use in averaging emissions across engine families. Some companies may improve the emission characteristics of their large volume engine families to provide credits for their smaller volume families. The real world impact on engine manufacturers would also be influenced by a manufacturer's ability to reduce the emissions from its major impact engine family in light of competition with others in the marketplace.

4. Handheld Equipment Costs

In most cases, the companies that manufacture engines for use in handheld equipment also manufacture the equipment. There are a small number of independent equipment manufacturers which do not make their own engines (ref: 1996 PSR EOLINK). Due to the overwhelming number of equipment models manufactured by engine/equipment manufacturers compared to the small number of independent equipment manufacturers, information for the analysis was taken from the known data in EPA's Phase 1 certification database which contains information from the engine/equipment manufacturers. Additional information was added from the auger equipment manufacturers who have been in touch with EPA throughout the Phase 2 process. Due to the degree of estimation used in the analysis, it is assumed that any equipment manufacturers not included in the analysis would not have a significant impact on the analysis. The costs for equipment conversion for handheld equipment was derived from the ICF/EF&EE cost study [17] which contained estimates based on the engine technology being utilized. Full details of EPA's cost analysis can be found in Chapter 4 of the Supplemental Draft RIA. EPA has assumed that capital costs would be amortized at seven percent over ten years.

This rulemaking assumes that the majority of Class III through V engines would be converted to using some form of compression wave technology with catalyst, mini 4-stroke or stratified scavenging with catalyst. The split in equipment impact was dependent on the split in technologies assumed amongst engines in each engine class. This was due to the vertical integration of this industry. The engine design impacts with the compression wave technologies with catalyst are assumed to be one injection mold design change for the engine shroud to accommodate cooling patterns for the engine and the muffler/exhaust gas temperatures. For stratified scavenging with a catalyst, the equipment must assure that it can house the new engine which may be slightly larger than its predecessor due to power loss. In addition, as with the compression wave technology, the equipment must allow for adequate cooling and protection of the user from the hot muffler. Several engine shroud changes are necessary along with added

[17] ICF and Engine, Fuel and Emissions Engineering, Incorporated; ''Cost Study for Phase Two Small Engine Emission Regulations'', Draft Final Report, October 25, 1996, in EPA Air Docket A–93–29, Item #II–A–04.

heat shields and air flow path modifications due to the use of the catalyst. Mini 4-strokes require a total redesign of the engine shroud, tank placements, etc. due to the new design of the engine. For this rulemaking, the analysis assumes that most Class III engines will utilize compression wave technology with a catalyst and some engines using stratified scavenging with a catalyst. The majority of Class IV engines are assumed to use compression wave technology with a catalyst and a small number of engines are assumed to use stratified scavenging with a catalyst or mini 4-stroke technologies. The majority of Class V engines are assumed to utilize compression wave technology and a small number are assumed to use stratified charge.

5. Handheld Operating Costs

The total life-cycle operating costs for this proposal include any expected decreases in fuel consumption. Life cycle fuel cost savings have been calculated per class using the NONROAD emission model. The model calculates fuel savings from the years of implementation to 2027 and takes into account factors including equipment scrappage, projected yearly sales increase per equipment type, and engine power. Details on the assumptions and calculations on fuel savings are included in Chapters 4 and 7 of the Supplemental Draft RIA.

Based on information described in Chapter 3 of the Draft Supplemental RIA (see section 3.2), a fuel consumption savings of 30 percent has been assumed from the two stroke engines as they are converted to compression wave, mini 4-stroke, or stratified scavenging design. The designs are expected to result in improved fuel economy since the engine designs may run on a leaner air/fuel mixture with or without improved combustion efficiency and reduce or altogether eliminate scavenging with fuel/oil mixture.

6. Cost Per Engine and Cost-Effectiveness

a. Cost Per Engine

Total costs for this proposal would vary per year as engine families are phased-in to compliance with the proposed Phase 2 standards over several years, as capital costs are recovered, and as compliance programs are conducted. The term ''uniform annualized cost'' is used to express the cost of this proposal over the years of this analysis.

The methodology used for estimating the uniform annualized cost per unit is as follows. Cost estimates from 1996 and 1997 model years, for technology and compliance programs respectively, were estimated and increased to 1998 dollars using the GDP Implicit Price deflator (1.9% in 1996, 1.9% in 1997 and 1.0% in 1998).[18] While a number of technologies are potentially possible for these engines, only the costs for one technology were chosen in order to simplify the estimates of the technologies manufacturers will choose to implement in the future years. Engine technology costs for all engine designs in Classes III and IV were based on compression wave (John Deere LE) with catalyst (cost information from MECA and ICF). The most detailed cost information was available from these sources and it is believed that the technology will prove to be most applicable to the broad range of engines. Engine technology costs for engine designs in Class V were also based on the John Deere LE technology, however no catalyst cost was applied for it is assumed that the standard does not require catalysts. While the technology is not yet proven in Class V engines, it is believed that it may likely be applicable. The cost estimates, including licensing fee, are assumed to allow room for expected costs from other technologies. EPA's Phase 1 database was then analyzed to determine the number of engine families per class that would likely incorporate the emission reduction technologies taking into consideration the availability of the proposed ABT program. The estimated costs per year were then calculated by multiplying the number of engine families and corresponding production volume by the fixed and variable costs per technology grouping, respectively. Since the majority of equipment manufacturers are also engine manufacturers in this market, retail markups used are 16 percent by the engine/equipment manufacturer and 5 percent by the mass merchandiser. All markups are based on industry-specific information from the Phase 1 program. For compliance program costs, the costs for certification bench aging were estimated based on the number of engine families in EPA's Phase 1 database and the expected certification date under the phase in of the proposed Phase 2 standards. To complete the calculation of the uniform annualized cost per unit, all of these costs are summed per year and then discounted seven percent to the first year of Phase 2 regulation. The yearly costs are summed and a uniform annualized cost is calculated. The uniform annualized cost is then divided by production at two points in time, the first full year of implementation of the proposed Phase 2 standards (2006 for Classes III and IV and 2008 for Class V), and the last year of this analysis (2027), to obtain two separate uniform annualized costs per unit. The average of these two values is then presented as the uniform annualized cost per unit in Table 6.

The yearly fuel savings (tons/yr) per class were calculated from the NONROAD model. The yearly fuel savings (tons/yr) were converted to savings (1998$) through conversion to gallons per year multiplied by $0.765 (a 1995 average refinery price of gasoline to end user, without taxes) increased to 1998 using the GDP deflator for 1996, 1997 and 1998. The yearly fuel savings were then discounted by 7 percent to the first year of Phase 2 regulation, for each engine class. The yearly results were totaled and then divided by an annualized factor to yield the uniform annualized fuel savings. The fuel savings for each class was calculated for the production years of 2006, 2008 and 2027. The average of these two values was utilized as the average fuel savings per unit per class per year as shown in Table 6.

The average resultant cost per unit class is calculated by subtracting the average fuel savings from the average cost, see Table 6. The reader is directed to Chapter 7 of the Supplemental Draft RIA for more details of this analysis.

TABLE 6.—ENGINE YEARLY FUEL SAVINGS AND RESULTANT COST PER UNIT COSTS BASED ON UNIFORM ANNUALIZED COSTS (1998$)

Class	Cost Per Unit	Savings Per Unit	Resultant Cost Per Unit
III	$17.35	$0.50	$16.85
IV	22.84	1.02	21.82
V	53.42	3.04	50.38

Note: Nearly all of the handheld industry is vertically integrated and therefore it is most appropriate to acknowledge cost/unit rather than cost/engine for the engine and equipment manufacturers are the same in nearly all cases.

b. Cost-Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed HC+NOx standards over the typical lifetime of the handheld, Class I–A and Class I–B equipment that would be covered by today's proposal. EPA has examined the cost-effectiveness by

[18] Information obtained from the Bureau of Economic Analysis' website (www.bea.doc.gov/bea/dn/niptbl-d.htm#).

performing a nationwide cost-effectiveness analysis in which the net present value of the cost of compliance per year is divided by net present value of the HC+NOx benefits. The resultant discounted cost-effectiveness is $2,146 cost/ton HC+NOx without fuel savings factored in, and $1,911 with fuel savings taken into consideration. Chapter 7 of the Supplemental Draft RIA contains a more detailed discussion of the cost-effectiveness analysis. The overall cost-effectiveness of this proposed rule on HC+NOx emission reductions, with fuel savings, is shown in Table 7 compared to the cost effectiveness of other nonroad rulemakings, which also reflect fuel savings.

TABLE 7.—COST-EFFECTIVENESS OF THE PROPOSED PHASE 2 HANDHELD, CLASS I–A AND CLASS I–B ENGINE STANDARDS (WITH FUEL SAVINGS) COMPARED TO OTHER NONROAD PROGRAMS

Nonroad Program	Cost-effectiveness	Pollutants
Proposed Phase 2 Small SI Handheld Engines	$1,911/ton	HC+NOx.
Phase 2 Small SI Nonhandheld Engines	$507/ton	HC+NOx.
Phase 1 Small SI Engines	$217/ton	HC+NOx.
Recreational Marine SI Engines	$1,000/ton	HC.
Tier 2/3 Standards for Nonroad CI Engines	$410–$650/ton	HC+NOx.

IV. Public Participation

The process for developing this supplemental proposed rule provided several opportunities for formal public comment. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 1997 (62 FR 14740) which announced the signing of two Statements of Principles (SOPs) with the small engine industry and several other interested parties. The ANPRM and included SOPs outlined possible programs which would increase the stringency of the small engine regulations compared to Phase 1 rules. Comments were received in response to this ANPRM which, in combination with the programs outlined in the ANPRM, formed the basis of the Notice of Proposed Rulemaking (NPRM) for Phase 2 standards which was published on January 27, 1998 (63 FR 3950). A public hearing was held on February 11, 1998 during which oral testimony was received on the proposal. Written comments were received during the formal comment period for the proposal and some additional written comments were received after the formal comment period closed. To expand upon comments received during the comment period and to address specific questions EPA had of the industry regarding technical feasibility and cost of some options for Phase 2 standards, EPA received additional information after the close of the formal comment period and participated in a number of phone conversations and meetings with industry representatives for this purpose. All of this information that is germane to Phase 2 handheld small SI standards, including documentation of phone calls and meetings, has been included in the docket for this supplemental proposed rule. Since considerable information was received after the formal comment period closed, a Notice of Availability highlighting the supplemental information was also published on December 1, 1998 (63 FR 66081) alerting interested parties to the availability of this supplemental information. Much of this information was relied upon in support of the recently finalized Phase 2 nonhandheld small SI program. All relevant information received, regardless of the date of receipt, was, to the maximum extent possible, considered in the development of this supplemental proposed rule for the Phase 2 handheld small SI program.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must assess whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this rulemaking is a ''significant regulatory action'' because the proposed standards and other regulatory provisions, are expected to have an annual effect on the economy in excess of $100 million. A Supplemental Draft RIA has been prepared and is available in the docket associated with this rulemaking. This proposal was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB are in the public docket for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant economic impact on a substantial number of entities.

EPA has identified industries that would be subject to this rule and has contacted small entities and small entity representatives to gain a better understanding of the potential impacts of the proposed Phase 2 handheld engine program on their businesses. This information was useful in estimating potential impacts of this proposal on affected small entities, the details of which are more fully discussed in Chapter 8 of the Supplemental Draft RIA. Small not-for-profit organizations and small governmental jurisdictions are not expected to be impacted by this proposal. Thus EPA's impact analysis focuses on small businesses. For purposes of the impact analysis, ''small business'' is defined by number of employees, according to published Small Business Administration (SBA) definitions. Since handheld equipment

manufacturers also tend to be the engine manufacturers, which also tend to be larger businesses, there are few small business entities involved in the analysis.

However, the Agency desires to minimize, to the extent appropriate, impacts on those companies which may be adversely affected, and to ensure that the emissions standards are achievable. Thus, flexibility provisions for the rule (discussed earlier in section II.D.) were developed based on analysis of information gained through discussions with potentially affected small entities as well as analysis of other sources of information, as detailed in Chapters 8 and 9 of the Supplemental Draft RIA. Many of the flexibilities in today's proposal should benefit the engine and equipment manufacturers that do qualify as small business entities.

The economic impact of the proposed rule on small entity engine and equipment manufacturers was evaluated using a ''sales test'' approach which calculates annualized compliance costs as a percent of sales revenue. The ratio is an indication of the severity of the potential impacts. EPA expects that, at worst, 3 small entity engine manufacturers and 6 small entity equipment manufacturers would be impacted by more than one percent of their sales revenue. Also, no more than 4 entities would be impacted by more than three percent of their annual sales revenue, as indicated by the analysis. This base case analysis assumes that manufacturers do not take advantage of the flexibilities being offered, but that they would be able to pass through most necessary price increases to the ultimate consumer. EPA would thus expect today's proposed rule to have a minimal impact on small business entities.

However, EPA is proposing a number of flexibilities to further reduce the burden of compliance on any small-volume engine manufacturers, small volume equipment manufacturers and manufacturers of small-volume engine families and small-volume equipment models. The Agency received a number of comments from engine and equipment manufacturers, which were generally supportive of the flexibilities initially proposed, but which suggested changes in production caps and other provisions. EPA has incorporated many of these suggested changes to the extent possible in this proposal, keeping in mind equity and air quality considerations. Given these flexibilities being afforded to the engine and equipment manufacturers, the results of the analysis suggest that of those small entities analyzed, only one small business engine manufacturer and none of the small business equipment manufacturers would likely experience an impact of greater than one percent of their sales revenue. Other outreach activities have also indicated that the impact of today's proposed rule could be minimized given sufficient lead time to incorporate the new technology with normal model changes. Again, the Agency has not attempted to quantify the beneficial impact on small volume manufacturers of the lead time provided (which can include delaying the impact of these rules up until the 2009 model year for Classes III and IV and up until the 2011 model year for Class V).

Although EPA believes that the above-mentioned flexibility provisions will minimize any adverse impact on small entities (see Chapter 8 of the Supplemental Draft RIA), the Agency has already adopted a hardship relief provision for nonhandheld engines that would also apply to handheld engines. This was developed to further ensure that standards can be achieved without undue hardship on the business entities involved. While it is difficult to project utilization of such a provision, EPA expects that it could further reduce any possible adverse economic impact of the proposed rule.

The results of the impact analysis show minimal impacts on small businesses. EPA expects that such impacts will be negligible if small companies take advantage of the above-mentioned flexibilities. Most of the small companies contacted considered it likely that they would be able to pass most of their cost increases through to their customers. Many of these entities are also involved in filling niche markets, and are thus in a particularly good position to pass these costs along to the ultimate consumers. Finally, the ample lead time contained by today's proposed rule should also allow for an orderly transition to the more advanced technology. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis for this proposal has not been prepared. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. In spite of the expected minimal impacts on small entities, EPA will continue its efforts to notify small business engine and equipment manufacturers of this proposed rule and to inform them of their opportunities for providing feedback to the Agency.

C. Paperwork Reduction Act

The information collection requirements in this supplemental proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

The information planned to be collected via this supplemental proposed rule is necessary to assure that the engine manufacturers required to seek certification of their engines have fulfilled all the essential requirements of these proposed regulations. In particular, this information will document the design of the engine for which certification is sought, the type(s) of equipment in which it is intended to be used and the emission performance of these engines based upon testing performed by or on behalf of the engine manufacturer. Additional, essential information is necessary to document the results of testing performed by the manufacturer under a proposed production line testing program to determine that the engines, as manufactured continue to have acceptable emission performance. Finally, if the manufacturer elects to conduct testing of in-use engines under a voluntary in-use testing program contained in the proposed regulations, information is necessary to document the results of that in-use testing program.

Table 8 provides a listing of the information collection requirements associated with the proposed Phase 2 program for nonroad SI handheld engines at or below 19 kW along with the appropriate OMB control numbers. The cost of this burden has been incorporated into the cost estimate for this rule. The Agency has estimated that the public reporting burden for the collection of information required under this supplemental proposed rule would average approximately 87,120 hours annually for the industry at an estimated annual cost of $5,360,000. The hours spent by an individual manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of

engine families, production changes, emission defects etc.

TABLE 8.—PUBLIC REPORTING BURDEN

Type of Information	OMB Control No.
Certification	2060–0338
Averaging, banking and trading	2060–0338
Production line testing	N/A
Pre-certification and testing exemption	2060–0007
Engine exclusion determination	2060–0124
Emission defect information	2060–0048
Importation of nonconforming engines	2060–0294

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Office for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 28, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 27, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this supplemental proposal.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of greater than $100 million in any one year, the Agency has prepared a budgetary impact statement and has addressed the selection of the least costly, most cost-effective or least burdensome alternative. While this proposed rule does not impose enforceable obligations on State, local, and tribal governments, because they do not produce small SI handheld engines or equipment, EPA has estimated the proposed rule to cost the private sector an annualized cost of $359 million per year (over the 20 year period from 2002 to 2021). However, the Agency has appropriately considered cost issues in developing this proposed rule as required by section 213(a)(3) of the Clean Air Act, and has designed the proposed rule such that it will in EPA's view be a cost-effective program. Because small governments would not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

The impact statement under section 202 of the Unfunded Mandates Act must include: (1) A citation of the statutory authority under which the rule is adopted; (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment; (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry; (4) where relevant, an estimate of the effect on the national economy; and (5) a description of the EPA's consultation with State, local, and tribal officials. Because this proposed rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, EPA has prepared the following statement with respect to sections 202 through 205 of the Unfunded Mandates Act.

1. Statutory Authority

This rule proposes standards for emissions of $HC+NO_X$ and CO from small nonroad SI handheld engines pursuant to section 213 of the Clean Air Act. Section 216 defines the terms ''nonroad engine'' and ''nonroad vehicle.'' Section 213(a)(3) requires these standards to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Section 213(b) requires the standards to take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety. Section 213(d) provides that the standards shall be subject to sections 206, 207, 208 and 209 of the CAA, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 202. Therefore, the statutory authority for this rule is as follows: sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended. Moreover, this proposed rule is being issued pursuant to a court order entered in *Sierra Club* v. *Browner,* No. 93–0124 and consolidated cases (D.D.C.).

2. Social Costs and Benefits

The social costs and benefits of this proposed rule are discussed in sections III.A. and III.B. of this notice, and in Chapters 6 through 7 of the Supplemental Draft RIA. Those discussions are incorporated into this statement by reference.

3. Effects on the National Economy

As stated in the Unfunded Mandates Act, macroeconomic effects tend to be measurable, in nationwide economic models, only if the economic effect of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of $15 billion to $30 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. Because the economic impact of the proposed Phase 2 rule for small SI handheld engines is expected to be far less than these thresholds, no estimate of this proposed rule's effect on the national economy has been conducted.

4. Consultation With Government Officials

Today's proposed rule would not create a mandate on State, local or tribal governments, since it would not impose any enforceable duties on these entities who do not produce small SI handheld engines or equipment. Thus, EPA did not consult with State, local or tribal governments in the context of discussing mandated costs that would apply to such governments. However, EPA did consult with state governmental representatives, and with representatives of associations representing state air regulatory agencies, in the contexts of developing the most stringent achievable regulations and of addressing state ozone attainment needs. The consulted entities include the California ARB and the Northeast States for Coordinated Air Use Management (NESCAUM). These consultations are documented in the record for this rule, and are reflected and discussed in the SOPs, the March 1997 ANPRM, the January 1998 NPRM, the December 1998 Notice of Availability, the recently finalized Phase 2 rule for nonhandheld small SI engines and equipment, and today's SNPRM.

5. Regulatory Alternatives Considered

To ensure the cost-effectiveness of this proposed rule and still fulfill the intent of the Clean Air Act, EPA has proposed numerous flexibility provisions that EPA expects would reduce the burden of the Phase 2 program for small volume manufacturers and manufacturers of small volume models and families. The flexibility provisions are discussed in section II.D. of today's document. Moreover, the technological options considered for the proposed rule's standards and related provisions are discussed in section II.A. of the document. EPA specifically requests comment on the standards contained in today's reproposal and the alternative set of standards (described in section II.A.) supported by a number of handheld engine manufacturers. Section II.B. discusses the proposed ABT program, and section II.C. discusses the proposed compliance program for Phase 2 handheld engines.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. While commenters suggested the use of ISO 8178 test procedures for measuring emissions, the Agency has decided not to propose the ISO procedures in this SNPRM. The Agency believes that these procedures would be impractical because they rely too heavily on reference testing conditions. Since the test procedures in these proposed regulations would need to be used not only for certification, but also for production line testing, selective enforcement audits, and voluntary in-use testing, EPA believes they must be broadly based. In-use testing is best done outside tightly controlled laboratory conditions so as to be representative of in-use conditions. EPA believes that the ISO procedures are not sufficiently broadly usable in their current form for this proposed program, and therefore should not be adopted by reference. EPA has instead proposed to continue relying on the procedures outlined in 40 CFR Part 90. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could be adopted by reference at that point.

F. Executive Order 13045: Protection of Children's Health

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) Was initiated after April 21, 1997 or for which a Notice of Proposed Rulemaking was published after April 21, 1998; (2) is determined to be ''economically significant'' as defined under Executive Order 12866; and (3) 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 all three criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045, because substantive actions were initiated before April 21, 1997 and EPA published a Notice of Proposed Rulemaking before April 21, 1998. The EPA interprets Executive Order 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 supplemental proposed rulemaking is based on technology performance and not health or safety risks. Therefore, EPA does not have reason to believe this proposed action involves environmental health and safety risks that present a disproportionate risk to children.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule would not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities, because they do not produce small SI handheld engines or equipment. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected tribal governments 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 proposed rule would not significantly or uniquely affect the communities of Indian tribal governments because it would not impose any enforceable obligations on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

VI. Statutory Authority

Authority for the actions set forth in this proposed rule is granted to EPA by Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—General

1a. Section 90.1 is proposed to be amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 90.1 Applicability.

(a) * * * To the extent permitted by other parts of this chapter, this Part may, at the engine manufacturer's option, apply to engines with gross power output greater than 19 kW that have an engine displacement of less than or equal to one liter.

* * * * *

2. Section 90.3 is proposed to be amended by adding the words ''handheld and'' immediately preceding the word ''nonhandheld'' in the definition of ''Phase 2 engine,'' by adding the words ''any handheld engine family or'' immediately preceding the words ''any nonhandheld engine family'' in the definition of ''Small volume engine family,'' and by adding a sentence to the end of the definitions of ''Small volume engine manufacturer,'' ''Small volume equipment manufacturer,'' and ''Small volume equipment model'' to read as follows:

§ 90.3 Definitions.

* * * * *

Small volume engine manufacturer * * *. For handheld engines, the term *small volume engine manufacturer* means any engine manufacturer whose total eligible production of handheld engines are projected at the time of certification of a given model year to be no more than 25,000 handheld engines.

Small volume equipment manufacturer * * *. For handheld equipment, the term *small volume equipment manufacturer* has the same meaning except that it is limited to 25,000 pieces of handheld equipment rather than 5,000 pieces of nonhandheld equipment.

Small volume equipment model * * *. For handheld equipment, the term *small volume equipment model* has the same meaning except that it is limited to 2,500 pieces of handheld equipment, rather than 500 pieces of nonhandheld equipment.

* * * * *

Subpart B—Emission Standards and Certification Provisions

3. Section 90.103 is proposed to be amended in paragraph (a) introductory text, by revising the heading for Table 2, adding two new entries to the beginning of Table 2, and adding Table 4, to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

TABLE 2.—PHASE 2 CLASS I–A, CLASS I–B, AND CLASS I ENGINE EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine class	$HC+NO_X$	$NMHC+NO_X$	CO	Effective date
I–A	50	.....	610	2000 Model Year.
I–B	40	37	610	2000 Model Year.
* * * * * * *				

* * * * *

TABLE 4.—PHASE 2 HANDHELD EXHAUST EMISSION STANDARDS BY MODEL YEAR

[Grams per kilowatt-hour]

Engine class and emission requirement	Model year						
	2002	2003	2004	2005	2006	2007	2008 and later
Class III:							
HC+NOx	226	200	150	100	50	50	50
CO	805	805	805	805	805	805	805
Class IV:							
HC+NOx	187	168	129	89	50	50	50
CO	805	805	805	805	805	805	805
Class V:							
HC+NOx	.....	.....	138	129	110	91	72
CO	.....	.....	603	603	603	603	603

* * * * *

4. Section 90.103 is proposed to be amended by revising the first and last sentences of paragraph (a)(6) and the first and last sentences of paragraph (a)(7) to read as follows:

* * * * *

(a) * * *

(6) In lieu of certifying to the applicable Phase 2 standards, small volume engine manufacturers as defined in this part may, at their option, certify their engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2009 model year for Class III and Class IV engine families, and until the 2011 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2009 model year for Class III and Class IV engine families, and the 2011 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

(7) In lieu of certifying to the applicable Phase 2 standards, manufacturers of small volume engine families, as defined in this part may, at their option, certify their small volume engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2009 model year for Class III and Class IV engine families, and until the 2011 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2009 model year for Class III and Class IV engine families, and the 2011 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

* * * * *

5. Section 90.104 is proposed to be amended by adding a sentence to the end of paragraph (g)(1), by redesignating paragraph (g)(3) as paragraph (g)(4), by adding new paragraph (g)(3), and by revising the introductory text of paragraph (h)(2) to read as follows:

§ 90.104 Compliance with emission standards.

* * * * *

(g)(1) * * * The provisions of this paragraph do not apply to Class I–A and Class I–B engines.

* * * * *

(3) Table 2 follows:

TABLE 2.—HANDHELD ENGINE HC+NO_x and CO Assigned Deterioration Factors for Small Volume Manufacturers and Small Volume Engine Families

Engine class	Two-stroke engines		Four-stroke engines		Engines with aftertreatment
	HC+NO_x	CO	HC+NO_x	CO	
Class III	1.1	1.1	1.5	1.1	Dfa must be calculated using the formula in § 90.104(g)(4)
Class IV	1.1	1.1	1.5	1.1	Do.
Class V	1.1	1.1	1.5	1.1	Do.

* * * * *

(h) * * *

(2) For engines not using assigned dfs from Table 1 or Table 2 of paragraph (g) of this section, dfs shall be determined as follows:

* * * * *

6. Section 90.105 is proposed to be amended by adding a sentence to the end of paragraph (a)(1), by adding two entries to the beginning of Table 1 of paragraph (a)(2), and adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 90.105 Useful life periods for Phase 2 engines.

(a) * * *

(1) * * * Engines with gross power output greater than 19 kW that have an engine displacement less than or equal to one liter that optionally certify under this part as allowed in § 90.1(a), must certify to a useful life period of 1,000 hours.

(2) Table 1 follows:

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)

Class I–A	50	125	300

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)—Continued

Class I–B	125	250	500
*	*	*	*
*	*	*	*

(3) For handheld engines: Manufacturers shall select a useful life category from Table 2 of this paragraph (a) at the time of certification.

(4) Table 2 follows:

TABLE 2.—USEFUL LIFE CATEGORIES FOR HANDHELD ENGINES (HOURS)

Class III	50	125	300
Class IV	50	125	300
Class V	50	125	300

* * * * *

7. Section 90.107 is proposed to be amended by removing the word ''and'' at the end of paragraph (d)(6)(iv), adding the word ''and'' at the end of paragraph (d)(6)(v), and adding a new paragraph (d)(6)(vi) to read as follows:

§ 90.107 Application for certification.

* * * * *

(d) * * *

(6) * * *

(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that declare the altitude ranges at which the kit must be installed or removed and that state that the operation of the engine/equipment at an altitude different from what it was certified at, for extended periods of time, and may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must be documented and retained by the manufacturer, and provided to the Administrator upon request);

* * * * *

8. Section 90.114 is proposed to be amended by revising paragraph (f)(1), by adding a new paragraph (f)(2), and by revising paragraph (f)(3) to read as follows:

§ 90.114 Requirement of certification—engine information label.

* * * * *

(f) * * *

(1) For nonhandheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. For engines less than 66 cc, Category C = 50 hours, B = 125 hours, and A = 300 hours. For engines equal to or greater than 66 cc but less than 225 cc displacement, Category C = 125 hours, B = 250 hours, and A = 500 hours. For engines of 225 cc or more, Category C = 250 hours, B = 500 hours, and A = 1000 hours.

(2) For handheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. Category C = 50 hours, B = 125 hours, and A = 300 hours.

(3) The manufacturer must provide, in the same document as the statement in paragraph (f)(1) or (f)(2) of this section, a statement of the engine's displacement or an explanation of how to readily determine the engine's displacement. The Administrator may approve alternate language to the statement in paragraph (f)(1) or (f)(2) of this section, provided that the alternate language provides the ultimate purchaser with a clear description of the number of hours represented by each of the three letter categories for the subject engine's displacement.

9. Section 90.116 is proposed to be amended by redesignating paragraphs (b)(1) through (b)(5) as paragraphs (b)(3) through (b)(7), respectively, and by adding new paragraphs (b)(1) and (b)(2), and revising newly designated paragraph (b)(3) to read as follows:

§ 90.116 Certification procedure—determining engine displacement, engine class, and engine families.

* * * * *

(b) * * *

(1) Class I–A—engines less than 66 cc in displacement,

(2) Class I–B—engines greater than or equal to 66 cc but less than 100 cc in displacement,

(3) Class I—engines greater than or equal to 100 cc but less than 225 cc in displacement,

* * * * *

10. Section 90.119 is proposed to be amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 90.119 Certification procedure—testing.

(a) * * *

(1) * * *

(i) Class I, I–B, and II engines must use Test Cycle A described in Subpart E of this part, except that Class I, I–B, and II engine families in which 100 percent of the engines sold operate only at rated speed may use Test Cycle B described in Subpart E of this part.

(ii) Class I–A, III, IV, and V engines must use Test Cycle C described in Subpart E of this part.

* * * * *

Subpart C—Certification Averaging, Banking, and Trading Provisions

11. Section 90.203 is proposed to be amended by revising paragraph (f) to read as follows:

§ 90.203 General provisions.

* * * * *

(f) No Phase 2 engine family may have a HC + NO_x FEL that is greater than 32.2 g/kW-hr for Class I engines, 94 g/kW-hr for Class I–A engines, 50 g/kW-hr for Class I–B engines, 26.8 g/kW-hr for Class II engines, 300 g/kW-hr for Class III engines, 246 g/kW-hr for Class IV engines, or 166 g/kW-hr for Class V engines.

* * * * *

§ 90.204 [Amended]

12. Section 90.204 is proposed to be amended by removing the word ''nonhandheld'' in paragraph (b).

13. Section 90.205 is proposed to be amended by adding new paragraphs (a)(2), (a)(4), (a)(5) and (b)(3), (b)(4), and (b)(5) to read as follows:

§ 90.205 Banking.

(a) * * *

(2) Beginning with the 2000 model year, a manufacturer of a Class I–A or Class I–B engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

* * * * *

(4) Beginning with the 2002 model year, a manufacturer of a Class III or Class IV engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

(5) Beginning with the 2004 model year, a manufacturer of a Class V engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

* * * * *

(b) * * *

(3) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class III engines, a manufacturer may bank early credits for all Class III engines with HC+NOx FELs below 226 g/kW-hr. All early credits for Class III engines shall be calculated against a HC+NOx level of 226 g/kW-hr.

(4) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class IV engines, a manufacturer may bank early credits for all Class IV engines with HC+NO_X FELs below 187 g/kW-hr. All early credits for Class IV engines shall be calculated against a HC+NO_X level of 187 g/kW-hr.

(5) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for

Class V engines, a manufacturer may bank early credits for all Class V engines with $HC+NO_X$ FELs below 131 g/kW-hr. All early credits for Class V engines shall be calculated against a $HC+NO_X$ level of 131 g/kW-hr.

* * * * *

14. Section 90.207 is proposed to be amended in paragraph (a) by revising the first sentence in the definition of ''load factor'' following the equation to read as follows:

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(a) * * *

Load Factor = 47 percent (i.e., 0.47) for Test Cycle A and Test Cycle B, and 85 percent (i.e., 0.85) for Test Cycle C. * * *

* * * * *

Subpart D—Emission Test Equipment Provisions

15. Section 90.301 is proposed to be amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.301 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

Subpart E—Gaseous Exhaust Test Procedures

16. Section 90.401 is proposed to be amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.401 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

17. Section 90.404 is proposed to be amended by revising paragraph (b) to read as follows:

§ 90.404 Test procedure overview.

* * * * *

(b) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen and fuel consumption. For Phase 2 Class I–B, Class I, and Class II natural gas fueled engines the test is also designed to determine the brake-specific emissions of non-methane hydrocarbons. The test consists of three different test cycles which are application specific for engines which span the typical operating range of nonroad spark-ignition engines. Two cycles exist for Class I–B, I and II engines and one is for Class I–A, III, IV, and V engines (see § 90.103(a) and § 90.116(b) for the definitions of Class I–A, I–B, and I–V engines). The test cycles for Class I–B, I, and II engines consist of one idle mode and five power modes at one speed (rated or intermediate). The test cycle for Class I–A, III, IV, and V engines consists of one idle mode at idle speed and one power mode at rated speed. These procedures require the determination of the concentration of each pollutant, fuel flow, and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per brake kilowatt hour (g/kW-hr).

* * * * *

18. Section 90.408 is proposed to be amended by revising the table in paragraph (b)(2) to read as follows:

§ 90.408 Pre-test procedures.

* * * * *

(b) * * *

(2) * * *

Engine class	Test cycle	Operating mode
I, I–B, II	A	6
I, I–B, II	B	1
I–A, III, IV, V	C	1

* * * * *

19. Section 90.409 is proposed to be amended by revising the last sentence of paragraph (a)(3) and by revising paragraph (b)(6) to read as follows:

§ 90.409 Engine dynamometer test run.

(a) * * *

(3) * * * For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II engines equipped with an engine speed governor, the governor must be used to control engine speed during all test cycle modes except for Mode 1 or Mode 6, and no external throttle control may be used that interferes with the function of the engine's governor; a controller may be used to adjust the governor setting for the desired engine speed in Modes 2–5 or Modes 7–10; and during Mode 1 or Mode 6 fixed throttle operation may be used to determine the 100 percent torque value.

(b) * * *

(6) For Class I, I–B, and II engines, during the maximum torque mode calculate the torque corresponding to 75, 50, 25, and 10 percent of the maximum observed torque (see Table 2 in Appendix A to this subpart).

* * * * *

20. Section 90.410 is proposed to be amended by revising paragraph (a), the first and third sentences of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 90.410 Engine test cycle.

(a) Follow the appropriate 6-mode test cycle for Class I, I–B and II engines and 2-mode test cycle for Class I–A, III, IV, and V engines when testing spark-ignition engines (see Table 2 in Appendix A of this subpart).

(b) For Phase 1 engines and Phase 2 Class I–A, III, IV, and V, and Phase 2 Class I and II engines not equipped with an engine speed governor, during each non-idle mode, hold both the specified speed and load within ± five percent of point. * * * For Phase 2 Class I, I–B, and II engines equipped with an engine speed governor, during Mode 1 or Mode 6 hold both the specified speed and load within ± five percent of point, during Modes 2–3, or Modes 7–8 hold the specified load with ± five percent of point, during Modes 4–5 or Modes 9–10, hold the specified load within the larger range provided by +/−0.27 Nm (+/−0.2 lb-ft), or +/−ten (10) percent of point, and during the idle mode hold the specified speed within ± ten percent of the manufacturer's specified idle engine speed (see Table 1 in Appendix A to this Subpart for a description of test Modes). * * *

(c) If the operating conditions specified in paragraph (b) of this section for Class I, I–B, and II engines using Mode Points 2, 3, 4, and 5 cannot be maintained, the Administrator may authorize deviations from the specified load conditions. * * *

* * * * *

21. Appendix A to Subpart E of Part 90 is proposed to be amended in Table 2 by revising the table heading and by removing the last entry and adding two

new entries in its place to read as follows:

Appendix A to Subpart E of Part 90—Tables

* * * * *

TABLE 2.—TEST CYCLES FOR CLASS I–A, I–B, AND CLASS I–V ENGINES

Mode	1	2	3	4	5	6	7	8	9	10	11
Speed	Rated Speed					Intermediate Speed					Idle
* * *			*		*			*		*	
Weighting for Phase 1 Engines	90%	.....	.....	.....	.....	.....	.....	.....	.....	.....	10%
Weighting for Phase 2 Engines	85%	.....	.....	.....	.....	.....	.....	.....	.....	.....	15%

Subpart H—Manufacturer Production Line Testing Program

§ 90.701 [Amended]

22. Section 90.701 is proposed to be amended by adding the words ''handheld and'' immediately preceding the word ''nonhandheld'' in paragraph (a).

Subpart K—Prohibited Acts and General Enforcement Provisions

23. Section 90.1003 is proposed to be amended by revising the first sentence of paragraph (b)(6)(i) and adding a new sentence to the end of paragraph (b)(6)(i), by revising the first two sentences of paragraph (b)(6)(ii) and adding a new sentence to the end of paragraph (b)(6)(ii), by revising paragraph (b)(6)(iii) introductory text, and by adding a new paragraph (b)(7) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(6)(i) Regulations elsewhere in this part notwithstanding, for three model years after the phase-in of each set of Class I through Class V Phase 2 standards; i.e. through August 1, 2010 for Class I engines, through model year 2008 for Class II engines, through model year 2009 for Class III and Class IV engines, and through model year 2011 for Class V engines, small volume equipment manufacturers as defined in this part, may continue to use, and engine manufacturers may continue to supply, engines certified to Phase 1 standards (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards), provided the equipment manufacturer has demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power a piece of equipment in production prior to the initial effective date of Phase 2 standards, as indicated in § 90.103(a). * * * These provisions do not apply to Class I–A and Class I–B engines.

(ii) Regulations elsewhere in this part notwithstanding, for the duration of the Phase 2 rule in this part, equipment manufacturers that produce small volume equipment models, as defined in this part, for a Class I model in production prior to August 1, 2007, or a Class II model in production prior to the 2001 model year, or a Class III or Class IV model in production prior to the 2002 model year, or a Class V model in production prior to the 2004 model year, may continue to use in that small volume equipment model, and engine manufacturers may continue to supply, engines certified to Phase 1 requirements (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the small volume equipment model. * * * These provisions do not apply to Class I–A and Class I–B engines.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through August 1, 2008 for Class I engines, through the 2006 model year for Class II engines, through the 2007 model year for Class III and Class IV engines, and through the 2009 model year for Class V engines, subject to the following criteria (These provisions do not apply to Class I–A and Class I–B engines.):

* * * * *

(7) Actions for the purpose of installing or removing altitude kits and performing other changes to compensate for altitude change as described in the application for certification pursuant to § 90.107(d) and approved at the time of certification pursuant to § 90.108(a) are not considered prohibited acts under paragraph (a) of this section.

Subpart L— Emission Warranty and Maintenance Instructions

24. Section 90.1103 is proposed to be amended by adding two sentences to the end of paragraph (a) to read as follows:

§ 90.1103 Emission warranty, warranty period.

(a) * * * Manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a one year warranty period for handheld engines that are subject to severe service in seasonal equipment and are likely to run their full useful life hours in one year. Such an application must be made prior to certification.

* * * * *

Subpart M—Voluntary In-Use Testing

§ 90.1201 [Amended]

25. Section 90.1201 is proposed to be amended by adding the words ''handheld and'' immediately preceding the word ''nonhandheld''.

[FR Doc. 99–18477 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
July 28, 1999

Part III

Department of Commerce

Bureau of the Census

15 CFR Part 30

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES); Final Rule

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980929251–9148–03]

RIN 0607–AA19

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES)

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to add provisions for filing shipper's export data electronically using the Automated Export System (AES). The AES is an export information gathering and processing system developed through cooperative efforts between the U.S. Customs Service (Customs), the Census Bureau, other federal agencies, and the export community. The AES is a completely voluntary system that provides an alternative to filing the paper Shipper's Export Declaration (SED) and manifest data, and will greatly streamline and improve the exporting process. Export information is collected electronically and edited immediately, and errors are detected and corrected at the time of filing. AES is a nationwide system operational at all ports and for all methods of transportation. Customs also is revising appropriate sections of its Customs Regulations in a final rule published elsewhere in this issue of the **Federal Register**. The Customs regulations will conform to the electronic filing provisions and requirements contained in this final rule.

EFFECTIVE DATE: This rule will become effective July 28, 1999.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, by fax on (301) 457–2645, or by E-mail at: c.h.monk.jr@ccmail.census.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, Customs and the Census Bureau published a joint notice in the **Federal Register** (63 FR 54438) that informed the public of the current status of the Automated Export System (AES). The AES is an electronic reporting system jointly developed by the Census Bureau and Customs that allows exporters or their authorized agents to transmit commodity Shipper's Export Declaration (SED) information, and carriers to transmit transportation (outbound manifest) information. That notice also informed the public of other developments affecting the implementation of the AES and announced that the Census Bureau and Customs would be developing regulations to implement provisions and requirements for filing export information electronically through the AES. Since the background information contained in that notice fully recounts the development of the AES to date, it is incorporated here by reference.

The Census Bureau published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7412) on Friday, February 12, 1999, proposing to add regulations to 15 CFR Part 30 for filing Shipper's export data electronically using the AES. Customs also published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7422) on Friday, February 12, 1999, proposing to revise appropriate sections of its Customs Regulations, 19 CFR, Chapter 1, to reference Census Bureau regulations that will provide for electronic filing requirements using the AES to provide for certain procedural safeguards regarding applicant's and participant's rights vis-a-vis Customs actions and to provide for a Sea Carriers Manifest Module for the submission of manifest information in the ocean environment.

The AES is a joint venture between Customs, the Census Bureau, and other federal agencies that will provide a seamless Government export information processing system to allow the trade community to report export data electronically. The AES also is the cornerstone of Customs' and the Census Bureau's reinvestment strategy to support and facilitate the movement of exports. Automation will help remove the time consuming paper processing barriers that now hinder the flow of trade. The AES will greatly improve the accuracy of the export data provided to the Census Bureau and will allow the Census Bureau, in turn, to provide more accurate export data and a wider range of export data needed by businesses to stay competitive in the global trade market today. The AES is in alignment with the global shift to the electronic movement of all business information.

The AES will result in the elimination of redundant reporting of export data to multiple agencies. It brings savings in both human resources and paper handling. It greatly increases the accuracy of trade statistics, which will allow for improvement in public and private sector decision making. Under AES, increased accuracy of trade information, the prohibition of illegal exports, and effective enforcement of license requirements can all be achieved while the flow of trade is facilitated. Although paper filing of the SED and manifest documents will still be permitted, it is anticipated that electronic filing through the AES will be the preferred method of export reporting by the trade community in the near future.

General Description of the AES Process

The export process begins when the exporter decides to export merchandise as specified in § 30.1. Once the exporter makes this decision, the exporter or their authorized forwarding agent makes shipping arrangements with the carrier. The exporter or an authorized filing agent transmits the shipper's export information using the AES. This information can come directly from the exporter or his authorized filing agent or indirectly from the aforementioned through a service center or port authority. The shipper's export data are transmitted in a timely manner in accordance with the provisions contained in electronic filing Options 2, 3, and 4 (see § 30.61, *Electronic Filing options*). The AES validates the data against editing tables and U.S. Government agency requirement files and generates either a confirmation message or a fatal error message. The carrier or an authorized filing agent transmits the export manifest data using the AES. The AES validates the transportation data then generates either a confirmation message or an error message. The exporter, carrier, or an authorized filing agent must attend to any errors generated by the AES. The AES allows the exporter, carrier, or an authorized filing agent to transmit corrections.

Response to Comments

The Census Bureau received three comments on the proposed rule. The comments and our responses are as follows:

1. *Comment:* This comment questioned: (a) the difference in reporting full export information within 5 business days from the date of exportation for Option 3 filers, and within 10 business days from the date of exportation for Option 4 filers; (b) the requirement that licensed shipments be filed using filing Option 2 or 3; and (c) concern over the operational integrity of the AES in light of the questions raised

in a previous General Accounting Office report and the recent hardware problems with the Automated Commercial Environment (ACE) computer system.

Response: The Census Bureau responded to these comments as follows: (a) the reporting provisions for Option 3 and Option 4 filers were based on the certification requirements and related filing privileges associated with the two filing options; (b) Option 4 was developed for qualified exporters to file certain export data post departure. The AES regulations allow for the filing of licensed shipments using Option 4, if the exporter has approval of the specific licensing agency to do so; and (c) the AES is fully capable of processing all export data submitted electronically for the modules developed so far for using the AES, and the Census Bureau and Customs will support all AES filers to the greatest extent possible. The AES operates on separate hardware from the ACE system, and although the AES currently uses the same communication lines, we do not anticipate hardware problems with the AES computer and communication system. No revision will be made to the proposed rule as a result of this comment.

2. *Comment:* This comment generally questioned the operational integrity of the AES and its functional compatibility with the International Trade Data System (ITDS) and suggested that the Automated Export Reporting Program (AERP) remain operational as filing Option 5 until the AES is fully operational.

Response: The AES is currently operational and processing data electronically for a substantial number of exporters. The AES is compatible with the functional requirements of the ITDS and could be incorporated into that system for the collection and tabulation of export data. The Census Bureau does not anticipate expensive or unwanted conversion problems if and when that transition occurs. The Census Bureau and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Currently, over 50 percent of AERP companies have submitted Letters of Intent to participate in the AES, and the Census Bureau has offered full assistance in making this transition. The AERP will not be extended past the December 31, 1999, deadline. No revision will be made to the proposed rule as a result of this comment.

3. *Comment:* This comment concerned the restriction that the export of used self-propelled vehicles be reported predeparture using filing Options 2 and 3 only, in lieu of also allowing this information to be filed post departure using filing Option 4.

Response: The provision that export data for used self-propelled vehicles as defined in 19 CFR 192.1, be transmitted predeparture using filing Options 2 or 3, is based on Customs requirements and conditions on the exportation and validation of such vehicles. As such, this comment was referred to Customs for review and evaluation. Based on the Customs response, no revision will be made to the proposed rule as a result of this comment.

Changes to the Proposed Rule

As a result of new record format requirements and administrative/functional adjustments, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to enhance the electronic reporting process. The changes to the proposed rule are as follows:

(1) In § 30.60(a), we added the term ''consolidators'' to the list of AES participants to be more inclusive and to ensure that air consolidators were included in the participant list.

(2) In § 30.61(a), Option 2 filing requirements, we included an exception from Option 2 filing restrictions for used self-propelled vehicles exported between the United States and Puerto Rico. Because shipments of used self-propelled vehicles between the United States and Puerto Rico do not require the normal Customs validation, that data can be filed using AES filing options 3 or 4. Appropriate language indicating this filing provision also is included in §§ 30.61(b), Option 3 filing requirements, and 30.61(c), Option 4 filing requirements.

(3) In § 30.63(a)(1)(i), Exporter/exporter identification, the text is revised to refer the user to the appropriate sections in the FTSR for a detailed description of exporter responsibilities.

(4) In § 30.63(a)(18), we added the term ''Shipment'' to the term ''reference number'' to provide a more accurate description of that record field.

(5) In § 30.63(a)(22), we added ''License code'' as a separate field in the mandatory data elements. This item was previously listed in § 30.63(b)(5) as part of the conditional data element for ''License number/CFR citation/license code'.

(6) In § 30.63(b)(5), we removed the reference to license code and included it as part of the mandatory data elements in § 30.63(a)(22).

(7) In § 30.63(b)(11), the term ''Booking number'' is retitled to read ''Transportation reference number'' as a more generic description of the field and to be consistent with the record format field.

(8) In § 30.63(b)(12), we included ''Equipment number'' as a conditional data element. This was previously listed as an optional data element.

(9) In § 30.63(b)(13), we added the field ''Filing option indicator'' as a new record format field under the conditional data elements.

(10) In Appendix A, Format for Letter of Intent, we added ''e-mail address'' to items 2 and 3 of the contents and added ''(Monthly SED volume)'' as a unit of measure to items 8 and 9 of the contents.

(11) In Appendix C, Part I, Method of Transportation Codes, we added codes 21, 31, and 41 for rail containerized, truck containerized, and air containerized shipments as a result of record format changes.

(12) In Appendix C, Part II, Export Information Codes, we added code RP for AERP, and AE for AES, to the record format fields.

Program Requirements

In order to include provisions for the electronic filing of shipper's export information, the Census Bureau is: (a) amending existing sections of the FTSR, 15 CFR Part 30, and (b) adding a new Subpart E to the FTSR to include provisions for the electronic filing of shipper's export data.

The Census Bureau is amending appropriate sections of the FTSR to include provisions for the electronic reporting of export data using the AES.

The Census Bureau is amending § 30.1, *''General statement of requirements for Shipper's Export Declarations,''* to add a reference that requirements for filing shipper's export data electronically can be found in the new subpart on electronic filing requirements.

The Census Bureau is amending the introductory text of § 30.7, *''Information required on Shipper's Export Declarations,''* to specify that the information in this section only applies to the paper SED and referring users to the new subpart for information required for electronic filing of shipper's export data.

The Census Bureau is amending § 30.39, *''Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment,''* to replace existing electronic filing programs with the AES and to reflect current Census Bureau authority to authorize alternative methods of filing shipper's export data.

The Census Bureau is amending § 30.91, *''Confidential information, Shipper's Export Declarations,''* item (a) *''Confidential status''* to clarify that confidentiality provisions apply to all export information supplied to the Census Bureau whether filed electronically or in any other approved format.

To include new provisions and requirements for the electronic filing of shipper's export information using the AES, the Census Bureau is adding a new subpart (Subpart E) in the current FTSR on electronic filing requirements for submitting shipper's export information. To accomplish this, the current Subpart E—General Requirements-Importers—is redesignated to read Subpart F, and Subpart E is renamed and reserved for ''Electronic Filing Requirements-Shippers Export Information.'' The current Subpart F is redesignated Subpart G—Special Provisions for Particular Types of Import Transactions. The current Subpart G is redesignated Subpart H—General Administrative Provisions.

The new Subpart E—Electronic Filing Requirements-Shipper's Export Information—will consist of §§ 30.60 through 30.66 to include:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES)
§ 30.61 Electronic filing options
§ 30.62 AES Certification, qualifications and standards
§ 30.63 Information required to be reported electronically through AES (data elements)
§ 30.64 Transmitting and correcting AES information
§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically
§ 30.66 Recordkeeping and documentation requirements

The revisions contained in this rule are consistent with the provisions of the Customs Regulations. The U.S. Customs Service, Department of the Treasury, concurs with the provisions contained in this final rule.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. 553(a)(1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions 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 Office of Management and Budget (OMB) Control Number.

This rule covers collections of information subject to the provisions of the PRA, which were cleared by OMB under OMB Control Number 0607–0152.

This rule will have no impact on the current reporting-hour burden requirements as approved under OMB Control Number 0607–0152 under provisions of the PRA of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau is amending 15 CFR chapter I, part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 FR 42765.

Subpart A—General Requirements—Exporters

2. Section 30.1 is amended by adding paragraph (c) to read as follows:

§ 30.1 General statement of requirements for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper Shipper's Export Declarations as provided elsewhere in this section, exporters or their authorized agents have the option to file shipper's export information electronically, as provided in subpart E of this part. The Electronic filing requirements for filing shipper's export declaration information are contained in subpart E of this part, Electronic Filing Requirements-Shipper's Export Information.

3. Section 30.7 is amended by revising the introductory text to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the paper copy of the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules C and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.) For information required to be filed electronically see § 30.63.

* * * * *

Subpart C—Special Provisions Applicable Under Particular Circumstances

4. Section 30.39 is revised to read as follows:

§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) The Census Bureau, with the concurrence of appropriate government agencies, may authorize exemptions from the requirement of § 30.6 that a separate Shipper's Export Declaration be filed for each shipment.

(b) Application for certification and approval to file shipper's export data electronically using the Automated Export System (AES) can be made directly to the Census Bureau in accordance with the provisions specified in § 30.60. Certification and approval procedures and qualification standards for filing shipper's export data electronically are contained in § 30.62.

(c) Authorization for other alternative methods of filing shipper's export information will be issued only when, in the judgment of the Census Bureau, complete and accurate information will be available on a prescribed basis from the records of the applicant and where the alternate filing method for shipments represents a reduction of reporting cost or burden. Where export control is a consideration, such authorizations will be granted only when, in the judgment of the appropriate controlling government agency, the applicant has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with export control

regulations of the appropriate government agency or agencies.

Subparts E through G [Redesignated as Subparts F Through H]

5. Subparts E through G are redesignated as subparts F through H, respectively.

6. A new Subpart E, consisting of §§ 30.60 through 30.66, is added to read as follows:

Subpart E—Electronic Filing Requirements—Shipper's Export Information

Sec.
30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).
30.61 Electronic filing options.
30.62 AES Certification, qualifications, and standards.
30.63 Information required to be reported electronically through AES (data elements).
30.64 Transmitting and correcting AES information.
30.65 Annotating the proper exemption legends for shipments transmitted electronically.
30.66 Recordkeeping and documentation requirements.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

The Automated Export System (AES) transmissions by exporters or their authorized filing agents that meet the requirements of this subpart constitute the Shipper's Export Declaration (SED) for purposes of this part. This section outlines the general requirements for participating in the AES. Several filing options are available for transmitting shipper's export data. The first option is the standard paper filing of the SED. The AES also provides AES participants with three electronic filing options for submission of shipper's export data.

(a) *Participation.* Participation in the AES is voluntary and is designed to use technology available to both large and small businesses. Companies that are not automated can submit data through a service center or port authority that provides the capability to communicate with the Customs Data Center in the same way as automated companies. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, include exporters or their authorized forwarding agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

(b) *Letter of Intent.* The first requirement for all participation in AES, including approval for Option 4 filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census Bureau performance requirements and operations standards. Once the Letter of Intent is received, a U.S. Customs Client Representative and a Census Bureau Client Representative will be assigned to work with the company. The Census Bureau will forward additional information to prepare the company for filing export data using the AES. The format and content for preparing the Letter of Intent is provided in Appendix A of this part.

(c) *General filing and transmission requirements.* The data elements required for filing shipper's export data electronically are contained in § 30.63. For AES, the difference is that the certified filer must transmit the shipper's export information electronically using the AES, rather than delivering the paper SED to the carrier. When transmitting export information electronically, the AES filers must comply with the data transmission procedures determined by Customs and the Census Bureau (See § 30.62 for AES certification, qualifications, and standards).

(d) *General responsibilities of exporters, filing agents, and sea carriers.—(1) Exporter and authorized filing agent responsibilities.* The exporter and/or their authorized agents, certified for AES filing, are responsible for:

(i) Transmitting complete and accurate information to the AES (see § 30.4 (a) and § 30.7 (d)(1), (2), and (e) for a delineation of responsibilities of exporters and authorized forwarding agents);

(ii) Transmitting information to the AES in a timely manner in accordance with the provisions and requirements contained in this subpart;

(iii) Responding to messages identified as fatal error, warning, verify, or reminder generated by AES in accordance with the provisions contained in this subpart;

(iv) Providing the exporting carrier with the required exemption statements or citations when an item or shipment is exempt from SED filing requirements in accordance with provisions contained in this subpart;

(v) Transmitting corrections or cancellations to information transmitted to the AES as soon as the need for such changes is determined in accordance with provisions contained in this subpart; and

(vi) Maintaining all necessary and proper documentation related to the AES export transaction in accordance with provisions contained in this subpart.

(2) *Sea carrier responsibilities.* The exporting sea carrier also is responsible for transmitting timely, accurate, and complete manifests and bills of lading information to AES for all cargo being shipped. The exporting sea carrier is also responsible for transmitting booking, receipt of booking, departure, and manifest messages to AES. Customs and Census Bureau officials, with written agreement of the exporting sea carrier, can provide for alternative methods of filing manifest and SED information to that found in this Subpart. For exporting carrier responsibilities, see Subpart B, of this part, General Requirements—Exporting Carriers. For electronic filing of manifest information using the AES, see 19 CFR 4.76, *Procedures and responsibilities for electronic filing of sea manifests through AES*.

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), three electronic filing options for transmitting shipper's export information are available to exporters or their authorized filing agents. Two of the electronic filing options (Options 3 and 4) take into account that complete information concerning export shipments is not always available at the time of shipment. The available AES electronic filing options are as follows:

(a) *AES with full information transmitted prior to exportation (Option 2).* Option 2 provides for the electronic filing of *all* information required for exports to AES prior to exportation (see § 30.63 for information required to be reported electronically). Full predeparture information is always required to be transmitted to AES for the following specific types of shipments:

(1) Used self-propelled vehicles (except those shipped between the United States and Puerto Rico) as defined in 19 CFR 192.1

(2) Essential and precursor chemicals requiring a permit from the Drug Enforcement Administration;

(3) Shipments defined as ''sensitive'' by Executive Order; and

(4) Shipments where full export information is required prior to exportation by a federal government agency.

(b) *AES with partial information transmitted prior to exportation (Option 3).* Option 3 provides for the electronic filing of *specified* data elements to the AES prior to exportation (see Appendix B of this part for a list of specified data elements). Filing Option 3 is available for all methods of transportation. Used self-propelled vehicles shipped between the United States and Puerto Rico may be shipped using filing Option 3. Option 3 is designed for those shipments for which full data are not available prior to exportation. No prior approval from the Census Bureau or Customs is required for certified AES filers to use Option 3. However, full predeparture information must be transmitted to the AES for certain specified transactions (as specified in Option 2). For shipments that require an export license, the exporter must file using Option 2 or 3, unless the licensing agency specifically approves the exporter for Option 4 filing for the licensed shipment under its jurisdiction. Where partial information is provided under Option 3, complete export information must be transmitted as soon as it is known, but no later than five (5) working days from the date of exportation. The exporter or their authorized filing agent must provide the exporting carrier with a unique shipment reference number prior to exportation.

(c) *AES with no information transmitted prior to exportation (Option 4).* Option 4 is only available for approved exporters and requires *no* export information to be transmitted electronically using AES prior to exportation. For approved Option 4 filers, all shipments (other than those requiring an export license, unless specifically approved by the licensing agency for Option 4 filing, and those specifically required under electronic filing Options 2 or 3) by all methods of transportation may be exported with no information transmitted prior to exportation. Used self-propelled vehicles, shipped between the United States and Puerto Rico, by an Option 4 approved exporter, may be shipped using filing Option 4. Certified AES authorized filing agents or service centers may transmit information post departure on behalf of approved Option 4 exporters. All exporters filing a Letter of Intent for Option 4 filing privileges will be cleared through a formal review process by Customs, the Census Bureau, and other federal government agencies participating in the AES (partnership agencies) in accordance with provisions contained in § 30.62. Where exportation is made with no prior AES filing, complete export information should be transmitted as soon as it is known, but no later than ten (10) working days from the date of exportation. The exporter or their authorized agent must provide the exporting carrier with the exporter's Option 4 AES identification number prior to exportation.

§ 30.62 AES Certification, qualifications, and standards.

(a) *AES certification process.* Certification for AES filing will apply to any exporter, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES. Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to and receiving data from the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. Assistance is provided by the Customs' and Census Bureau's client representatives during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained.

(1) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the exporter(s) using that agent need no further AES certification of their own. The certified filing agent must have a properly executed power of attorney, a written authorization from the exporter, or a SED signed by the exporter to transmit the exporter's data electronically using the AES. The exporter or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the exporter to submit the export information on behalf of the exporter.

(2) *AES certification letter.* The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(i) The date that filers may begin transmitting ''live'' data electronically using AES;

(ii) Reporting instructions; and

(iii) Examples of the required AES exemption legends.

(3) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer in writing if they fail to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this chapter. The Census Bureau will direct that appropriate action to correct the specific situation(s) be taken.

(b) *Criteria for denial of applications requesting Option 4 filing status; appeal procedure.* Approval for Option 4 filing privileges will apply only to exporters. However, forwarding agents may apply for Option 4 filing privileges on behalf of an individual exporter. Option 4 applicants must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60.

(1) *Option 4 approval process.* The Census Bureau will distribute the Letters of Intent for Option 4 filing privileges to Customs and the other partnership agencies participating in the AES Option 4 approval process. Failure to meet the standards of the Census Bureau, Customs, or one of the partnership agencies is reason for nonselection or denial of the application for Option 4 filing privileges. Each partnership agency will develop its own internal Option 4 acceptance standards, and each agency will notify the Census Bureau of the applicant's failure to meet that agency's acceptance standards. If the Census Bureau does not receive either notification of denial, or a request for extension from the partnership

agency within thirty (30) calendar days after the date of referral of the Letter of Intent to the partnership agency, the applicant is deemed to be approved by that agency. The Census Bureau will provide the Option 4 applicant with an approval or denial letter. If a denial letter is issued, the Census Bureau will indicate the partnership agency that denied the application. The applicant must contact the denying partnership agency for the specific reason(s) for denial.

(2) *Grounds for denial of Option 4 filing status.* The Census Bureau may deny an exporter's application for Option 4 filing privileges for any of the following reasons:

(i) Applicant is not an established exporter, as defined in this chapter, with regular operations;

(ii) Applicant has failed to submit SEDs to the Census Bureau for processing in a timely and accurate manner;

(iii) Applicant has a history of noncompliance with Census Bureau export laws and regulations contained in this chapter;

(iv) Applicant has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter; and

(v) Applicant has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(3) *Notice of nonselection and appeal procedures for Option 4 filing.* The Census Bureau will notify applicants in writing of the decision to either deny or approve the applicant for Option 4 filing privileges within thirty (30) days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for a final decision as soon as possible after the thirty (30) calendar days. Applicants for Option 4 filing privileges denied Option 4 status by other partnership agencies must contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. Applicants denied Option 4 status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in the notification letter. Option 4 applicants may appeal the Census Bureau's nonselection decision by following the appeal procedure and reapplication restriction provided in paragraph (b) (5) of this section.

(4) *Revocation of Option 4 filing privileges.* The Census Bureau may revoke Option 4 filing privileges of approved Option 4 exporters for the following reasons:

(i) The exporter has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(ii) The exporter submitting the Letter of Intent is indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter;

(iii) The exporter has failed to substantially comply with existing Census Bureau or other agency export regulations; or

(iv) The Census Bureau determines that continued participation in Option 4 by an exporter would pose a significant threat to national security interests such that their continued participation in Option 4 should be terminated.

(5) *Notice of revocation; appeal procedure.* Approved Option 4 filers whose Option 4 filing privileges have been revoked by other agencies must contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved Option 4 filer's AES Option 4 filing privileges, the exporter will be notified in writing of the reason(s) for the decision. The exporter may challenge the Census Bureau's decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. In most cases, the revocation shall become effective when the exporter has either exhausted all appeal proceedings, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases when required by national security interests, revocations will become effective immediately upon notification. Appeals should be addressed to the Chief, Foreign Trade Division, Bureau of the Census, Washington, DC 20233. The Census Bureau will issue a written decision to the exporter within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, a notice of extension will be forwarded within that time period. The exporter will be provided with the reasons for the extension of this time period and an expected date of decision. Approved Option 4 exporters who have had their Option 4 filing status revoked may not reapply for this status for one year following written notification of the revocation. Such applications will not be considered before the one-year time period.

§ 30.63 Information required to be reported electronically through AES (data elements).

The information (data elements) listed in this section is required for shipments transmitted electronically through AES. The data elements as they pertain to electronic reporting are defined as paragraphs (a), (b), and (c) of this section. Those data elements that are defined in more detail in other sections of the FTSR are so noted. The data elements identified as ''mandatory'' must be reported for each transmission. The data elements identified as ''conditional'' must be reported if they are required for or apply to the specific shipment. The data elements identified as ''optional'' may be reported at the discretion of the exporter.

(a) Mandatory data elements are as follows:

(1) *Exporter/exporter identification.* (i) *Name and address of the exporter.* For details on the reporting responsibilities of exporters, see § 30.4 and § 30.7 (d)(1), (2), and (e).

(ii) *Exporter's profile.* The exporter's Employer Identification Number (EIN) or Social Security Number (SSN) and exporter name, address, contact, and telephone number must be reported with the initial shipment. Subsequent shipments may be identified by either EIN, SSN, or DUNS (Dunn and Bradstreet) number. If no EIN, SSN, or DUNS number is available for the exporter, as in the case of a foreign entity being shown as exporter as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(2) *Date of exportation/date of arrival.* The exporter or the authorized forwarding or other agent in the export transaction must report the date the merchandise is scheduled to leave the United States for all modes of transportation. If the actual date is not known, report the best estimate of departure. The estimated date of arrival must be reported for shipments to Puerto Rico. (See § 30.7(r) for additional information.)

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee on the export license who is located abroad and actually receives the export shipment. The ultimate consignee known at the time of export

must be reported. For goods sold en route, report ''SOLD EN ROUTE'' and report corrected information as soon as it is known. (See § 30.7(f) for more information.)

(4) *U.S. state of origin.* Report the 2-character postal abbreviation for the state in which the merchandise begins its journey to the port of export. (See § 30.7(t)(1) and (2) for more information.)

(5) *Country of ultimate destination.* Report the 2-character International Standards Organization (ISO) code for the country of ultimate destination. The country of ultimate destination, as shown on the export license, or the country as known to the exporter or principal party in interest in the export transaction at the time of export is the country in which the merchandise is to be consumed or further processed or manufactured. For goods sold en route, report the country of the first port of call and then report corrected information as soon as it is known. (See § 30.7(i) for more information.)

(6) *Method of transportation.* The method of transportation is defined as that by which the goods are exported or shipped. Report one of the codes listed in Part I of Appendix C of this part. (See § 30.7(b) for detailed information on method of transportation.)

(7) *Conveyance name.* The name of the carrier (sea—vessel name; others—carrier name) must be reported by the exporter or the exporter's agent as known at the time of shipment for all shipments leaving the country by sea, air, truck, or rail. Terms such as ''airplane,'' ''train,'' ''truck,'' or ''international footbridge'' are not acceptable and will generate an error message. (See § 30.7(c) for more information.)

(8) *Carrier identification.* Report the 4-character Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments and the 2-or 3-character International Air Transport Association (IATA) Code for air shipments to identify the carrier actually transporting the merchandise out of the United States.

(9) *Port of export.* Report the code of the Customs port of export in terms of Schedule D, ''Classification of Customs Districts and Ports.'' (See §§ 30.7(a) and 30.20(c) and (d) for more information on port of export.)

(10) *Related/nonrelated indicator.* Indicate if the shipment is between related parties. Report the information as defined in § 30.7(v).

(11) *Domestic or foreign indicator.* Indicate if the commodities are of domestic or foreign production. Report the information as defined in § 30.7(p).

(12) *Commodity classification number.* Report the 10-digit commodity classification number as provided in Schedule B, ''Statistical Classification of Domestic and Foreign Commodities Exported from the United States'' (Schedule B). The 10-digit commodity classification number provided in the Harmonized Tariff Schedule (HTS) may be reported in lieu of the Schedule B Commodity classification number except as noted in the headnotes of the HTS. (See § 30.7(l) for detailed information.)

(13) *Commodity description.* Report the commercial description in sufficient detail to permit the verification of the commodity classification number. (See § 30.7(l) for more information regarding reporting the description.)

(14) *First net quantity/unit of measure.* Report the primary net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS or as specified on the export license.

(15) *Gross shipping weight.* Report the gross shipping weight in kilograms for vessel, air, truck, and rail shipments. Include the weight of containers, but exclude the weight of carrier equipment. (See § 30.7(o) for more information.)

(16) *Value.* The value shall be the selling price or cost if not sold, including inland freight, insurance, and other charges to the U.S. port of export. Report the value in U.S. currency. (See § 30.7(q) for more information.)

(17) *Export information code.* Report the appropriate 2-character export information code as provided in Part II of Appendix C of this part.

(18) *Shipment reference number.* The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.

(19) *Line item number.* Report a line number for each commodity for a unique identification of the commodity.

(20) *Hazardous material indicator.* This is a ''Yes'' or ''No'' indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(21) *In-bond code.* Report one of the 2-character in-bond codes listed in Part IV of Appendix C of this part to indicate the type of In-Bond or Not In-Bond shipment.

(22) *License code.* Report the 3-character code listed in Part III of Appendix C of this part to indicate the type of license, permit, license exemption, or no license required.

(b) Conditional data elements are as follows:

(1) *Forwarding agent/forwarding agent identification.* (i) *Name and address of the forwarding agent.* The forwarding agent is any person in the United States or under jurisdiction of the United States who is authorized by the exporter to perform the services required to facilitate the export of merchandise out of the United States or the person named in the validated export license. (See §§ 30.4(a) and 30.7(e) for details on responsibilities of forwarding agents).

(ii) *Forwarding agent's profile.* The forwarding agent's identification number, EIN, DUNS, or SSN and name and address must be reported with the initial shipment. Subsequent shipments may be identified by the identification number.

(2) *Intermediate consignee.* The intermediate consignee is the intermediary (if any) who acts in a foreign country as an agent for the exporter or the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee or the person named on the export license. (See § 30.7(g) for more information.)

(3) *Foreign Trade Zone number.* Report the unique 5-character code assigned by the Foreign Trade Board that identifies the Foreign Trade Zone from which merchandise is withdrawn for export. (See § 30.7(t)(3) for more information.)

(4) *Foreign port of unloading.* For sea shipments only, the code of the foreign port of unloading should be reported in terms of the 5-digit codes designated in Schedule K, ''Classification of Foreign Ports by Geographic Trade Area and Country.'' For air shipments from the United States to Puerto Rico, report the Puerto Rico port of unloading. For air shipments from Puerto Rico to the United States, report the United States port of unloading. Report the code of the port of unloading in terms of Schedule D, ''Classification of Customs Districts and Ports.'' (See § 30.7(h) for more information on port of unloading.)

(5) *License number/Code of Federal Regulations (CFR) citation.* For licensable commodities, report the license number of the license issued for the merchandise. If no license is required, report the regulatory citation exempting the merchandise from licensing or the conditions under which the merchandise is being shipped that make it exempt from licensing.

(6) *Export Control Classification Number.* Report the Export Control Classification Number for merchandise as required by the Bureau of Export

Administration (BXA) Regulations (15 CFR Parts 730 through 774).

(7) *Second net quantity/unit of measure.* When Schedule B requires two units of quantity to be reported, report the second net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS. (See § 30.7(n) for more information.)

(8) *Used self-propelled vehicles.* Report the following items of information for used self-propelled vehicles as defined in 19 CFR 192.1:

(i) *Vehicle Identification Number.* Report the unique Vehicle Identification Number (VIN) in the proper format;

(ii) *Product Identification Number.* Report the Product Identification Number (PIN) for those used self-propelled vehicles for which there are no VINs;

(iii) *Vehicle title number.* Report the unique title number issued by the Motor Vehicle Administration; and

(iv) Vehicle title state. Report the 2-character postal abbreviation for the state or territory of the vehicle title.

(9) *Entry number.* Report the Import Entry Number when the export transaction is to be used as proof of export for import transactions such as In-Bond, Temporary Import Bond, Drawback, and so forth.

(10) *Wavier of prior notice.* This is a ''Yes'' or ''No'' indicator to determine if the person claiming drawback received a waiver of prior notice for the exported merchandise.

(11) *Transportation reference number.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for the cargo being exported.

(12) *Equipment number.* Report the container number for containerized shipments. This number may be reported in conjunction with the booking number.

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 3 or Option 4 filing, or the AES-Post Departure Authorized Special Status (PASS) standard or expanded IOU's, if applicable.

(c) Optional data elements are as follows:

(1) *Marks and numbers.* The exporter or the authorized forwarding agent in the export transaction may opt to report any special marks or numbers that appear on the physical merchandise or its packaging that can identify the shipment or a portion thereof. (See § 30.7(j) for more information.)

(2) *Seal number.* Report the security seal number of the seal placed on the equipment.

§ 30.64 Transmitting and correcting AES information.

(a) The exporter or their authorized filing agent is responsible for electronically transmitting corrections, cancellations, or amendments to shipment information previously transmitted using the AES. Corrections, cancellations, or amendments should be made as soon as possible after exportation when the error or omission is discovered.

(b) For shipments where the exporter or their authorized filing agent has received an error message from AES, the corrections must take place as required. A fatal error message will cause the shipment to be rejected. This error must be corrected prior to exportation of the merchandise. For shipments where a warning message is received, the correction must be made within four (4) working days of receipt of the transmission, otherwise AES will generate a reminder message to the filer. For shipments with a verify message, corrections when warranted, should be made as soon as possible after notification of the error by the AES.

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

The exporter or their authorized forwarding agent is responsible for annotating the proper exemption legend on the bill of lading, airway bill, or other commercial loading document for presentation to the carrier, either on paper or electronically prior to export. The exemption legend will identify that the shipment information has been transmitted electronically using the AES. The exemption legend will include the statement ''NO SED REQUIRED—AES'' followed by the filer's identification number and a unique shipment reference number or the returned confirmation number. For exporters who have been approved to participate in Filing Option 4, the exemption statement, ''NO SED REQUIRED—AES,'' should include the exporter's identification number and the filer's identification number if other than the exporter. The exemption legend must appear on the first page of the bill of lading, airway bill, or other commercial loading document and must be clearly visible.

§ 30.66 Recordkeeping and documentation requirements.

All parties to the export transaction (owners and operators of the exporting carriers and exporters and their authorized agents) must retain documents or records verifying the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the exporter or their authorized agent from providing complete and accurate information after the fact.

Subpart H—General Administrative Provisions

7. In newly redesignated subpart H, § 30.91 is amended by revising paragraph (a) to read as follows:

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the Census and the Bureau of Export Administration. Information required thereon is confidential, whether filed electronically or in any other approved format, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information required on the Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

* * * * *

8. Appendixes A, B, and C are added to part 30 to read as follows:

Appendix A to Part 30—Format for Letter of Intent, Automated Export System (AES)

A. Letters of Intent should be on company letterhead and must include:

1. Company Name, Address (no P.O. Boxes), City, State, Postal Code
2. Company Contact Person, Phone Number, Fax Number, E-mail Address
3. Technical Contact Person, Phone Number, Fax Number, E-mail Address
4. Corporate Office Address, City, State, Postal Code
5. Computer Site Location Address, City, State, Postal Code
6. Type of Business—Exporter, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply.)
   (i) Are you currently an AERP Participant? What is the AERP symbol?
   (ii) Freight Forwarder/Brokers indicate the number of exporters for whom you file export information (AERP and SEDs).

(iii) Exporters indicate whether you are applying for AES, Option 4 filing, or both.
7. U.S. Ports of Export Currently Utilized
8. Average Monthly Volume of Export Shipments (Monthly SED volume)
9. Average Monthly Value of Export Shipments (Monthly SED volume)
10. Filer Code—EIN, DUNS, SSN, or SCAC (Indicate all that apply.)
11. Software Vendor Name, Contact, and Phone Number (if using vendor provided software)
12. Look-a-Like Remote to Copy (as provided by vendor)
13. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.)
14. Types of Merchandise exported
15. Types of Licenses or Permits
16. Anticipated Implementation Date

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: ''I hereby certify that *Company Name* is, and will continue to be, in compliance with all applicable laws and regulations.''

C. Send AES Letter of Intent to: Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to: 301–457–1159.

Appendix B to Part 30—Required Pre-Departure Data Elements for Filing Option 3

(1) Identifier of Exporter—EIN, etc.
(2) Forwarding Agent I.D.—EIN, etc.
(3) Carrier I.D. (SCAC or IATA).
(4) Country of Ultimate Destination—ISO code.
(5) Name of Ultimate Consignee.
(6) (a) Commodity description or (b) Optional—Schedule B No. or HTS code
(7) Shipment reference number (17 characters or less). The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.
(8) Intended U.S. Port of Export
(9) Estimated Date of Export
(10) Transportation Reference Number, e.g., vessel booking number
(11) Method of Transportation (MOT) code
(12) HAZMAT—Y/N
(13) License code
(14) Export License Number

Appendix C to Part 30—Electronic (AES) Filing Codes

Part I—Method of Transportation Codes

10 Sea
11 Sea Containerized
12 Sea (Barge)
20 Rail
21 Rail Containerized
30 Truck
31 Truck Containerized
32 Auto
33 Pedestrian
34 Road, Other
40 Air
41 Air Containerized
50 Mail
60 Passenger, Hand Carried
70 Fixed Transport (Pipeline and Powerhouse)

Part II—Export Information Codes

LC Shipments valued $2,500 or less per classification number that are required to be reported
TP Temporary exports of domestic merchandise
IP Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
IR Shipments of merchandise imported under a Temporary Import Bond for repair
DB Drawback
CH Shipments of goods donated for charity
FS Foreign Military Sales
OS All other exports
HV Shipments of personally owned vehicles
HH Household and personal effects
SR Ship's stores
TE Temporary exports to be returned to the United States
TL Merchandise leased for less than a year
IS Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
CR Shipments moving under a carnet
GP U.S. government shipments
LV Shipments valued $2,500 or less that are not required to be reported
SS Carriers' stores for use on the carrier
MS Shipments consigned to the U.S. Armed Forces
GS Shipments to U.S. government agencies for their use
DP Diplomatic pouches
HR Human remains
UG Gift parcels under Bureau of Export Administration License Exception GFT
IC Interplant correspondence
SC Instruments of international trade
DD Other exemptions:
Currency
Airline tickets
Bank notes
Internal revenue stamps
State liquor stamps
Advertising literature
Shipments of temporary imports by foreign entities for their use
RJ Inadmissible merchandise

(For Manifest Use Only by AES Carriers)

RP Shipment information filed through Census Bureau's AERP
AE Shipment information filed through AES

(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

Department of Commerce, Bureau of Export Administration (BXA) Licenses

C30 BXA Licenses
C31 SCL
C32 NLR (CCL/NS Column 2)
C33 NLR (All Others)
C34 Future Use
C35 LVS
C36 GBS
C37 CIV
C38 TSR
C39 CTP
C40 TMP
C41 RPL
C42 GOV
C43 GFT
C44 TSU
C45 BAG
C46 AVS
C47 APR
C48 KMI
C49 TAPS
C50 ENC

Nuclear Regulatory Commission (NRC) Codes

N01 NRC Form 250/250A
N02 NRC General License

Department of State, Office of Defense Trade Controls (ODTC) Codes

SAG Agreements
S00 License Exemption Citation
S05 DSP–5
S61 DSP–61
S73 DSP–73
S85 DSP–85

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

T10 OFAC Specific License
T11 OFAC General License

Other License Types

OPA Other Partnership Agency Licenses not listed above

Part IV—In-Bond Codes

70 Not-In-Bond
36 Warehouse Withdrawal for Immediate Exportation
37 Warehouse Withdrawal for Transportation and Exportation
62 Transportation and Exportation
63 Immediate Exportation
67 Immediate Exportation from a Foreign Trade Zone
68 Transportation and Exportation from a Foreign Trade Zone

Dated: July 1, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–19176 Filed 7–23–99; 9:55 am]

BILLING CODE 3510–07–P

federal register

Wednesday
July 28, 1999

Part IV

Department of the Treasury

Customs Service

19 CFR Parts 4, 101, 178, and 192
Automated Export System (AES); Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, 178, and 192

[T.D. 99–57]

RIN 1515–AC42

Automated Export System (AES)

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to make provision for the Automated Export System (AES)—an electronic reporting system jointly developed by the Bureau of the Census (Census) and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations and sea carriers to transmit outbound vessel manifest information. These amendments generally describe the AES, cross-referencing the applicable Census Regulations that will provide for the AES. They also set forth the criteria by which Customs will determine whether to approve an exporter for the option to transmit commodity information through AES after the carrier has left the United States (post-departure) and the appeal procedures for AES exporters if Customs denies the exporter the post-departure option; or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of that option. This document also provides for the Sea Carrier's Module in the AES.

These regulatory changes are designed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Maritza Castro, (202) 927–-0724, Office of Field Operations, Outbound Programs.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1999, Customs—in conjunction with the Bureau of the Census (Census)—published a document in the **Federal Register** (64 FR 7422) that proposed to amend the Customs Regulations to allow for the Automated Export System (AES), an electronic reporting system jointly developed by Census and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations (SEDs) and sea carriers to transmit outbound vessel manifest information. In that document, Customs proposed to add a new subpart B in part 192 of the Customs Regulations, which pertains to Export Control, to generally describe the AES, cross-referencing proposed Census Regulations providing for the AES which were published in the same issue of the **Federal Register** (64 FR 7412). The document also proposed criteria by which Customs would determine whether to approve an exporter for the AES option to transmit commodity information after the carrier has left the United States (post-departure) and the appeal procedures for AES exporters if Customs denies the exporter the post-departure option, or, if Customs has approved the post-departure option for an AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of the option.

The document also proposed to create a new § 4.76 in the Customs Regulations (19 CFR 4.76) providing for the Sea Carrier's module in the AES.

Customs also proposed to revise the authority citation for part 192 to more clearly show the statutory basis of Customs authority to collect and examine manifest and export data information.

Customs also used the notice document as the vehicle to propose an amendment to the general provisions of part 101 of the Customs Regulations to include a definition of the term ''business day.'' While the term ''business days'' was used in that document in reference to filing times for sea carriers, the proposed definition would be applicable wherever the term is used throughout the Customs Regulations (19 CFR).

These regulatory changes were proposed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation. Comments were solicited on the proposed regulations in general and on the economic impact of transmitting booking information on small carriers in particular.

The comment period closed April 13, 1999; three comments were received, one being forwarded from Census. The comments and Customs responses are set forth below.

Analysis of Comments

All of the comments received concern the general requirements for the AES proposed by the Census Regulations in their document; none of the comments received concern the Sea Carrier's Module in AES, which was the thrust of the subject matter proposed in the Customs document. No comments were received on the economic impact on small carriers of transmitting booking information.

Time Frame for Submitting Outstanding Data

Comment: One commenter questions why Option 3 filers are given only 5 days to submit outstanding data required to be filed when Option 4 filers are allowed 10 days and inquiries of the compelling reason for this disparity. Although the commenter states that the AES proposed rules—published by Census—accurately represented the four options agreed upon in the Interest Based Negotiations (IBN) between Census, Customs, and the trade community, the commenter goes on to state that Option 3 filers have the same invoicing and documentation problems as Option 4 filers and that the two filing classes should have the same time frames for submitting outstanding data required to be filed. This comment concerns §§ 30.61(b) and (c) of the proposed Census Regulations.

Customs Response: The reason Option 4 filers are allowed an additional 5 days to submit outstanding export data required to be filed is because Option 4 privileges are granted only to pre-approved exporters who have provided approving agencies with basic business information, such as type of merchandise, method of operation, and volume. Since this business data is on file prior to departure, the risk factor for Option 4 shipments is minimized. Filers with Option 3 status, on the other hand, do not have such business data on file, nor do they require any prior approval from an agency. Since Option 3 filing status is available to any AES commodity filer, the risk factor for Option 3 shipments is greatly increased. The tighter time frame for reporting full data is designed to provide a level of control, minimizing the risk for shipments which might require redelivery, or for which subsequent data is filed late or not at all. It should also help ensure a better workflow and more timely submission of crucial trade data.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Privileges and Shipments Required To Be Filed With Full Predeparture Information

Comment: Two commenters question why filers who are approved for Option 4 to transmit all export information post-departure should be required to transmit any export information predeparture under Option 2 or 3. Option 4 is not permitted for specific types of shipments, such as those requiring export licenses. These commenters believe that Option 4 was conceived as a ''blanket'' process for an exporter to submit all data post-departure and do not see the need, even when an export requires an export license, for predeparture reporting for Option 4 filers, since the license itself is permission to export. (Emphasis in comment). This comment concerns §§ 30.61(a) and (c) of the proposed Census Regulations.

Customs Response: This comment reflects confusion concerning the scope of Option 4 privileges. Option 4 filing privileges extend only to pre-approved filers, and then only for qualified shipments. An exporter's status as an approved Option 4 filer under § 30.61(c) of the Census Regulations does not negate the restrictions imposed when exporting specifically exempted shipments, identified under § 30.61(a) of the Census Regulations, or shipments requiring an export license. The specific types of shipments requiring full predeparture information under AES Option 2 are: (1) Used, self-propelled vehicles; (2) essential and precursor chemicals requiring a permit from the Drug Enforcement Administration; (3) shipments defined as ''sensitive'' by Executive Order; and (4) shipments where full export information is required prior to exportation by a Federal government agency. It would be the responsibility of that government agency to approve filers to use Option 4 for those shipments.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Filing Status & the Export of Used, Self-Propelled Vehicles

Comment: One commenter requests that § 30.61 of the Census Regulations be modified to allow approved exporters to report the export of used, self-propelled vehicles in AES under Option 4.

Customs Response: Customs disagrees. As discussed above in the second comment response, certain specific types of export shipments require that full predeparture information be filed under Option 2. These are high-risk shipments. Used, self-propelled vehicles are one of these type of shipments. Predeparture information is required for shipments of used, self-propelled vehicles because they are subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations (19 CFR part 192, subpart A), which were promulgated pursuant to specific statutes aimed at stopping the export of stolen vehicles. Law enforcement concerns to counter this threat of exporting stolen vehicles require that the original title for the vehicle be physically presented to Customs before the export of the used, self-propelled vehicle. See, T.D. 99–34 (64 FR 16635; published April 6, 1999). Accordingly, because full predeparture information is considered necessary before the exportation of used, self-propelled vehicles, Customs is not asking Census to change the regulations on this matter.

It is noted that new self-propelled vehicles (those for which the title has not been transferred to an ultimate purchaser) may be reported in the AES by an approved filer using Option 4. It is also noted that used, self-propelled vehicles shipped between the United States and Puerto Rico are not subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations and are approved commodities that may be reported in the AES by an approved filer using Option 4. The Census Regulations have been amended to reflect this.

Comment: Two commenters suggest that the Census Bureau program, the Automated Export Reporting Program (AERP), should be retained. One of these commenters further suggests that AES data formats do not conform to the Treasury Department's International Trade Data System (ITDS), which will replace the AES.

Customs Response: Census and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Again, in a notice published in the **Federal Register** (63 FR 54438) on October 9, 1998, it was announced that the AERP would expire on December 31, 1999. This time frame was established to allow sufficient time for AERP participants to convert to AES. The AES is able to process trade data for all AERP companies. The AERP will not be extended past December 31, 1999.

In response to the comment regarding AES compatibility with ITDS, it should be noted that AES is compatible with the functional requirements of the ITDS and may be incorporated into that system in the future.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt as a final rule, with one substantive change and minor changes for clarity, the proposed amendments published February 12, 1999, in the **Federal Register** (64 FR 7422). The one substantive change involves the definition of the term ''business day.''

In the proposal, Customs proposed to amend the general provisions of Part 101 of the Customs Regulations to include a definition of the term ''business day'' and the term ''business days'' was used in §§ 4.76(b), (c)(3), and (c)(4). While the definition of ''business day'' is adopted in this final rule document because of its use at § 4.76(b), Customs has determined that the term is not appropriate at §§ 4.76 (c)(3) and (4) because AES programming only allows for calculation of calendar days.

Accordingly, the term ''business days'' is replaced with ''calendar days'' at § 4.76(c)(4).

It is noted that in a separate document published in today's **Federal Register**, the Bureau of the Census is publishing its final rule document setting forth the general requirements for the AES in the Census Regulations (chapter I of title 15 of the Code of Federal Regulations) at new subpart E of part 30 (15 CFR part 30).

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Booking information is already collected in the ordinary course of business by sea carriers and the cost of transmitting the information electronically to Customs through AES, even if the carrier is not a certified AES participant, is not substantial. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Inapplicability of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(1) and (3), a delayed effective date is not required for this rule. For purposes of 5 U.S.C. 553(d)(1), this rule reflects a grant of an exemption from the normal export manifest reporting requirements to AES

participants using the Sea Carrier's module. A complete outbound cargo manifest is generally required to be delivered to a Customs port director not later than the fourth business day after clearance of the vessel from each port. According to this rule, a carrier can file the manifest information with Customs via AES for each booking loaded on a departed vessel within ten calendar days after the departure of the vessel from each port. Because the ability to file export manifest information electronically benefits the public, pursuant to 5 U.S.C. 553(d)(3), good cause exists for not delaying the effective date of this rule.

Paperwork Reduction Act

The collection of information contained in these final regulations has been revised, reviewed, and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0221. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is at § 4.76. This information is required to determine which export shipments are high risk. This information will be used to screen shipments for enforcement targeting. The likely respondents are sea carriers that engage in foreign commerce and trade with the United States and are required to submit outbound vessel manifest data. The estimated average burden associated with the collection of information in this final rule is one to seventy-two hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., NW, Washington, DC 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Part 178 of the Customs Regulations is amended to reflect this paperwork requirement.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Exports, Foreign commerce and trade statistics, Freight, Inspection, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade statistics, Harbors, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, Vessels.

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Customs duties and inspection, Electronic filing, Export control, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, parts 4, 101, 178, and 192 of the Customs Regulations (19 CFR parts 4, 101, 178, and 192) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

2. A new § 4.76 is added to read as follows:

§ 4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (*see*, part 192, subpart B, of this chapter) that allows for the filing of outbound vessel manifest information electronically (*see*, 15 CFR part 30). All sea carriers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.60. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302–A) of §§ 4.63 and 4.75, except as otherwise provided in §§ 4.75 and 4.84.

(b) *Responsibilities.* The performance requirements and operational standards and procedures for electronic submission of outbound vessel manifest information are detailed in the AES Trade Interface Requirements handbook (available on the Customs internet web site (www.customs.gov)). Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AES Trade Interface Requirements handbook. Customs will send messages to participant carriers regarding the accuracy of their transmissions. AES participants are required to comply with the recordkeeping requirements contained at § 30.66 of the Census Regulations (15 CFR 30.66) and any other applicable recordkeeping requirements. Where paper SEDs have been submitted by exporters prior to departure, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel from each port, unless a different time requirement is specified by §§ 4.75 or 4.84. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set forth in § 4.75(b) by which the participant carriers are otherwise bound.

(c) *Messages required to be filed within the sea carrier's module.* Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking.* When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment

designated for inspection is released and may be loaded on the vessel;

(3) *Departure.* No later than the first calendar day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest.* Within ten (10) calendar days after the departure of the vessel from each port, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (*see,* applicable provisions in this part) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.1, add, in appropriate alphabetical order, the definition of ''business day'' to read as follows:

§ 101.1 Definitions.

* * * * *

Business day. A ''business day'' means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding, in appropriate numerical order, a listing for § 4.76 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
*	* * *	*
§ 4.76	Booking information for the Sea Carrier's Module of the AES.	1515–0221
*	* * *	*

PART 192—EXPORT CONTROL

1. The authority citation for part 192 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; Subpart B also issued under 13 U.S.C. 303; 46 U.S.C. App. 91.

2. In § 192.0, a sentence is added at the end of the section to read as follows:

§ 192.0 Scope.

* * * This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations at part 30, subpart E (15 CFR part 30, subpart E), and provides the grounds under which Customs, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by Customs.

3. A new subpart B, consisting of §§ 192.11 through 192.13, is added to read as follows:

Subpart B—Filing of Export Information Through the Automated Export System (AES)

Sec.
192.11 Description of the AES.
192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.
192.13 Revocation of participant's AES post-departure (Option 4) filing privileges; appeal procedures.

Subpart B—Filing of Export Information Through the Automated Export System (AES)

§ 192.11 Description of the AES.

AES is a voluntary program that allows all exporters required to report commodity export information (*see,* 15 CFR 30.16) to submit such information electronically, rather than on paper, and sea carriers to report required outbound vessel information electronically (*see,* §§ 4.63, 4.75, and 4.76 of this chapter). Eligibility and application procedures are found at subpart E of part 30 of the Census Regulations (15 CFR part 30, subpart E), denominated Electronic Filing Requirements—Exporters. These Census Regulations (15 CFR part 30, subpart E) provide that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

§ 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (*e.g.,* exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The applicant has made or caused to be made in the ''Letter of Intent,'' a false or misleading statement or omission with respect to any material fact.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b).

§ 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter has made or caused to be made in the ''Letter of Intent,'' a

false or misleading statement or omission with respect to any material fact;

(2) The exporter submitting the ''Letter of Intent'' is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Except as stated elsewhere in this paragraph, the revocation will become effective when the participant has either exhausted all appeal proceedings or thirty (30) calendar days after receipt of the notice of revocation if no appeal is filed. However, in cases of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the Director, Outbound Programs, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington, DC 20229. Customs will issue a written decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in Option 4 of AES may not reapply for this filing status for one year following written notification of rejection or revocation.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 22, 1999.

Timothy G. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–19177 Filed 7–23–99; 9:55 am]

BILLING CODE 4820–02–P

federal register

Wednesday
July 28, 1999

Part V

Department of Labor

Office of Labor–Management Standards

29 CFR Part 215

Amendment to Section 5333(b) Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA 21); Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 215

RIN 1215–AB25

Amendment to Section 5333(b) Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA 21)

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Final guidelines.

SUMMARY: The Department of Labor (the Department) is providing notice of an amendment to its procedural guidelines for certification of certain projects of the Department of Transportation, Federal Transit Administration (FTA), in satisfaction of the requirements of Title 49 U.S.C., Chapter 53, Section 5333(b) (commonly referred to as ''Section 13(c)''). This notice is necessitated by the introduction of three new programs under the Transportation Equity Act for the 21st Century (TEA–21), and the need to identify appropriate procedures for the Department's required certification of employee protections in connection with these projects.

The section 5333(b) guidelines, as amended, are reprinted in their entirety in this document for the convenience of the reader. These guidelines replace those currently published at 29 CFR part 215. For a discussion of issues raised during the comment process for the earlier guidelines, see the final guidelines published on December 7, 1995 (60 FR 62964).

DATES: These guidelines become effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5603, Washington, DC 20210; telephone (202) 693–0126; facsimile (202) 693–1342.

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation Equity Act for the 21st Century (TEA–21), signed into law by President Clinton on June 9, 1998, provides for three new transportation programs which require employee protections under section 5333(b). These are the Job Access and Reverse Commute Program (section 3037), the Over-the-Road Bus Accessibility Program (section 3038), and the State Infrastructure Bank Program (section 1511). As a condition of the release of Federal funds for these programs, applicants must comply with section 5333(b), administered under the Department's mass transit employee protection program. These employee protections include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining.

For most mass transit programs funded by the FTA, the Department processes the employee protection certifications required under section 5333(b) in accordance with procedural guidelines published at 29 CFR 215.3. The Department does not apply these procedures to the processing of section 5310, Elderly and Handicapped grants which do not require section 5333(b) certification, or section 5311 Non-Urban formula grants which are specifically exempted from processing under the guidelines. Section 5311 grants are certified through the application of a warranty without referral to the affected parties. Other grants are certified following the referral procedures established in the guidelines affording the interested parties an opportunity to provide their views on substantive protections.

The Department's Office of Labor-Management Standards' Notice of Proposed Rulemaking (NPRM), issued March 30, 1999 (64 FR 15276), proposed to amend the guidelines to identify the certification processes which will be applicable for the Job Access and Reverse Commute Program, the Over-the-Road Bus Accessibility Program, and the State Infrastructure Bank Program.

Comments addressing the proposed modifications to the guidelines were submitted by six interested parties. The Department has carefully reviewed these comments in the context of the amended guidelines to ensure that the requirements of the statute continue to be satisfied and that the Department will meet its goal of providing efficient and predictable certification of employee protections. The Department's review of the interested parties' comments has not resulted in any changes to the proposed guideline amendments. However, the specific points raised by the parties are discussed in Section II, Summary and Discussion of Comments.

Therefore, for the newly authorized programs under TEA–21, the Department will provide for processing as follows. For Job Access and Reverse Commute grants, the Department will differentiate between grants to applicants serving populations under 200,000 and those applicants serving populations of 200,000 or more. The Department will develop procedures and apply appropriate protections without a referral for ''under 200,000'' grants and will utilize the guidelines procedures for ''200,000 and over'' grants. For State Infrastructure Bank (SIB) activities, the Department will develop procedures and ensure that employees are appropriately protected without a referral for the initial capitalization of SIBs and will utilize the guidelines procedures for subsequent projects receiving assistance from the SIB. Finally, for the Over-the-Road Bus Accessibility Program, the Department will utilize the guidelines procedures.

II. Summary and Discussion of the Comments

Six comments from various interested parties throughout the transit industry were submitted and considered.

Comments were received from one public transit provider:

—New Jersey Transit Corporation

Four labor organizations provided comments:

—Amalgamated Transit Union
—Transportation Trades Department, AFL–CIO
—Transportation-Communications International Union
—United Transportation Union

Finally, one public transit association provided comments:

—American Public Transit Association

The Department has carefully reviewed and considered all of the comments in developing these guidelines. The following provides a summary of the comments and the Department's response.

A. Job Access Certification Procedures for Applicants Serving Populations Under 200,000

Two comments supported the Department's proposal not to apply the existing guidelines procedures for Job Access and Reverse Commute grants in areas under 200,000. However, they expressed disappointment that projects for grants to applicants serving populations of 200,000 and over would be covered by the existing guidelines procedures. Concern was expressed that, because ''non-traditional transportation providers are going to be

involved, and given the unique types of transportation services to be funded under this new program, it is likely that grants will be subject to inordinate delays under the referral process.'' The Department, however, does not believe that such non-traditional providers will experience substantial delays under the certification procedures which were put in place in 1996. The Department's existing procedures provide for certifications to be issued within 60 days after referral of a grant application.

Four comments opposed the Department's proposed procedures for processing Job Access and Reverse Commute grants for applicants serving populations under 200,000. One comment indicated that there was no basis in the statute or the legislative history to justify a warranty procedure for Job Access and Reverse Commute Program grants to applicants serving populations under 200,000. Another indicated that the Department's expectation that this program will have a greater impact on employees of larger transit systems does not justify its proposal not to apply the existing guidelines to grants serving populations under 200,000. It was suggested that the existing procedures should be applicable to the Job Access and Reverse Commute grants serving populations under 200,000 because ''the Department already acknowledges that the existing Section 13(c) guidelines are the appropriate means by which to certify employee protective terms for grants disbursed to urbanized areas with populations under 200,000 who receive ''pass-through'' funds from their respective states.''

The Job Access program established under TEA–21 distinguishes between grants serving differing populations by requiring that Metropolitan Planning Organizations will select applicants in areas serving populations of 200,000 or greater, and the states will select applicants in areas with populations under 200,000. Section 3037(j) of TEA–21 specifies that ''[a] grant under this section shall be subject to . . . all of the terms and conditions to which a grant made under section 5307 of title 49, United States Code, is subject''. However, neither the statute nor the legislative history for the Job Access and Reverse Commute Program specify how such grants are to be processed. Therefore, the Department has flexibility to develop and implement procedures appropriate to carry out its section 5333(b) responsibilities. In addition, with regard to ''pass-through'' grants, the legislative history indicates that negotiations are the appropriate process for the development of protections for application to those grants.

The Job Access and Reverse Commute grants serving populations under 200,000 will have much in common with grants processed under the section 5311 small urban and rural transportation program. For example, both types of grants will be selected and administered through the States and many grants will be made to non-traditional transportation providers. Because grants serving populations of under 200,000 are less likely to interface with traditional transportation providers which tend to be represented by organized labor, the Department believes it is not necessary to use a referral process here. Accordingly, the Department believes there is adequate justification for utilizing a process which does not require a referral for certification of Job Access and Reverse Commute Program grants to applicants serving populations under 200,000. The Department will ensure that the protections applied to Job Access and Reverse Commute grants serving populations under 200,000 satisfy the requirements of section 5333(b).

Several comments assumed that the Department would process Job Access and Reverse Commute grants for applicants serving populations under 200,000 using the warranty certification process applicable to non-urban formula grants. As noted in the NPRM, the Department intends to ''establish procedures *similar* to those for section 5311(f).'' (Emphasis added.) Another comment noted that ''the Department intends to apply as yet unspecified arrangement(s)'' but ''the proposed amendment to the Section 5333(b) guidelines fails to include any discussion and/or provisions prescribing how such an arrangement would be established.''

The Department has the authority and responsibility to develop appropriate procedures and statutorily sufficient protective arrangements for the section 5333(b) certification program. These may need to be adjusted periodically to reflect developments in transit programs, including the Job Access and Reverse Commute program, or to formulate the necessary terms and conditions for specific projects. The Department must retain the flexibility to apply appropriate protections in the circumstances presented. Therefore, it is not appropriate to publish the protective arrangements which will be applied for grants under this program.

The Department will establish appropriate procedures for processing of ''under 200,000'' Job Access and Reverse Commute grants similar to those for section 5311(f) grants, coordinating with the Federal Transit Administration on mass transit issues, issues relating to the interface of our procedures, and various issues relating to the applications themselves.

B. State Infrastructure Bank Certification Procedures

One comment indicated that, in addition to the initial capitalization, the SIB program should be administered through ''more flexible and streamlined warranty procedures in lieu of the lengthy referral process'' for grants made subsequent to the initial capitalization. The Department, however, anticipates that many of the projects assisted by the SIBs will be similar to projects currently requiring certification under the existing guidelines procedures. Accordingly, the existing certification process is appropriate for SIB projects and it will not unduly burden the efficient delivery of program services.

One comment indicated that the proposed guidelines did not make it sufficiently clear that transit projects receiving assistance subsequent to a SIB capitalization would be subject to the referral procedures under section 215.3. Another comment noted that the initial capitalization might also include specific projects which should be processed in accordance with the existing guidelines procedures. These comments suggested that the final guidelines be amended to address these issues. The Department, however, does not believe that such modifications are necessary. As drafted, the amended guidelines only exempt from the existing procedures those grants which capitalize SIB accounts. If a specific project were to be applied for at the same time as the capitalization grant, the Department would apply the certification procedures of the existing guidelines for that project.

It was also suggested that the Department include in its guidelines ''the procedures and/or standards to be applied for developing the 'standard protections' for initial SIB capitalization grants where no specific projects are identified.'' As previously indicated, the Department has the authority and responsibility to develop appropriate procedures and statutorily sufficient protective arrangements, and these may need to be adjusted periodically to reflect developments in transit programs, including the SIB program. In order for the Department to retain the flexibility necessary in the circumstances presented, it is not appropriate to publish the specific language which will be applied for SIB

capitalization grants. The Department will certify initial capitalization grants made by FTA to the SIBs by specifying that the SIB may not release funds for specific projects in the absence of a subsequent certification for those projects.

As with other programs, the Department will establish appropriate procedures for processing of SIB capitalization grants, coordinating with the Federal Transit Administration on issues relating to the interface of our procedures and various issues relating to the applications themselves.

C. Second and Subsequent Generations of Funds Under the State Infrastructure Bank Program

One comment indicated that SIB ''funds are repaid to the state account from non-federal sources after their first use, which means the federal nexus becomes attenuated and there remains no real basis for ongoing application of federal DOL Guidelines—which at that point should no longer apply.'' Another comment, however, noted that ''Section 1511(h)(2)(i)(2) [of TEA–21] mandates the application of Section 5333(b) requirements . . . to transit projects assisted by 'repayments' to the SIB resulting from any financial transactions undertaken by the bank.'' That comment indicated that ''[t]he Department's final regulation should acknowledge and incorporate these obligations for so-called 'second generation' grants to insure the proper application of transit employee protections to *all* transit projects assisted by an infrastructure bank.''

TEA–21 does specify that ''[t]he requirements of titles 23 and 49, United States Code, shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.'' It is not necessary to modify the Department's proposed amendment to address either of these comments. The Department will include language in its certifications for the capitalization of SIBs which ensures that the requirements of TEA–21 with respect to second and subsequent generations of funds are appropriately satisfied.

D. Over-the-Road Bus Accessibility Program

Two comments expressed support for the Department's proposed certification approach for processing grants under the Over-the-Road-Bus Accessibility Program. Another comment, however, indicated that ''the Secretary of Labor appears to have the authority to waive section 5333(b) certification requirements'' for the program, and recommended that the final rule address this authority.

In addressing the Over-the-Road-Bus Accessibility Program, section 3038(f) of TEA–21 provides that ''[a] grant under this section shall be subject to all of the terms and conditions applicable to subrecipients who provide intercity bus transportation under section 5311(f) of title 40, United States Code, and such other terms as the Secretary [of Transportation] may prescribe.'' This language establishes that the *requirements* of section 5333(b) must be applied for Over-the-Road-Bus Accessibility Program grants, but neither the statute nor the legislative history specify the *procedures* for processing these grants. Therefore, the Department has flexibility to develop and implement procedures appropriate to carry out its section 5333(b) responsibilities. Section 5311(j) provides that ''the Secretary of Labor may waive the application of section 5333(b)'' for projects under section 5311. However, the criteria for such a waiver requires that ''there are no employees of the Recipient or of any other public transportation providers in the transportation service area of the Project who could be potentially affected.'' The Department believes it is unlikely that intercity bus services would meet that criteria. Therefore, the Department did not include waiver procedures for this program.

III. Regulatory Procedures

Executive Order

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

This final rule addresses the procedural steps for obtaining the Department's certification that employee protection arrangements under the Federal Transit law are in place as required for three new programs funded under TEA–21. The amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Assistant Secretary for Employment Standards has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

A. This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

B. Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the Effective Date set forth in the outset of this document. The report will note the Office of Management and Budget's determination that this rule does not constitute a ''major rule'' under that Act. 5 U.S.C. 801, 805.

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Accordingly, Part 215 in Chapter II of Title 29 of the *Code of Federal Regulations* is amended by removing the last sentence in paragraph (a)(3) of § 215.3, by adding a new paragraph (a)(4) in § 215.3 to read as set forth below, and by revising § 215.8 to read as set forth below. For the convenience of the reader, the entire part is being republished in full.

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.
215.1 Purpose.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 The Model Agreement.
215.7 The Special Warranty
215.8 Department of Labor contact.

Authority: Secretary's Order No. 5–96, 62 FR 107, January 2, 1997.

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11326 of this title.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The Federal Transit Administration will provide the Department with the information necessary to enable the Department to certify the project.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation/discussion, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(3) If an application involves a grant to a state administrative agency which will pass assistance through to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions.

(4) These procedures are not applicable to grants under section 5311; grants to applicants serving populations under 200,000 under the Job Access and Reverse Commute Program; or grants to capitalize SIB accounts under the State Infrastructure Bank Program.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in paragraphs 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in paragraphs 215.3(b)(2) or 215.3(b)(3)(ii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) For operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) For capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation/discussion within the time frames designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under paragraph 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations/discussions during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of the date for submitting objections, the Department of Labor will:

(i) Determine whether the objections raised are sufficient; and

(ii) Take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit

Administration for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administration.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations/discussions, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate/discuss expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations/discussions if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation/discussion period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administration within five (5) days after the end of the negotiation/discussion period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to §§ 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administration pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Department will issue a final certification to the Federal Transit Administration no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Department will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate/discuss over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Department.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administration.

(h) Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of § 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 The Special Warranty.

The Special Warranty mentioned in paragraph (b)(3)(ii) of § 215.3 refers to the protective arrangements developed for application to the small urban and rural program under section 5311 of the Federal Transit statute. The warranty arrangement represents the understandings of the Department of Labor and the Department of

Transportation, reached in May 1979, with respect to the protections to be applied for such grants. The Special Warranty provides fair and equitable arrangements to protect the interests of employees and meets the requirements of 49 U.S.C. 5333(b).

§ 215.8 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Director, Statutory Programs, U.S. Department of Labor, Suite N5603, 200 Constitution Avenue, N.W., Washington, DC 20210; phone number 202–693–0126.

Signed at Washington, DC this 21st day of July, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–19111 Filed 7–27–99; 8:45 am]

BILLING CODE 4510–27–P

federal register

Wednesday
July 28, 1999

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 47 and 52

Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods; Withdrawal of Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98–603]

RIN 9000–AI28

Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are withdrawing a proposed rule published in the **Federal Register** on February 16, 1999 (64 FR 7736), under FAR case 98–603, Contractor Liability for Loss of and/or Damages to Household Goods. The rule proposed to amend the Federal Acquisition Regulation (FAR) to standardize the method of calculating contractor liability for loss of and/or damage to shipments of household goods to conform to International Through Government Bill of Lading (ITGBL) procedures.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 98–603, Contractor Liability for Loss of and/or Damages to Household Goods; Withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The rule proposed to amend the clause at FAR 52.247–23 with regard to the method of calculating contractor liability for loss of and/or damage to shipments of household goods.

Presently, when contracting for the transportation of household goods, the contracting officer inserts the clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts. This clause requires the contractor to indemnify the owner of the goods at a rate per pound determined to be appropriate to the specific situation. The Councils intended to provide standardization for liability on shipments of household goods and a more equitable compensation for loss of individual items that conforms with commercial industry standards by calculating liability, as found in the ITGBL, at a rate of $5.00 per pound times the total net shipment weight. Respondents to the **Federal Register** notice expressed several concerns with regard to the adoption of the increased liability to $5.00 per pound. One major concern was whether this increased liability reflected a commercial industry standard. A second concern was that the proposed rule did not reflect a demonstrated benefit to the Government or industry. After review of the public comments, the Councils have decided to withdraw the proposed rule and retain the current clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, requiring the contractor to indemnify the owner of the goods at a rate per pound determined to be appropriate to the specific situation.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 22, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–19251 Filed 7–27–99; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Wednesday
July 28, 1999

Part VII

The President

Proclamation 7211—Parents' Day

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

Presidential Documents

Title 3—

The President

Proclamation 7211 of July 23, 1999

Parents' Day, 1999

By the President of the United States of America

A Proclamation

Parents are the foundation of the family and a cornerstone of community life in America. They instill the values, attitudes, and guidance children need to become strong individuals and caring citizens; we turn to our parents for the unconditional love and encouragement we need to make the most of our lives and to contribute to the life of our Nation. On Parents' Day, we pay tribute to the millions of parents whose care has nurtured us, whose vigilance has protected us, and whose selfless devotion has blessed our lives.

The challenges of parenthood have changed as our society has changed. In many American families, both parents work outside the home and struggle to balance the competing demands of job, home, and family. In others, a single parent bears these responsibilities.

My Administration continues to support parents through initiatives such as the Children's Health Insurance Program and Head Start and by advocating child care, adoption, and child welfare expansion. We have worked hard to help parents support their families financially by creating new jobs, raising the minimum wage, expanding the Earned Income Tax Credit, preserving the national guarantee of health care for poor children, and increasing child support collections to record heights. We have helped parents balance work and family by enacting the Family and Medical Leave Act and releasing funds for after-school grants so that parents do not have to choose between keeping their jobs and ensuring that their children receive quality care and supervision.

Though helping parents do their job has always been a top priority of my Administration, we recognize that government programs alone cannot solve all the problems that families face today. For example, I am heartened by the passionate commitment of parents across America in response to our call for a national campaign to prevent youth violence. This campaign will ask all sectors of society to focus on this crucial issue, to discover what measures work, and to share that knowledge with other families in communities across our country.

There is no single cause or solution to ending the violence that has cut short too many young lives. But, by working together, we can change the values of our culture and influence the marketing strategies of media industries so that our children are not continually exposed to violent or other inappropriate materials in the games they play, the programs and movies they watch, or the music they hear. We also must continue our efforts to ensure that our young people do not gain unauthorized access to guns. Parents play a crucial role in all of these endeavors by remaining involved in the lives of their sons and daughters.

The First Lady and I have issued a challenge to our Nation to celebrate the coming of the new millennium by honoring the past and imagining the future. As we prepare to enter the 21st century, let us remember that, just as parents remain a treasured link to our past, they also influence the future by raising their children to become the responsible citizens of tomorrow. On this day and throughout the year, let us honor the millions

of devoted mothers and fathers who have fulfilled this solemn responsibility with extraordinary compassion, generosity, and love.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103-362, do hereby proclaim Sunday, July 25, 1999, as Parents' Day. I invite the States, communities, and the people of the United States to join together in observing this day with appropriate ceremonies and activities to honor our Nation's parents.

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

William J. Clinton

[FR Doc. 99–19494
Filed 7–27–99; 8:45am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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AGRICULTURE DEPARTMENT

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AGRICULTURE DEPARTMENT

Economic Research Service

Organization, functions, and authority delegations; published 7-28-99

AGRICULTURE DEPARTMENT

Organization, functions, and authority delegations:
- Chief Economist and Energy Policy and New Uses Office Director; published 7-28-99

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- Automated Export System; shipper's export data; electronic filing; published 7-28-99

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National Oceanic and Atmospheric Administration

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- Atlantic highly migratory species—
  - Large coastal shark species; published 7-14-99

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- Zinc phosphide; published 7-28-99

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Common carrier services:
- Commercial mobile radio services—
  - Wireless services compatibility with enhanced 911 service; published 6-28-99

GENERAL SERVICES ADMINISTRATION

Federal property management:
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  - Excess personal property reporting requirements; and Federal surplus firearms, donation to State and local law enforcement activities; published 7-28-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Lockheed; published 6-23-99
- McDonnell Douglas; published 6-23-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

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  - Breakout tanks; industry standards adoption; correction; published 7-28-99

TREASURY DEPARTMENT

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COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Air Force Department

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DEFENSE DEPARTMENT

Defense Logistics Agency

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EDUCATION DEPARTMENT

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- Tier 2 motor vehicle emission standards and gasoline sulphur control requirements; comments due by 8-2-99; published 6-30-99

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Air quality implementation plans; approval and promulgation; various States:
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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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  - Dietary supplements; effect on structure or function of body; types of statements definition; meeting; comments due by 8-4-99; published 7-8-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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INTERIOR DEPARTMENT

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INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

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TRANSPORTATION DEPARTMENT

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