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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as margin securities under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 23, 1999 (64 FR 8711), and became effective March 1, 1999.

The Foreign List is composed of foreign equity securities that qualify as foreign margin stock under Regulation T by meeting the requirements of section 220.11 (c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a ''ready market'' under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a ''no-action'' position issued thereunder. This includes all foreign stocks on the Financial Times/Standard & Poor's Actuaries World Indices.

There are no additions to the Foreign List. The following nine stocks are being removed because they no longer substantially meet the provisions of section 220.11(d) of Regulation T:

Hong Kong
PEREGRINE INVESTMENT HOLDINGS LTD.
HK $.60 ordinary shares

Japan
KURIMOTO, LTD.
¥ 50 par common
KYUDENKO CORPORATION
¥ 50 par common
MEIDENSHA CORPORATION
¥ 50 par common
NISSAN FIRE & MARINE INSURANCE CO., LTD.
¥ 50 par common
SANYO SECURITIES CO., LTD.
¥ 50 par common
TOKYO SOWA BANK, LTD.
¥ 50 par common
TOKYO TATEMONO CO., LTD.
¥ 50 par common
TOSHIBA CERAMICS CO., LTD.
¥ 50 par common

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Germany
GEHE AG
Ordinary shares, par DM 50
HOECHST AG
Ordinary shares, par DM 50

Japan
AIWA CO., LTD.
¥50 par common
AKITA BANK, LTD.
¥50 par common
AOMORI BANK, LTD.
¥50 par common
ASATSU INC.
¥50 par common
BANDAI CO., LTD.
¥50 par common
BANK OF KINKI, LTD.
¥50 par common
BANK OF NAGOYA, LTD.
¥50 par common
CHUDENKO CORP.
¥50 par common
CHUGOKU BANK, LTD.
¥50 par common
CLARION CO., LTD.
¥50 par common
DAIHATSU MOTOR CO., LTD.
¥50 par common
DAINIPPON SCREEN MFG. CO., LTD.
¥50 par common
DAIWA KOSHO LEASE CO., LTD.
¥50 par common
DENKI KAGAKU KOGYO CO., LTD.
¥50 par common
EIGHTEENTH BANK, LTD.
¥50 par common
FUTABA CORP.
¥50 par common
FUTABA INDUSTRIAL CO., LTD.
¥50 par common
HIGO BANK, LTD.
¥50 par common
HITACHI CONSTRUCTION MACHINERY CO., LTD.
¥50 par common
HITACHI SOFTWARE ENGNEERING CO., LTD.
¥50 par common
HITACHI TRANSPORT SYSTEM, LTD.
¥50 par common
HOKKOKU BANK, LTD.
¥50 par common
HOKUETSU BANK, LTD
¥50 par common
HOKUETSU PAPER MILLS, LTD.
¥50 par common
IYO BANK, LTD.
¥50 par common
JACCS CO., LTD.

¥50 par common
JAPAN AIRPORT TERMINAL CO., LTD.
¥50 par common
JAPAN SECURITIES FINANCE CO., LTD.
¥50 par common
JUROKU ANK, LTD
¥50 par common
KAGOSHIMA BANK, LTD.
¥50 par common
KAMIGUMI CO., LTD.
¥50 par common
KATOKICHI CO., LTD.
¥50 par common
KEISEI ELECTRIC RAILWAY CO., LTD.
¥50 par common
KEIYO BANK, LTD.
¥50 par common
KIYO BANK, LTD.
¥50 par common
KOMORI CORP.
¥50 par common
KONAMI CO., LTD.
¥50 par common
KYOWA EXEO CORP.
¥50 par common
MAEDA ROAD CONSTRUCTION CO., LTD.
¥50 par common
MATSUSHITA SEIKO CO., LTD.
¥50 par common
MAX CO., LTD.
¥50 par common
MICHINOKU BANK, LTD.
¥50 par common
MUSASHINO BANK, LTD.
¥500 par common
NAMCO, LTD.
¥50 par common
NICHICON CORP.
¥50 par common
NICHIMEN CORP.
¥50 par common
NIHON UNISYS, LTD.
¥50 par common
NIPPON COMSYS CORP.
¥50 par common
NIPPON TRUST BANK, LTD.
¥50 par common
NISHI-NIPPON BANK, LTD.
¥50 par common
NISHI-NIPPON RAILROAD CO., LTD.
¥50 par common
NISSAN CHEMICAL INDUSTRIES, LTD.
¥50 par common
OGAKI KYORITSU BANK, LTD.
¥50 par common
Q.P. CORP.
¥50 par common
RINNAI CORPORATION
¥50 par common
RYOSAN CO., LTD.
¥50 par common
SAGAMI RAILWAY CO., LTD.
¥50 par common
SAIBU GAS CO., LTD.
¥50 par common
SAKATA SEED CORP.
¥50 par common
SANKI ENGINEERING CO., LTD.
¥50 par common
SANTEN PHARMACEUTICAL CO., LTD.
¥50 par common
SHIMADZU CORP.
¥50 par common
SHIMAMURA CO., LTD.
¥50 par common
SUMITOMO RUBBER INDUSTRIES, LTD.
¥50 par common
SURUGA BANK, LTD.
¥50 par common
TAIYO YUDEN CO., LTD.
¥50 par common
TAKARA STANDARD CO., LTD.
¥50 par common
TAKASAGO THERMAL ENGINEERING CO.
¥50 par common
TAKUMA CO., LTD.
¥50 par common
TOHO BANK, LTC.
¥50 par common
TOHO GAS CO., LTD.
¥50 par common
TOKYO OHKA KOGYO CO., LTD.
¥50 par common
TOKYO TOMIN BANK, LTC.
¥500 par common
UNI-CHARM CORP.
¥50 par common
USHIO, INC.
¥50 par common
YAMAHA MOTOR CO., LTD.
¥50 par common
YODOGAWA STEEL WORKS, LTD.
¥50 par common

List of Foreign Margin Stocks

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22114 Filed 8–25–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 541, 545, 560, 561

[No. 99–34]

RIN 1550–AB21

Letters of Credit, Suretyship and Guaranty

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to clarify that a Federal savings association may act as guarantor under section 5(b)(2) of the Home Owners' Loan Act (the ''HOLA''). Additionally, OTS is modifying restrictions on suretyship and guaranty agreements issued under this section. The rule also clarifies that a Federal savings association holds authority to issue letters of credit and makes related technical amendments. OTS is also amending various lending related definitions to either clarify definitions or remove unnecessary or outdated definitions.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Raynette Gutrick, Attorney, (202) 906–6265, Regulations and Legislation Division or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 1998, OTS issued a Notice of Proposed Rulemaking (''NPR'') clarifying a Federal savings association's authority to act as guarantor under section 5(b)(2) of the HOLA (64 FR 49874). The proposed rule included restrictions on suretyship and guaranty agreements issued under this authority. OTS also proposed revisions clarifying that Federal savings associations may issue letters of credit. Finally, OTS sought comment on whether it should adopt a regulation to address the escrow authority of Federal savings associations.

This document finalizes the proposed changes, clarifies or removes various related definitions that are outdated or unnecessary, and makes other technical amendments.

II. Summary of Comments

The public comment period on the NPR closed on November 17, 1998. Two Federal savings associations, two trade associations, a Federal Home Loan Bank, and one individual filed comments on the NPR.

Four commenters addressed OTS's proposal clarifying the guaranty authority for Federal savings associations and proposing restrictions on suretyship and guaranty agreements under section 5(b)(2) of the HOLA. Two commenters supported the proposed

changes and two commenters suggested clarifications.

Two commenters supported the clarification of the authority of Federal savings associations to issue letters of credit. Three commenters opposed the issuance of a regulation addressing the escrow authority of Federal savings associations. OTS has addressed the specific comments in the section-by-section discussion below.

III. Section-by-Section Discussion

A. Suretyship and Guaranty [1]

Section 5(b)(2) of the HOLA provides ''[t]o such extent as the Director may authorize in writing, a Federal savings association * * * may be surety as defined by the Director.* * *'' [2] OTS's current regulation at 12 CFR 545.103 authorizes Federal savings associations to act as surety under this section, subject to specified conditions.

Neither section 5(b)(2) of the HOLA nor current 545.103 address a Federal savings association's authority to issue a guaranty.[3] Nonetheless, OTS and its predecessor, the Federal Home Loan Bank Board (''FHLBB''), have recognized that the authority of a Federal savings association to act as guarantor is subsumed within section 5(b)(2) of the HOLA.[4] To clarify this point, OTS proposed to specifically authorize Federal savings associations to act as guarantors. OTS also proposed to move the portion of the regulation authorizing surety and guaranty agreements under section 5(b)(2) of the HOLA from part 545 to the lending and investment regulation at part 560.

Currently 545.103 imposes various conditions on the exercise of a Federal savings association's authority under section 5(b)(2) of the HOLA. Under these conditions, a Federal savings association may enter into a surety agreement only if its performance under the agreement would create an obligation authorized for investment and it takes and maintains a perfected security interest in described collateral. In addition, the current rule treats the obligation under the surety agreement as a loan to the principal under the loans-to-one-borrower limits and loans to insider restrictions.

OTS proposed several modifications to these existing conditions. First, OTS proposed to revise the collateral requirements to reflect changes to the Office of Comptroller of the Currency's (OCC) related regulation on surety and guaranty agreements.[5] Second, OTS proposed to add a new provision requiring the association to limit its obligations under the surety or guaranty agreement to a fixed amount and a specified duration. The proposed rule also added definitions of the terms suretyship and guaranty agreement.[6]

Four commenters addressed the proposed surety and guaranty regulation. Two supported the proposed changes. Two other commenters suggested clarifications and changes. These two commenters argued that the text of the proposed rule assumes that all guaranties are repayable and, thus, treats all guaranty agreements as if they were loans. The commenters noted that many guaranty-type arrangements issued by savings associations are not repayable. As examples of such arrangements, the commenters cited letters of credit, recourse transactions, and various other corporate undertakings in financial transactions. The commenters urged OTS to adopt a rule recognizing the standard market practice of non-repayable guaranties and similar arrangements, and clarifying that these practices are not subject to the conditions contained in the proposed rule.

OTS did not intend to deprive Federal thrifts of any existing authority. Rather, like the existing rule, this provision is intended to address only repayable guaranty and surety agreements issued under section 5(b)(2) of the HOLA.[7] Federal savings associations hold other authority to issue other guaranties and guaranty-like arrangements. For example, a Federal savings association may sell loans with recourse,[8] issue letters of credit and other independent undertakings,[9] and act as a surety for public deposits.[10] Further, a Federal savings association may execute signature guaranties,[11] may act as a surety with respect to its lost or destroyed Government National Mortgage Association (GNMA) certificate,[12] and may offer performance guaranties on low down payment mortgage loans that it originates or purchases and insures with a private mortgage insurer.[13] OTS did not intend to limit these authorities or to subject these authorities to the conditions contained in the proposed rule.

OTS has revised its final rule to clarify this point. The final rule clarifies that a Federal savings association may enter into a repayable suretyship or guaranty agreement under section 5(b)(2) of the HOLA, subject to the conditions listed in § 560.60.

As noted in the NPR, OTS modeled its rule on the OCC's rule on surety and guaranty agreements at 12 CFR 7.1017. The OCC's regulation states that:

> A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, if: (a) The bank has a substantial interest in the performance of the transaction involved * * *; or (b) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability.

One commenter observed that the proposed rule incorporated paragraph (b), but did not incorporate paragraph (a) of the OCC's rule. Thus, the commenter noted that OCC does not require a national bank to collateralize the transaction or meet collateral requirements listed in paragraph (b), if the bank holds a substantial interest. The commenter, therefore, asserted that OTS has imposed more rigorous

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[1] Letters of credit and other independent undertakings are discussed in Section III. B. below.

[2] 12 U.S.C. 1464(b)(2).

[3] Under a suretyship agreement, the surety is bound with its principal to pay or perform an obligation to a third party. Black's Law Dictionary 1441–42 (6th ed. 1990). Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to pay or perform. *Id.* at 705.

[4] *See e.g.*, 48 FR 23032, 23043 (May 23, 1983) (stating that section 5(b)(2) of the HOLA empowers the FHLBB to authorize by regulation the issuance of suretyship devices by Federal savings associations for the purpose of guarantying the obligations of others); FHLBB Op. Assoc. Gen. Counsel (July 5, 1983) (permitting the association to act as surety or guarantor under section 5(b)(2) of the HOLA). *See also* 12 CFR 545.16(a)(3) (''surety'' means surety under real and/or personal suretyship, and includes guarantor).

[5] 12 CFR 7.1017, as amended by 61 FR 4849 (February 9, 1996).

[6] The agency proposed to delete certain provisions of existing § 545.103. For example, current § 545.103(c) states that if a Federal savings association is required to perform under the suretyship agreement, it must treat the amount advanced as an extension of credit, subject to investment limits and other restrictions applicable to such an extension of credit. OTS has deleted this paragraph because it duplicates § 560.31(a).

[7] *See* FHLBB Op. Gen. Counsel (March 5, 1985) (Section 545.103 ''addresses the situation where the association for a fee backs the obligation of another to a third party; the party contracting for the association to pledge to pay its debt would be liable to the association for repayment should the association have to make payment to the third party under the surety agreement.'')

[8] *See* 47 FR 4049, 4051 (January 28, 1982).

[9] *See* today's final rule at § 560.50.

[10] 12 CFR 545.16.

[11] *See* FHLBB Op. Gen. Counsel (August 11, 1981) (''The authority to guarant[y] customer signatures is both implied in and incidental to the express objects and powers of Federal associations as set forth in the HOLA and the Federal charter.'').

[12] *See* FHLBB Op. Gen. Counsel (March 5, 1985) (''This is a form of offering the association's assets generally in support of its obligations which appears to be incidental to its authority to enter into the GNMA transaction and to give security.'').

[13] *See* OTS Op. Chief Counsel (October 2, 1998) (This activity ''is subsumed within the residential real property lending authority of Federal savings associations in section 5(c)(1)(B) of the [HOLA], and is a power incident to this authority.'').

requirements than OCC, causing the thrift charter to be less attractive than the national bank charter.

OCC appears to have included the ''substantial interest'' provision to clarify the authority of national banks in light of judicial precedent limiting their ability to issue guaranties for others based on a lack of express authority to national banks to guarantee the acts of third parties.[14] Despite this limitation, national banks may provide guaranties that are ''entered into for the furtherance of their own rights or as an incident to the transaction of business.'' [15] Interpretative Ruling 7.1017 was ''intended to provide a general statement of this incidental powers exception to the general prohibition against national banks' entering guarantees.'' [16] Because the HOLA expressly authorizes thrifts to enter into suretyship and guaranty agreements,[17] it is unnecessary to include a similar clarification in OTS's authorizing rule.

Moreover, OTS believes that a new paragraph incorporating incidental powers concepts would duplicate other existing OTS regulations. Like national banks, federal savings associations hold powers incident to their express powers, as set forth in the HOLA.[18] OTS regulations at 12 CFR 544.1 and 552.3 already state that a Federal savings association may ''exercise all the express, implied, and incidental powers conferred'' by the HOLA. In light of this general recognition of incidental powers under the HOLA, OTS has not restated the widely recognized incidental powers concepts in this authorizing rule.

In the proposed rule, OTS asked whether the OTS rule should specifically authorize other types of suretyship, guaranty, or similar arrangements beyond those covered in the proposed rule. One commenter recommended that OTS adopt a rule based on the OCC's former rule at 12 CFR 7.7015 (1996), which permitted a national bank to engage in check guaranty plans under which it will honor checks drawn on it up to a certain amount. OCC determined that this arrangement is essentially a credit agreement and, therefore, a permissible activity.

OTS believes that the HOLA expressly authorizes these check guaranty plans. A check guaranty plan is an arrangement where an institution holds out to the public that it will honor checks drawn upon it up to a certain amount by a depositor who displays a check guaranty card. A check guaranty plan is, in essence, an agreement by a Federal savings association to pay deposits out of an account or extend credit up to a predetermined amount to a depositor when insufficient funds are available to honor a check drawn on a depositor's account.[19] In the latter case, such a commitment to lend is within the express powers of Federal savings associations under section 5(c)(1)(A) of the HOLA, which permits a Federal savings association to make ''loans specifically related to transaction accounts.'' [20] OTS regulation at 12 CFR 560.30, which implements this section of the HOLA, specifically states that transaction account loans include overdrafts.[21] Thus, the HOLA and OTS regulations already authorize a Federal savings association to offer a plan that provides a line of credit on the customer's checking account. Since a Federal savings association may make overdraft loans, it is not necessary to expressly authorize check guaranty plans in the revised suretyship and guaranty provisions.[22]

Today's final rule also includes several changes to the proposed rule. First, OTS has moved the conditions on the exercise of this surety and guaranty authority from its proposed location at § 560.115 to the authorizing provision at § 560.60.[23] Second, OTS has made minor clarifying revisions to the text of the rule. For example, OTS has revised the provision addressing real estate collateral at § 560.60(c)(1)(i) to require an evaluation or appraisal of real estate consistent with OTS appraisal regulation at 12 CFR 564.3. OTS has also replaced the phrase ''prior mortgage'' in § 560.60(c)(1)(i) with the phrase ''any existing senior mortgages'' to clarify this provision.

B. Letters of Credit and Other Independent Undertakings

Proposed 560.50 would clarify that Federal savings associations are authorized to issue letters of credit, and may issue such other independent undertakings as are approved by OTS, subject to restrictions in existing 560.120.[24] Three commenters addressed proposed 560.50. Two of these commenters supported OTS's proposal. The third commenter submitted information regarding international practices relating to standby letters of credit. Today's final rule adopts proposed 560.50 without change.

Today's final rule also makes several technical and clarifying revisions to 560.120, a related rule on Letters of Credit and Other Undertakings to Pay Against Documents. First, OTS has redrafted paragraph (a) to be more concise. Second, OTS is revising footnote 1 to indicate that the U.N. General Assembly adopted in 1995 and the United States signed in 1997, the United Nations Convention on Independent Guarantees and Standby Letters of Credit. Third, OTS is revising 560.120(b)(2)(ii) to clarify that the precautions on allowing credit assessments when an independent undertaking is renewed apply only to automatic renewals. Discretionary renewals implicitly allow the savings association to make any necessary credit assessment before renewing. Fourth, OTS is updating a telephone number in footnote 1.

OTS did not address these changes in the NPR. Because these changes are technical, rather than substantive, OTS has concluded that notice and public comment on these changes is

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[14] *See* OCC Unpublished Interpretative Letter (June 4, 1993) citing *Dunn* v. *McCoy*, 113 F.2d 587, 588 (3d Cir. 1940); *Kimen* v. *Atlas Exch. Nat'l Bank*, 92 F.2d 615, 617 (7th Cir. 1937), cert. denied, 303 U.S. 650 (1938); *Border Nat'l Bank* v. *American Nat'l Bank*, 282 F. 73, 77 (5th Cir.), cert. denied and appeal dismissed, 260 U.S. 701 (1922); *Bowen* v. *Needles Nat'l Bank*, 94 F. 925, 927 (9th Cir. 1899), cert. denied, 176 U.S. 682 (1900).

[15] OCC Interpretative Letter 376 (October 22, 1986), citing *Dunn*, 113 F.2d at 589.

[16] OCC Unpublished Interpretative Letter (June 4, 1993).

[17] *See* 12 U.S.C. 1464(b)(2) and *infra* notes 2–4 and accompanying text.

[18] *See* OTS Op. Acting Chief Counsel (March 25, 1994) at 7–8 and (October 17, 1994) at 4–5.

[19] OCC reached a similar conclusion that check guaranty plans are essentially a loan commitment. *See* 12 CFR 7.7015 (1996).

[20] 12 U.S.C. 1464(c)(1)(A). Moreover, section 12 of the HOLA expressly authorizes a Federal savings association to advertise, subject to OTS regulations.

[21] While loans on transactional accounts under section 5(c)(1)(A) of the HOLA are not subject to percentage of assets limitation, OTS implementing regulation indicates that ''[overdrafts] on commercial deposit or transaction accounts shall be considered to be commercial loans for the purposes of determining the association's percentage of assets limitations.'' 12 CFR 560.30, footnote 20.

[22] OTS notes that OCC removed the interpretive ruling on check guaranty plans from its regulations in 1996 because the ruling was unnecessary or repetitive. 61 FR 4849, 4860 (February 9, 1996).

[23] OTS originally placed these conditions in subpart B of part 560 to ensure that similar guaranty and surety agreements by state-chartered savings associations would be subject to cited conditions. A state-chartered savings association may not engage as principal in any type of activity that is not permissible for a Federal savings association, unless the FDIC has made certain determinations regarding the risk of the transactions. *See* 12 U.S.C. 1831e(a) (1989). Accordingly, this purpose will be preserved by placing the restrictions in the authorizing provision at § 560.60.

[24] The broad scope of the term ''independent undertakings'' and its recent evolution require close supervision and review when such undertakings fall outside the more traditional activities generally known as letters of credit. OTS approval may take the form of legal opinions, general guidance, or case-by-case approvals, depending on how the undertakings are presented to the agency. *See* 63 FR 49874, 49875–76 (September 18, 1998).

unnecessary and contrary to the public interest.[25]

C. Escrow Accounts

In the NPR, OTS requested comment on the escrow authority of Federal savings associations. OTS has long recognized that the authority of Federal savings associations to make loans includes the authority to establish an escrow account in connection with a loan.[26] However, OTS questioned whether it should clarify the scope of Federal savings associations' authority to handle escrow accounts that are not related to loans. OTS did not propose any new regulatory text on escrow accounts. Rather, it requested comment on this issue. OTS specifically asked commenters to address whether OTS should place any restriction on the exercise of the escrow authority.

Three commenters opposed the adoption of any regulation addressing the escrow authority of Federal savings associations. These commenters argued that current guidance in the escrow area is sufficient.[27] Commenters also feared that additional restrictions on the exercise of escrow authority, particularly for escrow accounts related to loans, could lead to confusion with other regulations.[28]

In light of these comments, OTS will not adopt a regulation on escrow authority in this rulemaking. OTS will continue to answer any questions that arise in this area on a case-by-case basis.

IV. Related Definitions

In connection with today's final rule, OTS has removed or revised certain lending-related definitions in parts 541 and 561 and elsewhere. These revisions fulfill, in part, promises made in the final lending and investment regulation in 1996. In that rulemaking, OTS recognized that its regulations include similar, but not identical, terms in various regulatory provisions. OTS indicated that it would review its definitions and would minimize or eliminate the potential for confusion in a later rulemaking.[29]

OTS did not address the possibility of these changes in the NPR. Nonetheless, OTS has concluded that additional notice and public comment on these changes is unnecessary and contrary to the public interest.[30] OTS has not made any substantive revisions in this final rule. Rather, OTS has simply removed some unused terms, and made other minor technical or clarifying changes to other definitions. OTS has made the following revisions:

A. Guaranteed Loan, Guaranteed Obligation, and Insured Loan

The current OTS rules at Parts 541 and 561 include one definition of ''guaranteed obligation'' (561.21), two definitions of ''guaranteed loan'' (541.13 and 561.20), and two definitions of ''insured loan'' (541.17 and 561.25). The FHLBB originally adopted these definitions between 1949 and 1968 to implement various lending and investments authorities then applicable to Federal savings associations.[31] Neither OTS nor the FHLBB substantively revised these definitions after 1971. OTS merely adopted these definitions without change when it transferred and re-codified FHLBB regulations in 1989.[32]

The current definitions of the cited terms conflict. For example, 541.13 defines ''guaranteed loan'' as a loan guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, as amended. Section 561.20, on the other hand, defines ''guaranteed loan'' as a loan guaranteed under ''(a) The Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code; (b) The New Communities Act of 1968; (c) Section 221 or section 224 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969; or (d) section 221 or section 222 of the Foreign Assistance Act of 1961, as in effect on December 30, 1969, and thereafter.'' The two definitions of insured loans are similarly inconsistent.[33] These inconsistencies have arisen over time as the statutes and regulations affecting savings associations have been reorganized and recodified.

OTS regulations use the three cited terms only in the lending and investment chart at 560.30. This chart expressly cross-references the explicit statutory citation for each type of guaranteed loan, guaranteed obligation, or insured loan. These cross-references completely and accurately define the scope of the lending and investment authority of Federal savings associations. Accordingly, OTS has concluded that these definitions are unnecessary and potentially confusing, and has deleted these provisions.

B. Open-End Consumer Credit and Closed-End Consumer Credit

The current rules at 561.36 and 561.10 define open-end consumer credit and closed-end consumer credit by a cross-reference to Regulation Z (12 CFR 226.2). OTS regulations use these two phrases only in 560.3 (definition of consumer loan). Accordingly, OTS has deleted the definitions of open-end and closed-end consumer credit, and has revised 560.3 to include appropriate cross-references to Regulation Z.

OTS has also made a minor technical change to the definition of consumer loan at 560.3. The existing consumer loan definition excludes ''credit extended in connection with credit cards and bona fide overdraft loans.'' OTS excluded these loans to reflect the fact that credit card loans and overdraft loans are not subject to the 35 percent of asset limitation applicable to consumer loans under section 5 of the HOLA.[34] OTS notes, however, that other types of loans may meet the technical definition of consumer loan at 560.3, but may also be made without limitation under other sections of the HOLA. Examples include educational loans and home improvement loans.[35] OTS has revised the rule to indicate that the term consumer loan does not include credit extended in connection with credit card loans, bona fide overdraft loans, and other loans that the savings association has designated as made under investment or lending authority other than section 5(c)(2)(D) of the HOLA.[36]

C. Residential Real Estate and Related Definitions

OTS has also made minor revisions to the definition of residential real estate and related definitions. Two changes consolidate defined terms. For example, 541.3 defines the phrase ''combination of home and business property'' as a home used in part for business. OTS

[25] *See* 5 U.S.C. 553(b)(B).

[26] *See* 61 FR 50951, 50961 (September 30, 1996).

[27] *See* 61 FR 50951, 50961 (September 30, 1996)(the authority to hold escrow accounts related to loans); OTS Regulatory Handbook: Trust Activities, § 140 (1992) and Op. Chief Counsel (October 17, 1995) (the authority to engage in fiduciary activities involving non-discretionary activities such as escrow or safekeeping services or acting as a custodian or paying agent); and OTS Op. Chief Counsel (August 19, 1998) (the authority to hold an escrow account for funds representing down-payments on vacations for a Federal savings association customer, a vacation organizer).

[28] *See e.g.*, the Real Estate Settlement Procedures Act at 12 U.S.C. 2601 et seq. and the implementing regulations at 24 CFR 3500 et seq.

[29] *See e.g.*, 61 FR 50951, 50953, 50959 (September 30, 1996).

[30] *See* 5 U.S.C. 553(b)(B).

[31] *See* 14 FR 3981 (July 16, 1949); 23 FR 9891 (December 23, 1958); 33 FR 16555 (November 14, 1968).

[32] 54 FR 49411 (November 30, 1989).

[33] *Compare* 12 CFR 541.17 *with* 12 CFR 561.25.

[34] *See* 61 FR 50951, 50959 (September 30, 1996). A Federal thrift's aggregate investments in consumer loans, corporate debt securities, and commercial paper are subject to a 35 percent of assets limitation.

[35] 12 U.S.C. 1464(c)(1)(J) and (c)(1)(U).

[36] *See* 12 CFR 560.31.

regulations use this phrase twice—once in the definition of residential real estate at 541.23 and once in the definition of home loan at 560.3. The final rule deletes 541.3 and modifies 541.23 and 560.3 accordingly.

Similarly, 541.4 defines the phrase ''combination of residential real estate and business property involving only minor or incidental business use'' as residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use. OTS regulations use this phrase only in the definition of residential real estate at 541.23. OTS has deleted 541.4 and has revised 541.23 to include the phrase.

In addition, 541.23 currently defines residential real estate, in part, as ''homes (including condominiums and cooperatives).'' OTS has clarified the parenthetical phrase to include ''a dwelling unit in a multi-family residential property such as a condominium or a cooperative.'' [37]

D. Miscellaneous Definitions

Section 561.23 defines the term ''home mortgage.'' OTS regulations use this term only within the phrase ''home mortgage loan'' in part 563e—Community Reinvestment. OTS has separately defined ''home mortgage loan'' for part 563e by a cross-reference to the Federal Reserve Board's Regulation C—Home Mortgage Disclosure.[38] Since OTS rules do not use the term ''home mortgage'' elsewhere, OTS has deleted this definition as superfluous.

OTS regulations define the phrase ''normal lending territory'' at 561.32, but do not use this term anywhere. This definition appears to be a remnant of provisions found in former section 5(c) of the HOLA, which generally restricted real estate lending by a Federal savings association to property located in the state in which the association's home office was located, or within 100 miles of the home office.[39] OTS has deleted this term as unnecessary.

The rules define ''cooperative housing development'' at 541.6. This term, however, is also not used in OTS regulations. OTS has, therefore, deleted this definition.

OTS rules at 561.11 define ''closing date'' as ''any annual or semiannual closing date.'' Three OTS regulations use this term. The cited definition is clearly inapplicable in two of these regulations. *See* 12 CFR 563b.7(g)(5) (the closing date of a public offering) and 12 CFR 567.4(a)(4) (the closing date for a response to a notice of intent to issue a capital directive). The remaining regulation at 563b.3(f)(5) uses closing date within the phrase ''annual closing date.'' OTS, therefore, has removed this term as superfluous.

V. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purpose of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Today's final rule will not impose any additional burdens or requirements on small entities. Rather, the final rule simply clarifies the authority of Federal savings associations to act as guarantor and to issue letters of credit. This final rule also streamlines lending related definitions or removes unnecessary or outdated definitions. While the final rule also restricts the circumstances under which savings associations may enter into surety and guaranty agreements, the restrictions are the minimum necessary for safe and sound operations and should not impose a significant burden on small savings associations.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an 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 the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 541

Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 541—DEFINITIONS

1. The authority citation for part 541 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§§ 541.3, 541.4, 541.6, 541.13, 541.17 [Removed]

2. Sections 541.3, 541.4, 541.6, 541.13, and 541.17 are removed.

3. Section 541.23 is revised to read as follows:

§ 541.23 Residential real estate.

The terms *residential real estate* or *residential real property* mean:

(a) Homes (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative);

(b) Combinations of homes and business property (*i.e.*, a home used in part for business);

(c) Other real estate used for primarily residential purposes other than a home (but which may include homes);

(d) Combinations of such real estate and business property involving only minor business use (*i.e.*, where no more than 20 percent of the total appraised value of the real estate is attributable to the business use);

(e) Farm residences and combinations of farm residences and commercial farm real estate;

(f) Property to be improved by the construction of such structures; or

(g) Leasehold interests in the above real estate.

PART 545—[AMENDED]

PART 560—LENDING AND INVESTMENT

4. The authority citation for part 560 continues to read as follows:

[37] OTS has made a related change to the definition of home loan at 12 CFR 560.3.

[38] *See* 12 CFR 563e.12(l), which cross-references 12 CFR 203.2.

[39] 12 U.S.C. 1464(c)(1976).

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

§ 545.103 [Redesignated as § 560.60]

5. Section 545.103 is redesignated as § 560.60 and revised to read as follows:

§ 560.60 Suretyship and guaranty.

Pursuant to section 5(b)(2) of the HOLA, a Federal savings association may enter into a repayable suretyship or guaranty agreement, subject to the conditions in this section.

(a) *What is a suretyship or guaranty agreement?* Under a suretyship, a Federal savings association is bound with its principal to pay or perform an obligation to a third person. Under a guaranty agreement, a Federal savings association agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

(b) *What requirements apply to suretyship and guaranty agreements under this section?* A Federal savings association may enter into a suretyship or guaranty agreement under this section, subject to each of the following requirements:

(1) The Federal savings association must limit its obligations under the agreement to a fixed dollar amount and a specified duration.

(2) The Federal savings association's performance under the agreement must create an authorized loan or other investment.

(3) The Federal savings association must treat its obligation under the agreement as a loan to the principal for purposes of §§ 560.93 and 563.43 of this chapter.

(4) The Federal savings association must take and maintain a perfected security interest in collateral sufficient to cover its total obligation under the agreement.

(c) *What collateral is sufficient?* (1) The Federal savings association must take and maintain a perfected security interest in real estate or marketable securities equal to at least 110 percent of its obligation under the agreement, except as provided in paragraph (c)(2) of this section.

(i) If the collateral is real estate, the Federal savings association must establish the value by a signed appraisal or evaluation in accordance with part 564 of this chapter. In determining the value of the collateral, the Federal savings association must factor in the value of any existing senior mortgages, liens or other encumbrances on the property, except those held by the principal to the suretyship or guaranty agreement.

(ii) If the collateral is marketable securities, the Federal savings association must be authorized to invest in that security taken as collateral. The Federal savings association must ensure that the value of the security is 110 percent of the obligation at all times during the term of agreement.

(2) The Federal savings association may take and maintain a perfected security interest in collateral which is at all times equal to at least 100 percent of its obligation, if the collateral is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guarantied by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.

6. Section 560.3 is amended by revising the definitions of ''Consumer loans'' and ''Home loans'' to read as follows:

§ 560.3 Definitions.

* * * * *

Consumer loans include loans for personal, family, or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit (as defined at 12 CFR 226.2(a) (10) and (20)). Consumer loans do not include credit extended in connection with credit card loans, bona fide overdraft loans, and other loans that the savings association has designated as made under investment or lending authority other than section 5(c)(2)(D) of the HOLA.

* * * * *

Home loans include any loans made on the security of a home (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative), combinations of homes and business property (*i.e.*, a home used in part for business), farm residences, and combinations of farm residences and commercial farm real estate.

* * * * *

7. Section 560.50 is added to subpart A to read as follows:

§ 560.50 Letters of credit and other independent undertakings—authority.

A Federal savings association may issue letters of credit and may issue such other independent undertakings as are approved by OTS, subject to the restrictions in § 560.120.

8. Section 560.120 is amended by revising the first two sentences of paragraph (a) and paragraph (b)(2)(ii) to read as follows:

§ 560.120 Letters of credit and other independent undertakings to pay against documents.

(a) *General authority.* A savings association may issue and commit to issue letters of credit within the scope of applicable laws or rules of practice recognized by law. It may also issue other independent undertakings within the scope of such laws or rules of practice recognized by law, that have been approved by OTS (approved undertaking).[1] * * *

(b) * * *

(2) * * *

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should allow the savings association to make any necessary credit assessment prior to renewal;

* * * * *

PART 561—DEFINITIONS

9. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§§ 561.10, 561.11, 561.20, 561.21, 561.23, 561.25, 561.32, 561.36 [Removed]

10. Sections 561.10, 561.11, 561.20, 561.21, 561.23, 561.25, 561.32, and 561.36 are removed.

Dated: August 19, 1999.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 99–21993 Filed 8–25–99; 8:45 am]

BILLING CODE 6720–01–P

[1] Samples of laws or rules of practice applicable to letters of credit and other independent undertakings include, but are not limited to: the applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328–4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150; the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–149]

RIN 2115–AA97

Safety Zone: Decker Wedding Fireworks, Western Long Island Sound, Rye, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Decker Wedding fireworks display located on Western Long Island Sound. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of Western Long Island Sound.

DATES: This rule is effective from 8:30 p.m. until 10 p.m., on September 25, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On August 4, 1999, Bay Fireworks submitted an application to hold a fireworks program on the waters of Western Long Island Sound, Rye, NY. The fireworks program is being sponsored by David Decker. This regulation establishes a safety zone in all waters of Western Long Island Sound within a 360 yard radius of the fireworks barge, in approximate position 40°56′34″N 073°41′23″W (NAD 1983), approximately 450 yards west of Milton Point, Rye, New York. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, September 25, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone will have negligible impact on the area because boaters can safely transit around the zone to the south. The zone does not block access to any portion of Western Long Island Sound other than the area comprised by the zone itself. Public notifications will be made prior to the event by marine information broadcasts and the Local Notice to Mariners.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(0) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through Western Long Island Sound during the event, and advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–149 to read as follows:

§ 165.T01–149 Safety Zone: Decker Wedding Fireworks, Western Long Island Sound, Rye, New York.

(a) *Location.* The following area is a safety zone: All waters of Western Long Island Sound within a 360 yard radius of the fireworks barge, in approximate position 40°56′34″N 073°41′23″W (NAD 1983), approximately 450 yards west of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on September 25, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a US Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 18, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–22175 Filed 8–23–99; 5:08 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6423–8]

Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference the Oklahoma authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into the CFR the currently authorized State hazardous waste program in Oklahoma. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. In addition, today's document corrects technical errors made in the table of authorities published in the September 22, 1998 (63 FR 50528) authorization notice for Oklahoma.

DATES: This action is effective on October 25, 1999 without further notice unless EPA receives relevant adverse comments by September 27, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments and inform the public that the rule will not take effect. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of October 25, 1999 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments referring to Document Number OK99–2 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–8533. Copies of Oklahoma program revisions and materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, Phone number: (405) 702–7180 and EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 65202, Phone number: (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multi-Media Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Corrections

A. Corrections to the September 22, 1998 (63 FR 50528) Authorization Document

There were typographical and effective date errors in the table published as part of the September 22, 1998 (63 FR 50528) authorization document for Oklahoma. The affected entries for that table are as follows:

1. All references to ''Sec. 2–7–104'' are corrected to ''Sec. 2–2–104'';

2. All references to the permanent effective date of ''June 1, 1997'' are corrected to ''June 2, 1997'';

3. Specific to Checklist 137 (Item 3),

a. the reference to ''Sec. 2–7–107(10)'' is corrected to ''Sec. 2–7–107A(10)'';

b. the phrase ''and (60 FR 242) January 3, 1995'' should be inserted after ''September 19, 1994;

4. Specific to Checklist 140 (Item 5), the phrase ''and (60 FR 25619) May 12, 1995'' should be inserted after ''April 17, 1995'';

5. Specific to Checklist 141 (Item 6), the reference to ''emergency effective date 1, 1996'' is corrected to ''emergency effective date August 1, 1996.''

II. Incorporation By Reference

A. Background

Effective December 13, 1993 (58 FR 52679) and July 14, 1998 (63 FR 23673), EPA incorporated by reference Oklahoma's then authorized hazardous waste program. Effective November 23, 1998 (63 FR 50528), EPA granted authorization to Oklahoma for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Oklahoma.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of Hazardous Waste and Solid Waste Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the CFR whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally

approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma Hazardous Waste Program for which authorization approval has been granted by EPA.

B. Oklahoma Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference of the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1851(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b)(2) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's Hazardous Waste Program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(b)(3) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. ''Broader in scope'' provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Oklahoma has adopted but is not authorized for the Federal rule regarding delisting published on July 15, 1985 (50 FR 28702); and the Federal rules published in the FR on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); February 18, 1992 (57 FR 5859), December 6, 1994 (59 FR 62896); May 19, 1995 (60 FR 26828); and June 29, 1995 (60 FR 33912). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:200–3–2(2) through 252:200–3–2(11) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's FR document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting a Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in § 272.1851(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Oklahoma hazardous waste regulations incorporated by reference at § 272.1851(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of E.O. 12866.

B. Executive Order 13045

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the OMB determines is ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the OMB a description of the prior consultation and communications the agency has had with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

D. Unfunded Mandates Reform Act

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 certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. Costs to State, local and/or tribal governments already exist under the Oklahoma program, and today's action does not impose any additional obligations on regulated entities. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Oklahoma's requirements which EPA already authorized under 40 CFR part 271. Small governments are not subject to any additional significant or unique requirements by virtue of today's action.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's codification does not impose any additional burdens on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates by reference Oklahoma's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

F. Submission to Congress and the Comptroller General

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

H. 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 to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1999.

Jerry Clifford,

Acting Regional Administration, Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart LL [Amended]

2. Subpart LL is amended by revising § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for Base program effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998, and November 23, 1998.

(b) State Statutes and Regulations.

(1) The Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(ii) The EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2–2–104, 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–110(A), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–123, 2–7–126, 2–7–129, 2–7–130, 2–7–131 and 2–7–133.

(ii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, section 252:200–1–1(b); subchapter 11, section 252:200–11–2; and subchapter 13, sections 252:200–13–1 and 252:200–13–3.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200–3–2(1), 252:200–3–4(b)(1)–(3) and 252:200–3–4(b)(16).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2–7–119 and 2–7–121.

(ii) The Oklahoma Administrative Code Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 8.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 13, section 252:200–13–4; subchapter 17; and 252:200 appendices B and C.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at § 272.1851(b)(1), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Delisting	50 FR 28702: Amendments to 260.22(a) through 260.22(e).	07/15/85
Toxicity Characteristics; Hydrocarbon Recovery Operations	55 FR 40834, 56 FR 3978, 56 FR 13406.	10/05/90, 02/01/91, 04/02/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Administrative Stay for K069 Listing	56 FR 19951	05/01/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations.	56 FR 66365	12/23/91
Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable.	57 FR 5859	02/18/92
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Rules 154.1 and 154.2).	59 FR 62896, 60 FR 26828	12/06/94, 05/19/95
Removal of Legally Obsolete Rules	60 FR 33912	06/29/95

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma, signed by the EPA Regional Administrator on August 4, 1998, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization,'' signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; and April 15, 1997, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto

are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''Oklahoma'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, effective August 30, 1996, sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B) (except the last sentence and the phrase,'' recycling'' in the first sentence), 2–7–111(C)(2)(a) (except the phrase ''Except as provided in subparagraph b of this paragraph'' and the word ''recycling'' in the first sentence), 2–7–111(D), 2–7–111(E) (except the word ''recycling'' in the first sentence), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118(A), 2–7–124, 2–7–125 and 2–7–127.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, sections 252:200–1–1(a) and 252:200–1–2; subchapter 3, sections 252:200–3–5 and 252:200–3–6; subchapter 5, sections 252:200–5–3 and 252:200–5–5; subchapter 7, sections 252:200–7–1 through 252:200–7–4; subchapter 9 (except 252:200–9–2, 252:200–9–6 and 252:200–9–7); subchapter 11, sections 252:200–11–1 (except the phrases ''or off-site recycling'' and ''(TSDRs)''), 252:200–11–3(a) (except the word ''recycling''), 252:200–11–3(b) through 252:200-11–3(d), 252:200–11–4(a)(1) (except the phrases ''Except as otherwise provided in this section'' and ''or recycling''), 252:200-11–4(a)(5) (except the phrase ''For the purposes of this section''), 252:200–11–4(b) through 252:200–11–4(e); and subchapter 13, sections 252:200–13–2 introductory paragraph, 252:200–13–2(1) and 252:200–13–2(2) first sentence.

The Oklahoma Administrative Code Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200–3–1, 252:200–3–2 (except 252:200–3–2(1)) and 252:200–3–4(a) and 252:300–3–4(b)(4)–(15); subchapter 5, sections 252:200–5–1, 252:200–5–4 and 252:200–5–6; and subchapter 9, section 252:200–9–2.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

* * * * *

[FR Doc. 99–21936 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CRF Part 52

[CC Docket No. 95–116; FCC 99–151]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This document addresses issues raised on reconsideration of the First Report and Order relating to interim number portability. First, the Commission affirms its earlier conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The Commission denies the request that these cost recovery guidelines be applied retroactively. The Commission also affirms its earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The Commission also clarifies issues relating to terminating access charges, billing system modifications, and certain cost recovery allocators, as each of these issues relates to interim number portability.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien or Janet Sievert at (202) 418–1520, Competitive Pricing Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth *Memorandum Opinion and Order on Reconsideration* in CC Docket No. 95–116, *In re Telephone Number Portability,* FCC 99–151, adopted June 23, 1999 and released July 16, 1999. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW., Room CY–A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW., Washington DC 20036; (202) 857–3088.

Analysis of Proceeding

I. Introduction

The Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking,* 61 FR 38605 (July 25, 1996) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. *In re* Telephone Number Portability, CC Docket No. 95–116, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 8352 (1996) (*First Report and Order*). Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' 47 U.S.C. 251(b)(2). Section 251(e)(2) provides that ''the costs of establishing * * * number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' 47 U.S.C. 251(e)(2). The Communications Act of 1934, as amended (''the Act'' or ''the 1996 Act'') defines ''number portability'' as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' 47 U.S.C. 153(30). In the *First Report and Order,* the Commission determined, among other things, that it has authority under section 251 to promulgate rules regarding long-term and currently available (or ''interim'') number portability, as well as to establish cost recovery methods for each.

Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order.* Nineteen parties filed oppositions to or comments on the petitions, and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration,* 62 FR 18280 (April 15, 1997) in this proceeding, addressing a number of these issues. *In re* Telephone Number Portability, CC Docket 95–116, *First Memorandum Opinion and Order on Reconsideration,* 12 FCC Rcd 7236 (1997). A *Second Memorandum Opinion and Order on Reconsideration,* 63 FR 68197 (Dec. 10, 1998) clarified that all LECs must discontinue using interim number portability in areas where a long-term number portability method has been implemented. *In re*

Telephone Number Portability, CC Docket 95–116, *Second Memorandum Opinion and Order on Reconsideration,* 13 FCC Rcd 21,204 (1998). The item also clarified that Remote Call Forwarding (RCF) and Flexible Direct Inward Dialing (DID) are not the exclusive methods of providing interim number portability that LECs are obligated to provide on a transitional basis. Instead, LECs may implement any technically feasible method of interim number portability comparable to RCF and DID. The Commission also held that a LEC is required to implement the specific method of interim number portability requested by a competing carrier, provided that provision of the requested method is not unduly burdensome. A *Third Memorandum Opinion and Order on Reconsideration.* CC Docket No. 95–116, 13 FCC Rcd 16,090 (1998) denied a petition for reconsideration that sought modification to the long-term number portability deployment schedule. In its *Third Report and Order* on number portability, 63 FR 35150 (June 29, 1998), CC Docket No. 95–116, 13 FCC Rcd 11,701 (1998), the Commission adopted rules governing recovery of the costs of long-term number portability. In this *Fourth Memorandum Opinion and Order on Reconsideration,* the Commission addresses issues raised by petitioners relating to cost recovery for interim number portability.

II. Background

3. In the *First Report and Order,* the Commission exercised its authority to prescribe requirements governing the LECs' duty to provide number portability. After determining that section 251(b)(2) requires LECs to provide number portability in the short term, the Commission prescribed that such number portability be provided through Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or other comparable methods. The Commission based this finding on its conclusion that section 251(b)(2), by referring to the provision of number portability ''to the extent technically feasible,'' creates a dynamic requirement that allows for changes in the methods by which a LEC provides the required number portability. Accordingly, the Commission concluded that because RCF, DID, and other comparable measures currently are technically feasible number portability methods, section 251(b)(2) requires LECs to provide number portability through such methods. The Commission stated that, upon receipt of a specific request from another telecommunications carrier, a LEC must provide number portability through such measures as soon as reasonably possible, until such time as the LEC implements a long-term database method for number portability in that area.

4. In light of its finding that the Communications Act requires LECs to provide interim number portability, the Commission also determined that it must adopt cost recovery principles for interim number portability measures pursuant to section 251(e)(2). The Commission concluded that section 251(e)(2) ''gives us specific authority to prescribe pricing principles that ensure that the costs of establishing number portability are allocated on a 'competitively neutral' basis.'' Applying section 251(e)(2) to interim number portability, the Commission concluded that it should adopt guidelines that the states must follow in mandating cost recovery mechanisms for interim number portability measures.

5. Section 251(e)(2) requires that ''the costs of establishing number administration and number portability be borne by all telecommunications carriers on a competitively neutral basis.'' 47 U.S.C. 251(e)(2). In the *First Report and Order,* the Commission determined that the costs of currently available (referred to here as interim) number portability are those ''incremental costs incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers.'' The Commission also determined that for purposes of interim number portability, the phrase ''all telecommunications carriers'' was to be read literally, and included ''any provider of telecommunications services,'' including incumbent LECs, new LECs, commercial mobile radio service (CMRS) providers, and interexchange carriers (IXCs).

6. The Commission also set forth two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, ''a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.'' Second, the cost recovery mechanism ''should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' In the *First Report and Order,* the Commission provided some examples of methods currently in use that would comply with these criteria. Such methods include, but are not limited to: allocating incremental costs based on (a) the number of ported numbers, (b) the number of active telephone numbers, (c) the number of active telephone lines, (d) gross telecommunications revenues net of charges paid to other carriers; and (e) each carrier bearing its own costs. The Commission further stated that requiring new entrants to bear all of the costs of interim number portability, measured on the basis of incremental costs, would not comply with the statutory requirements of section 251(e)(2). In setting forth these criteria, however, the Commission left to the states the determination of the specific cost recovery mechanism to be utilized. On May 5, 1998, the Commission adopted a *Third Report and Order* that resolved numerous issues regarding the means by which carriers will bear the costs of providing long-term number portability. The Commission found that section 251(e)(2) expressly and unconditionally grants the Commission authority, and requires the Commission, to ensure that all telecommunications carriers bear the costs of providing number portability for interstate and intrastate calls on a competitively neutral basis. The Commission concluded that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority of section 2(b) to the states over intrastate matters. Thus, the Commission determined that section 251(e)(2) authorizes it to provide the distribution and cost recovery mechanism for all the costs of providing long-term number portability. The Commission determined that an exclusively federal recovery mechanism for long-term number portability ''will enable the Commission to satisfy most directly its competitive neutrality mandate.''

II. Reconsideration Issues

A. Commission Authority To Require Interim Number Portability

1. Background

7. In the *First Report and Order,* the Commission required LECs to provide interim number portability, based on the 1996 Act's requirement that LECs provide number portability ''to the extent technically feasible.'' The Commission based this conclusion on the language of section 251(b)(2), which states that LECs have ''[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Several carriers challenge the Commission's finding that the 1996 Act provides authority for the Commission to order LECs to provide interim number portability.

2. Discussion

8. The Commission reaffirms its earlier conclusion that it has authority to require that number portability be implemented ''to the extent technically feasible'' and that its authority under section 251(b)(2) encompasses all forms of number portability. Section 3(30) of the Act defines number portability as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' This definition is not limited to any one technical method of number portability. Nor is the duty of LECs pursuant to section 251(b)(2), to provide number portability ''to the extent technically feasible . . . in accordance with requirements prescribed by the Commission,'' limited to long-term number portability. The Commission acknowledges that some ambiguity exists regarding the statutory mandate to require the provision of interim number portability, because, while sections 251(b) and 3(30) refer to the provision of ''number portability,'' section 271(c)(2)(B) refers to both ''regulations pursuant to section 251 to require number portability'' and ''interim number portability'' to be provided by Bell Operating Companies (BOCs) until the Commission issues such regulations.'' *See* 47 U.S.C. 251(b)(2), 271(c)(2)B)(ix), 153(30). The Commission finds, however, that its earlier interpretation of section 251(b)(2), that is, requiring all LECs to provide number portability to the extent technically feasible, is consistent with, and necessary to effectuate, Congress's goal to promote competition in the provision of local telecommunications service. Indeed, prior Commission decisions reflect its understanding of Congress's intent, stated in the *First Report and Order,* that number portability is a dynamic concept that allows for changes in the methods by which LECs provide it. Additionally, in placing number portability obligations within section 251, which is concerned overall with the development of competitive local markets, Congress recognized the importance of number portability to the development of local competition. Because the statutory language, like the language in the House bill, requires LECs to provide number portability ''to the extent technically feasible'' and according to requirements prescribed by the Commission, rather than ''when technically feasible,'' the Commission does not believe that this legislative history suggests an intent by Congress to prevent the Commission from requiring LECs to provide ''interim,'' ''currently available,'' or ''transitional'' number portability until ''true'' number portability becomes available.

9. The Commission finds unpersuasive BellSouth's contention that, because Congress considered including a specific reference to interim number portability, but did not adopt it in section 251(b), the lack of such language demonstrates that the Commission is without jurisdiction in this area, in particular regarding language set forth in section 261 of Senate Bill 652. This language was not included in the final version of the legislation. Because the legislative history provides no explanation for the deletion of this language, it is subject to various interpretations, and the Commission is not persuaded that BellSouth's is the most reasonable among them. *See Mead Corp.* v. *Tilley,* 490 U.S. 714, 723 (1989); *Rastelli* v. *Warnder,* 782 F.2d 17, 23 (2d Cir. 1986). The Joint Explanatory Statement of the Conference Report states that all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement does not address the omission of section 261 of the Senate Bill from the final legislation, the more logical inference from the quoted statement is that Congress regarded the change as an inconsequential modification rather than a significant alteration. This view is supported by two additional facts noted above: first, the statement in the Joint Explanatory Statement that section 251 ''incorporates provisions from both the Senate Bill and the House Amendment;'' and second, the statements from the House Report suggesting that the Commission's authority to prescribe requirements for number portability extends both to interim number portability, which is being provided now, and to long-term number portability, which will ''be deployed when it is technically feasible.''

10. This reading of the term ''number portability'' to include all forms of number portability, whether interim or long-term, also is more consistent than BellSouth's reading with Congress' goal of fostering competition in the local exchange marketplace. Congress recognized that number portability is essential to meaningful competition in the provision of local exchange services, and the record in this proceeding demonstrates that customers are reluctant to switch carriers if doing so requires that they give up their current telephone numbers. Nor is this view inconsistent with the distinction between ''interim number portability'' and ''section 251 number portability'' referenced in section 271(c)(2)(B)(ix). The legislative history of the 1996 Act does not explain why Congress decided to refer specifically to interim number portability only in section 271(c)(2)(B)(ix). In the absence of such an explanation, and given the broad definition of number portability in section 3(30) and the legislative history described above, it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute.

11. Contrary to BellSouth's assertion, in the *First Report and Order,* the Commission did not rely on section 271(c)(2)(B)(xi) as the basis for requiring all LECs to provide interim number portability. Rather, the Commission merely referred to section 271(c)(2)(B)(xi) as offering further support for its interpretation of section 251(b)(2). In addition, the Commission explained that its interpretation of section 251(b)(2) would prevent a BOC seeking interLATA authorization, pursuant to section 271 of the Act, from being able to avoid providing number portability during the time between the adoption of the Commission's number portability rules and the implementation of long-term number portability measures. *See* 47 U.S.C. 271. Under BellSouth's interpretation, a BOC could refuse to offer interim number portability from the time of the adoption of the *First Report and Order* until the actual implementation of long-term number portability, yet still be in compliance with the number portability checklist requirement set forth in section 271. The Commission believes that a more logical interpretation of these sections is that, in providing for both types of number portability, Congress did not intend for there to be such a time lag but instead required the provision of interim number portability until long-term number portability is in place.

B. Commission Authority To Establish Cost Recovery Guidelines for Interim Number Portability

1. Background

12. In the *First Report and Order,* the Commission asserted jurisdiction over interim number portability and established cost recovery guidelines for interim number portability measures for the states to implement. Several commenters assert that the Commission lacks authority to promulgate cost recovery guidelines for interim number portability.

2. Discussion

13. The Commission upholds its earlier decision and affirms its authority to establish cost recovery guidelines for interim number portability measures. Its interpretation of the statute finds support in the language of the 1996 Act, is consistent with the Act's underlying goals, and is consistent with the conclusions reached in the *Third Report and Order.*

14. The Commission finds that sections 251(b)(2) and 251(e)(2) grant it explicit authority over, respectively, the provision of and the recovery of costs associated with number portability. 47 U.S.C. 251(b)(2), (e)(2). The Commission finds that its authority under section 251(e)(2), as with section 251(b)(2), is not limited to long-term number portability, since the statutory definition of number portability draws no distinction between interim and long-term number portability. Section 3(30) of the Act defines number portability as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. 47 U.S.C. 153(30). This definition is not limited to one technical method of providing number portability. Similarly, sections 251(b)(2) and 251(e)(2) refer only to the provision and cost recovery of ''number portability,'' but do not limit the term ''number portability'' to long-term measures. As discussed above, given the broad definition of number portability in section 3(30), it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute, such as in sections 251(b)(2) and 251(e)(2). In addition, the Commission finds that its interpretation of section 251(b)(2), requiring all LECs to provide interim number portability, is consistent with, and necessary to effectuate Congress's goal to promote competition in the provision of local telecommunications service.

15. The Commission also notes that its conclusion that it has statutory authority over interim number portability, regardless of whether it is characterized as an intrastate or interstate service, and the establishment of cost recovery rules for interim number portability, is consistent with its holdings in the *Third Report and Order.* There, the Commission concluded that the express and unconditional grant of authority of section 251(e)(2) to the Commission grants us the authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis for both interstate and intrastate calls. Section 251(e)(2) states that carriers shall bear the costs of number portability ''as determined by the Commission,'' and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls. Thus, the Commission concludes for interim number portability, as it did in the *Third Report and Order* for long-term number portability, that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority to the states over intrastate matters contained in section 2(b). 47 U.S.C. 152(b). *See Iowa Utils. Bd.* v. *FCC,* 120 F.3d at 792, 794 and n.10, 795 and n.12, 802 and n.23, 806. *See also In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, *First Report and Order,* 61 FR 45476 (August 29, 1996), 11 FCC Rcd 15,499 at 15,548 and n.155 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC,* 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.,* 119 S.Ct. at 730.

16. The Commission is not persuaded that it lacks jurisdiction over cost recovery for interim number portability measures because the states have historically regulated the retail provision of RCF and DID. The states' regulation of rates for these services when provided on a retail basis does not preclude an express Congressional grant of authority to this Commission under section 251(e)(2) to regulate the cost recovery for interim number portability. Section 251(e)(2) states that carriers shall bear the costs of number portability ''as determined by the Commission,'' and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls.

17. The Commission disagrees with Bell Atlantic's claim that, because section 251(e)(2) refers to the costs of ''establishing'' number portability and there is nothing to ''establish'' with respect to interim number portability, the Commission is without authority to adopt cost recovery guidelines for the provision of interim number portability. In arguing that there is nothing to ''establish'' regarding interim number portability, Bell Atlantic defines the term ''establish'' narrowly, *i.e,* limiting the meaning of ''establish'' to physically upgrading the public switched telephone network or creating databases necessary for customers to retain their telephone numbers when switching carriers. To give full effect to the pro-competitive objectives of the 1996 Act, the Commission concludes that the term ''establish'' should be read more broadly. Although the functionalities necessary to provide interim number portability already exist in most public switched telephone networks, additional actions are necessary to implement interim number portability in a manner useful to new entrants. The actions required to establish interim number portability and the associated costs vary according to where the call originates in a carrier's network. The provision of interim number portability results in switching and transport costs, and may include some small non-recurring costs, such as administrative costs. Because additional actions are required by LECs in the provision of interim number portability, the Commission finds that the process of transferring numbers and subsequently forwarding calls is what ''establishes'' (*i.e.,* ''creates'' or ''brings into existence'') interim number portability for use by new entrants.

18. In addition to disagreeing with Bell Atlantic's narrow interpretation of the term ''establish'' in section 251(e)(2), the Commission also finds that it would be contrary to Congressional intent to conclude that the Commission's authority to impose a competitively neutral cost recovery mechanism is limited to long-term number portability. Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. 47 U.S.C. 251(e). Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to

win customers, whether the method of porting numbers is long-term or interim. In the *First Report and Order,* the Commission concluded that, because interim number portability costs will be small and incurred for a relatively short period, requiring carriers to bear their own costs would meet its competitive neutrality guidelines. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Because both carriers would be competing for the same customer, the new provider may be forced to charge higher prices due to its need to recover the incumbent LEC's incremental costs of number portability, while the customer would face no additional charges if it stayed with the incumbent LEC. Thus, the Commission concludes that Bell Atlantic's interpretation—that the Commission has authority under section 251(e)(2) to impose a competitively neutral cost recovery mechanism for long-term number portability, but lacks such authority over interim number portability—will not promote competition.

19. The Commission similarly is not persuaded by Bell Atlantic's claim that cost recovery for interim number portability must be subject to negotiation between carriers, and that the Commission therefore lacks authority to establish cost recovery guidelines. Bell Atlantic's argument is based on language in the Senate Report discussing section 261 of Senate Bill 652, which states that interconnection agreements reached under section 251 must, if requested, provide for interim number portability, including the method by which it will be provided, and the amount of compensation. As discussed above, section 261, as it appeared in Senate Bill 652, distinguished between interim and final number portability, but was ultimately dropped from the final version of the 1996 Act. The Commission finds unpersuasive Bell Atlantic's interpretation of the legislative history. *See Helvering* v. *Hallock,* 309 U.S. 106, 119–20 (1940); *Brennan* v. *Midwestern United Life Insurance,* 259 F. Supp. 673 (1966); *Women Involved in Farm Economics* v. *USDA,* 682 F. Supp. 599 (1988).

20. The Commission rejects BellSouth's assertion that the Commission lacks authority to depart from cost-causative pricing principles. As the Commission explained in the *Third Report and Order,* Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. A cost causative basis for pricing number portability could defeat the purpose for which number portability was mandated. Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to win customers, whether the method of porting numbers is long-term or interim, because they could be forced to bear all incremental costs of number portability and pass those costs onto customers in the form of higher prices.

21. Finally, the Commission rejects BellSouth's contention that the Commission based its jurisdiction to order interim number portability on pre-1996 Act provisions and is therefore precluded from relying on section 251(e)(2) for jurisdiction to determine cost recovery for such interim measures. To the contrary, in the *First Report and Order* the Commission concluded only that sections 1 and 202 of the Communications Act provide a pre-existing and independent basis for its jurisdiction to require the provision of interim number portability methods. The Commission did not rely solely on sections 1 and 202 as a basis for jurisdiction, and hereby clarifies that, although it finds that sections 1 and 202 provide an additional statutory basis on which it may require interim number portability, it has independent authority to do so by virtue of sections 251(b)(2) and 251(e)(2) of the Act.

22. The Commission reiterates its earlier finding, as discussed above, that section 251(e)(2) addresses both interstate and intrastate matters, and overrides section 2(b)'s reservation of authority to the states over intrastate matters. Although the Commission asserts federal jurisdiction over interim number portability and affirms its authority to establish cost recovery guidelines for interim number portability measures, it denies requests that it generally preempt state number portability cost recovery policies. Instead, the Commission affirms its earlier conclusion that states may continue to utilize various cost recovery mechanisms as long as they meet the Commission's competitive neutrality guidelines. This cost recovery approach is different than the one adopted in the *Third Report and Order* for long-term number portability cost recovery, in which the Commission adopted an exclusively federal cost recovery mechanism. The Commission notes that in the *Third Report and Order,* it found that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanism for all the costs of providing long-term number portability, but did not interpret the statute to require the adoption of an exclusively federal recovery mechanism for all forms of number portability. Instead, an exclusively federal cost recovery mechanism for long-term number portability was adopted for several policy reasons that are inapplicable to interim number portability. The Commission determined in the *Third Report and Order* that an exclusively federal cost recovery mechanism for long-term number portability will enable it ''to satisfy most directly its competitive neutrality mandate and will minimize the administrative and enforcement difficulties that might arise where jurisdiction over long-term number portability divided.'' Additionally, an exclusively federal cost recovery mechanism for long-term number portability obviates the need for state allocation of the shared costs of the regional database, a task that would likely be complicated by the database's multistate nature.

23. Although the Commission has determined that the Commission's authority to provide the distribution and recovery mechanism for all number portability costs extends to long-term and interim number portability, it does not find it necessary to establish an exclusively federal recovery mechanism for interim number portability. Instead, it will continue to permit states to provide for cost recovery in accord with the competitive neutrality standards adopted in the *First Report and Order,* and elaborated here, for the following reasons. First, the Commission believes that adopting an exclusively federal cost recovery mechanism would be very disruptive to existing interim number portability cost recovery. States have been providing for interim number portability cost recovery since 1996. Also, cost recovery for interim number portability has been determined through existing interconnection agreements, as incumbent LECs are required by section 251(c) to provide for interim number portability in their interconnection agreements. 47 U.S.C. 251(c). The Commission notes that federal courts have upheld the interim number portability cost recovery guidelines established in *the First Report and Order. See, e.g., Southwestern Bell Telephone* v. *AT&T, 1998 WL 657717*4* (D.Tex. 1998); *see also US WEST Communications* v. *MFS Intelnet,* 35 F. Supp. 2d 1221, 1236 (D.Or. 1998).

Second, the Commission believes that disruption of existing cost recovery mechanisms is not warranted because interim number portability will remain in place for a very limited period of time. Interim number portability was replaced by long-term number portability in the 100 largest MSAs by the end of 1998, and is subsequently being replaced in other switches in which a bona fide request for number portability has been received. Third, the Commission believes that a cost allocation method that requires LECs to bear their own costs of interim number portability is competitively neutral, as individual carrier's costs will be small and no shared costs or database costs must be allocated. As previously indicated, to the extent that RCF, DID and other comparable methods are used to provide currently available number portability, and the capability for currently available number portability already exists in the incumbent LEC network, only the short-run incremental costs are properly attributed to interim number portability. Having already provisioned their switches with enough capacity to carry all of their respective customers' incoming and outgoing calls, the Commission does not expect incumbent LECs to incur additional costs with respect to switch capacity when a customer chooses to port its number to a new service provider and the incumbent LEC must forward calls using interim number portability methods. As a result, the Commission expects little or no change in the level of incumbent LECs switching and transport costs per ported number.

24. As stated in the *First Report and Order,* if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, it may be able to seek relief from its state commission. If the carrier is not able to obtain relief in this way, or if a state has not yet adopted a cost recovery mechanism for cost recovery of interim number portability measures, it may be able to bring action against the LEC in federal district court pursuant to section 207 for damages or file a section 208 complaint with this Commission against another carrier alleging a violation of the Act or the Commission's rules. Alternatively, if a carrier believes that a state has not properly applied the statute or Commission rules, or if a state's cost recovery mechanism is not competitively neutral because it improperly burdens new entrants with interim number portability costs, it may file a request for declaratory ruling with the Commission or otherwise seek court review of the state cost recovery mechanism.

C. Cost Recovery Guidelines

1. Background

25. In the *First Report and Order,* the Commission established two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, ''a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.'' Second, the cost recovery mechanism ''should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' In setting forth these criteria, however, the Commission left to the states the determination of the exact cost recovery mechanism to be utilized. Several carriers have challenged the Commission's cost recovery guidelines.

2. Discussion

26. The Commission rejects the claims of those carriers that assert that its cost recovery guidelines are arbitrary, capricious, or plain error. Number portability promotes competition by allowing customers to switch carriers easily without having to change their telephone numbers. In the *First Report and Order,* the Commission explained that the Commission departed from cost causation principles with respect to interim number portability because, ''[d]epending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated.'' As the Commission stated in the *Third Report and Order,* pricing number portability on a cost-causative basis could defeat Congress's purpose of removing barriers to local competition because the nature of the costs involved with some number portability solutions might make it economically infeasible for some carriers to compete for a customer serviced by another carrier. If it is assumed that the customer who ports his or her number is the cost causer, and all of the costs associated with forwarding a call are placed on the customer who switches carriers, customers who want to retain their telephone numbers could be deterred from switching carriers due to increased costs. This result is wholly contrary to the pro-competitive intent of sections 251(b)(2) and 252(e)(2) regarding the provision of number portability.

27. Additional economic and policy considerations also support the Commission's decision not to follow strict principles of cost causation in this specific context by imposing all interim number portability costs on new entrants. First, all customers benefit from number portability because number portability promotes competition, lower prices, increased choices, and greater innovation. In addition, other customers will benefit to the extent that they need not search for a customer's new number when that customer switches carriers. Since number portability generates an externality from which all customers benefit, the porting customers should not pay the full economic costs. Moreover, as discussed in the *First Report and Order* and *Third Report and Order,* if the costs are placed entirely on one carrier or group of carriers, ''the new entrant's share of the cost [could be] so large, relative to its expected profits, that the entrant would decide not to enter.'' Preventing new, efficient entrants from offering service because of costs associated with number portability would directly contravene one of the 1996 Act's primary purposes, namely to encourage local exchange competition.

28. Furthermore, the Commission agrees with MCI that the costs of number portability should not be viewed narrowly as simply costs of entry, but more broadly as costs of creating a competitive environment that will benefit all consumers. In the *Third Report and Order,* the Commission concluded that applying principles of competitive neutrality to long-term number portability cost recovery would ensure that the cost of number portability does not undermine the goal of the 1996 Act to ''promote a competitive environment'' for the provision of local communications services. Similarly, the Commission concludes that requiring incumbent LECs to share in the costs of providing both interim and long-term number portability is in the public interest and will contribute to the development of competition in the local exchange market.

29. BellSouth asserts that the cost recovery guidelines for interim number portability are ''vague and ambiguous,'' and that the Commission failed to define the phrases ''appreciable cost advantage'' and ''normal return.'' As applied to its cost recovery guidelines, the Commission clarifies that, when the Commission used the phrase ''appreciable cost advantage'' the Commission meant a difference in costs that, if reflected in retail prices, would cause a not-insignificant number of

customers to change, or decline to change, carriers. The Commission also finds that a ''normal return'' in economic terms is the return sufficient to assure confidence in the financial integrity of the company so as to maintain its credit and attract capital. Normal return in this context does not guarantee that all firms will be profitable and, hence, remain in the industry. Rather, this concept means that number portability costs imposed on a particular carrier should not be so significant, by themselves, as to drive existing carriers out of the market or make continued operations unprofitable, or deter the entry of carriers that, but for the number portability costs, would have entered the market.

30. The Commission finds no merit to BellSouth's suggestion that the Commission's definition of, and criteria for, competitive neutrality, are novel or unprecedented. The ''competitively neutral'' principles established in the *First Report and Order* were drawn from well-accepted principles of economic theory. To be competitive, a firm must be able to offer a particular customer a service/price package which that customer finds comparable to that offered by other carriers, and it must be able to do so while earning a normal rate of return. In making business decisions, firms are concerned with both the short-run and the long-run. In the short-run, firms are concerned with their ability to compete, while in the long-run firms are concerned with remaining in the market. The first criterion of the competitive neutrality test addresses the short-run concern, in that carriers cannot compete effectively if one carrier has an appreciable, incremental cost advantage over other carriers. The second criterion addresses the concern that the cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.

31. The Commission also rejects arguments that the methods currently suggested in the *First Report and Order* fail to meet the second criterion of competitive neutrality, which states that ''[the allocation mechanism] should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' As applied to interim number portability, the methods for allocating the costs of interim number portability suggested in the *First Report and Order,* including allocation according to a carrier's number of active lines or number of active telephone numbers, meet the criteria established for competitive neutrality. Given the relatively small incremental costs of interim number portability, the Commission concludes that using either number of telephone lines or number of active telephone numbers as the basis for allocation also meets the second criterion. Although that carrier's costs for number portability go up relative to other carriers, it also receives the corresponding revenues generated by the new customer. One characteristic of these rules is that the costs allocated to particular carriers increase with the size of the carrier so that smaller carriers will not be driven from the market. In creating the competitive neutrality criteria, the Commission also was guided by the 1996 Act's objectives. Number portability and competitively neutral cost recovery are necessary to fulfill the 1996 Act.

32. The Commission also rejects BellSouth's argument that it is arbitrary and capricious to use transitional measures as an incentive to adopt long-term number portability as quickly as possible. As discussed above, the Commission finds that it has jurisdiction over number portability, and that number portability is a dynamic, not static, concept. Section 271 of the Act explicitly states that BOCs must provide ''interim telecommunications number portability'' until ''the date by which the Commission issues regulations pursuant to section 251 to require number portability.'' While the costs of long-term number portability will be greater than those of interim number portability, carriers will be able to recover their costs through two separate federally-tariffed charges, and end-user and query service charge.

33. The Commission disagrees that it is interfering with existing state-mandated interim number portability cost recovery mechanisms. As the Commission stated in the *First Report and Order,* the Commission provides flexibility for the states to determine their own cost allocation mechanisms, subject to the guidelines set forth in the *First Report and Order.* If a state previously determined its cost allocation scheme without taking section 251(e)(2) into account, that state must now ensure that its method comports with the 1996 Act and the Commission's implementing regulations.

34. The Commission disagrees with AirTouch's assertion that carriers that do not serve customers with ported numbers, such as wireless carriers, should not be required to share in the cost of number portability because such carriers do not benefit from number portability. The Commission looks to section 251(e)(2) of the Act, which plainly requires that the costs of establishing number portability be borne by ''all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' 47 U.S.C. 251(e)(2). This interpretation is consistent with the *Third Report and Order,* wherein the Commission concluded that the provisions of section 3 of the Act, when read together, define ''all telecommunications carriers'' as all persons or entities other than aggregators that charge to transmit information for the public without changing the form or content of the information, regardless of the facilities they use. Applying the statutory definition to section 251(e)(2), the Commission concluded that the way all telecommunications carriers bear the costs of providing number portability—including incumbent LECs, competitive LECs, CMRS providers, IXCs, and resellers—must be competitively neutral as determined by the Commission. The Commission has exercised its statutory mandate by articulating criteria for states to use in adopting cost recovery mechanisms. As the states develop cost recovery mechanisms pursuant to the statutory mandate, carriers will bear their own costs or states may allocate costs in a competitively neutral fashion on all telecommunications carriers that does not unduly burden any particular carrier or group of carriers.

35. The Commission finds no merit in SCLP and SCI's claim that requiring CMRS providers to contribute to number portability would have a ''disparate effect'' on their ability to earn a normal rate of return. These carriers have failed to present any evidence to support their claim that contributing to the costs of interim number portability would have such an effect. As noted in the *First Report and Order,* a disparate effect may be said to exist when a ''new entrant's share of the [interim number portability] costs may be so large, relative to its expected profits, that the entrant would decide not to enter the market.'' With respect to existing carriers, the Commission clarifies that a disparate effect under its definition would exist if that carrier or class of carriers would be driven from the market, while other carriers would not, as a result of number portability costs. These carriers' unsupported allegations that contributing to the costs of interim number portability would have a disparate effect are insufficient to support their request for a blanket exemption for all CMRS carriers.

36. The Commission also disagrees with SCLP and SCI's assertion that its

First Report and Order demonstrates an intent that the costs of interim number portability be placed on non-cost causers only where necessary to preserve competitive neutrality. In making this claim, SCLP and SCI rely on the word ''relevant'' in the Commission's statement that ''states may apportion the incremental costs of interim measures among relevant carriers by using competitively neutral allocators.'' In using the term ''relevant carriers,'' the Commission intended to reflect that differing cost recovery mechanisms, all of which could satisfy its competitively neutral mandate, might encompass all, or a subset of all, telecommunications carriers, depending on the specifics of the cost recovery mechanism.

37. In the *First Report and Order*, the Commission concluded that, in choosing the phrase ''all telecommunications carriers,'' Congress intended to include all types of carriers in the cost recovery mechanism because, unlike the requirement to provide number portability which applies solely to local exchange carriers, the requirements relating to number portability cost recovery apply to ''all telecommunications carriers on a competitively neutral basis.'' The term ''telecommunications carrier'' is defined in the Act as ''any provider of telecommunications services. * * *'' 47 U.S.C. 153(44). The Commission adopted a literal reading of the statutory requirement and of the statutory definition of ''telecommunications carriers.'' While the Commission's interpretation prevents an incumbent LEC from recovering its costs entirely from the new entrant, such an incumbent LEC may be able to recover its incremental interim number portability costs via the state-adopted allocation mechanism from ''all telecommunications carriers'' if a state implements such a cost recovery mechanism. Since the carrier providing the call forwarding itself falls within the category of ''all telecommunications carriers,'' the carrier providing the forwarding is prevented by statute from recovering all of its costs from other carriers. States could also permit incumbent LECs to recover any remaining costs in some other manner, *e.g.*, from end-users.

38. The Commission affirms its finding that a ''mechanism that requires each carrier to pay for its own costs of interim number portability measures'' is competitively neutral and would constitute an acceptable cost recovery scheme that states could adopt. First, no significant capital costs are incurred by the carrier winning the customer or by the carrier losing the customer. Thus, the cost recovery mechanism does not give one service provider an appreciable, incremental advantage over another service provider when competing for the same customer. Second incumbent LECs should still be able to earn a normal return, as the anticipated costs of interim number portability measures are relatively small.

39. The Commission disagrees with BellSouth's argument that ''having determined that the costs of [interim number portability] will be incurred solely by the incumbent LECs,'' it was arbitrary and capricious for the Commission to determine that requiring each carrier to bear its own costs does not operate to the competitive disadvantage of the incumbent LECs. The Commission also disagrees with Bell Atlantic's argument that the *First Report and Order* was not competitively neutral because the Commission denied Bell Atlantic the ability to recover incremental costs of interim number portability. As a threshold matter, these carriers are incorrect when they assert that the Commission determined that the costs of providing interim number portability will be incurred solely by incumbent LECs. Although finding that ''initially, the costs of providing interim number portability will be incurred primarily by the incumbent LEC, because the incumbent LECs currently hold the vast majority of numbers in use,'' the *First Report and Order* imposed interim number portability requirements on all local exchange carriers. The Commission finds that it would be competitively neutral for carriers to pay their own incremental interim number portability costs, that is, to absorb the costs themselves or pass the costs onto their own retail customers. Additionally, the Commission has not foreclosed incumbent LECs from recovering all of their incremental costs of interim number portability, but has permitted each state to adopt a cost recovery mechanism, consistent with its competitive neutrality guidelines. The *First Report and Order* does not deny any carrier the right to recover costs, but, rather adopts guidelines that states must follow in implementing a cost recovery mechanism.

40. The Commission also concludes that the assertion by Bell Atlantic and Cincinnati Bell that new entrants should be required to bear all the costs of interim number portability is not consistent with the pro-competitive intent of sections 251(b)(2), 252(e)(2), and the 1996 Act as a whole. As the Commission stated in the *Third Report and Order*, the Commission has interpreted the Congressional mandate of competitive neutrality to require the Commission to depart from cost-causation principles when necessary to ensure that the cost of number portability borne by each carrier does not significantly affect any carrier's ability to compete with other carriers. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Despite the fact that such incremental costs are small, shifting all of an incumbent LEC's costs of interim number portability to a new entrant could result in a cost so large, ''relative to expected profits,'' that the new entrant would decide not to enter the market. As the Commission stated in the *First Report and Order*, imposing the full incremental cost of interim number portability solely on new entrants would place them at an ''appreciable, incremental cost disadvantage relative to another service provider when competing for the same customer'' and would, therefore, violate the first criteria of the competitive neutrality mandate.

41. The Commission is not persuaded by BellSouth's contention that the cost allocation mechanisms discussed in the *First Report and Order* guarantee the profitability of the new entrants. Number portability facilitates the development of competition among local providers. Through its competitive neutrality criteria and state-determined cost allocation mechanisms, the *First Report and Order* removes a potential barrier to entry that could result from high rates or charges that incumbent LECs potentially could impose for interim number portability on new entrants that possess their own switches. It does not guarantee that a new entrant will be profitable or be able to compete successfully in the market.

42. GTE suggests a third criterion, that ''a cost recovery mechanism must not influence a customer's selection of his or her service provider.'' While the Commission agrees with GTE that a cost recovery mechanism should not influence a customer's selection of his or her service provider, this criterion is effectively embodied in the first prong of its competitive neutrality test and, thus, the Commission sees no need to revise that test.

D. Alternative Allocators for Cost Recovery of Interim Number Portability

1. Background

43. In the *First Report and Order*, the Commission provided a list of examples of allocators for interim number portability cost recovery that would

meet the Commission's criteria for competitive neutrality. The Commission stated, for example, that a cost allocator based on a carrier's number of active telephone numbers, or a carrier's relative number of presubscribed customers, would meet its competitive neutrality guidelines. Several parties ask the Commission to approve additional allocators, or take exception to cost allocators deemed to be competitively neutral by the Commission in the *First Report and Order.*

2. Discussion

44. In the *First Report and Order*, the Commission provided a non-exhaustive list of examples of allocators for interim number portability cost recovery that would meet the Commission's criteria for competitive neutrality. The Commission disagrees with GTE's argument that a federally-mandated cost pooling mechanism needs to be implemented. For the reasons discussed in the *First Report and Order*, the Commission believes that states should be able to adopt various cost recovery mechanisms based on its competitive neutrality guidelines. The Commission is not, however, precluding states from selecting cost pooling as a cost recovery mechanism, nor is the Commission determining that cost pooling is not competitively neutral for the recovery of interim number portability costs. Although in the *Third Report and Order* the Commission rejected pooling of carriers' long-term number portability costs as a mechanism for recovery of these costs because pooling mechanisms, in general, reduce carrier incentives to provide service efficiently, states may find that these disadvantages are not as significant when pooling is used as a mechanism for the recovery of interim number portability costs. Because the costs of interim number portability are relatively small, given that incumbent LECs have already provisioned their switches with the capacity to provide the services needed for interim number portability, creating incentives for carriers to provide service efficiently may be less of a concern. The Commission allows states to utilize various cost recovery mechanisms, and states will make the decision as to whether they will choose pooling as a recovery mechanism and impose cost accounting and distribution mechanisms on carriers.

45. In clarifying that the list of potential allocators referenced in the *First Report and Order* is not exhaustive, the Commission also affirms that a cost recovery mechanism based on a carriers' gross revenues is an acceptable means of allocating costs among carriers. Financial measures, including gross revenues, are developed for different uses, such as for tax filings, annual reports, and SEC filings, and are readily available for this use. Additionally, such an allocator does not disparately affect the incremental costs of winning a specific customer or group of customers. A LEC with a small share of the market's revenues would pay a percentage of the incremental costs of interim number portability that is small enough that it will have no appreciable affect on its ability to compete for that customer. Accordingly, utilizing a gross revenues allocator does not violate the Commission's competitive neutrality guidelines.

46. It appears that carriers' concerns with some of the allocators approved by the Commission are focused on its second criterion, on whether losing a customer affects a firm's ''normal return.'' Losing a customer will necessarily affect a firm's revenues and subsequent return on investment. The *First Report and Order* did not intend to change that. Rather, as stated in the *Third Report and Order*, the second prong of the competitive neutrality test does not guarantee any particular rate of return, but merely states that an allocator should not disparately affect a carrier's ability to earn a normal return. The Commission also stated that allocating costs on an active telephone number basis would meet the second criteria, because it should not give any carrier a cost advantage, relative to its competitors.

47. In a written *ex parte* presentation to the Commission, AT&T summarized a number of existing state cost recovery mechanisms in effect at that time. In one method, cost elements required for interim number portability are attributed to the requesting carrier, which is deemed the cost causer, and must be borne by that entity. This method allocates all incremental costs of interim number portability to the new entrant. The Commission reiterates its earlier conclusion in the *First Report and Order* that a cost recovery mechanism that imposes the entire incremental costs of interim number portability on a facilities-based new entrant violates its competitive neutrality criteria. New entrants subjected to such a cost recovery mechanism may pursue one of the enforcement options discussed above.

48. NYNEX suggests that allocating costs on the basis of total telecommunications retail revenues is competitively neutral and should be permitted as an allocator. The Commission agrees with NYNEX that such an allocation may meet its competitive neutrality guidelines because, as with allocators based on gross telecommunications revenues, it would not give one service provider an appreciable, incremental cost advantage over another service provider. Under this allocation method, a LEC with a small share of the market's revenues would pay a percentage of the incremental cost of number portability that will be small enough to have no appreciable affect on its ability to compete for a customer.

49. In sum, the Commission reaffirms its determination to allow each state to determine the appropriate cost recovery mechanism for its jurisdiction as long as it meets its competitive neutrality criteria. The Commission recognizes that, in the *First Report and Order*, the Commission tentatively concluded that a cost recovery mechanism for interim number portability that assesses charges based on a carrier's gross revenues less charges carriers paid to other carriers would meet its competitive neutrality guidelines, while in the *Third Report and Order*, the Commission declined to utilize this allocator for long-term number portability cost recovery. The Commission notes, however, that interim number portability and long-term number portability, as implemented pursuant to industry-wide discussions, have very different cost characteristics. A cost recovery method that is appropriate for one may not be suitable for the other. Although the Commission has established one particular cost recovery mechanism for long-term number portability, the Commission declines to issue an exclusive list of acceptable cost recovery methods for interim number portability from which the states may choose to adopt. States are free to adopt an appropriate cost recovery method pursuant to the competitive neutrality criteria.

E. Takings

1. Background

50. Several petitioners claim that its cost recovery guidelines for interim number portability do not ensure adequate compensation and therefore constitute an unlawful taking under the Fifth and Fourteenth Amendments to the Constitution.

2. Discussion

51. The Commission rejects the claim that the cost recovery guidelines for interim number portability established in the *First Report and Order* violate the Fifth Amendment's mandate that no private property shall be ''taken for public use without just compensation.''

See U.S. Const. amend. V. As discussed below, the Commission concludes that the petitioners' takings claim is premature. More importantly, in examining its cost recovery guidelines in light of criteria articulated by the Supreme Court, the Commission finds that the petitioners' takings claim fails on the merits.

52. In the *First Report and Order*, the Commission clearly stated that, although its guidelines govern state allocation of costs of interim number portability, it is the responsibility of the states to adopt specific cost recovery mechanisms. Although petitioners have broadly stated that they believe that incumbent LECs will not receive adequate compensation as a result of the guidelines established in the *First Report and Order*, they have not shown the actual impact of the guidelines based on state orders. The Commission concludes, therefore, that, absent an actual rate order under which the impact of the cost recovery guidelines can be evaluated, the petitioners' takings argument is premature. This conclusion is consistent with *FPC* v. *Texaco Inc.*, in which the Supreme Court held that ''[a]ny broadside assertion that indirect regulation will be confiscatory is premature. The consequences of indirect regulation can only be viewed in the entirety of the rate of return allowed on investment, and this effect will be unknown until the Commission has applied its scheme in individual cases over a period of time.'' *FPC* v. *Texaco Inc.* 417 U.S. 380, 391–92 (1974).

53. Assuming arguendo that the petitioners' takings claim is not premature, the Commission finds it without merit. The Supreme Court has made clear that ''government may execute laws or programs that adversely affect recognized economic values,'' *Penn Central* v. *City of New York*, 438 U.S. 104, 124 (1978), and that ''given the propriety of governmental power to regulate, it cannot be said that the Takings Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another.'' *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 222 (1986). In fact, ''government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.'' *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413 (1922). Despite the conclusory assertion of Cincinnati Bell to the contrary, its guidelines will not result in a significant economic impact on incumbent LECs. As noted in the *First Report and Order*, ''the capability to provide number portability through interim methods, such as RCF and DID, already exists in most of today's networks, and no additional network upgrades are necessary.'' The incremental costs associated with the utilization of pre-existing network functionality for purposes of interim number portability are relatively small.

54. In *Duquesne Light Co.* v. *Barasch*, the Supreme Court rejected a takings claim on the grounds that it was permissible to preclude certain costs from inclusion in an electric utility's rate base because the overall rate was within constitutional requirements. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299 (1989). A rate is too low for constitutional purposes, according to the Court, if it is ''so unjust as to destroy the value of [the] property for all the purposes for which it was acquired.'' The Court held that '' '[i]t is not the theory, but the impact of the rate order which counts.' . . . The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.''

55. In determining that the overall impact of the rate order was not constitutionally objectionable and that the takings clause was not violated, the Court in *Duquesne Light Company* took note of the fact that ''[n]o argument has been made that these slightly reduced rates jeopardize the financial integrity of the companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital. Nor has it been demonstrated that these rates are inadequate to compensate current equity holders for the risk associated with their investments. . . .'' Similarly, no showing has been made that the cost recovery guidelines at issue here will ''jeopardize the financial integrity'' of incumbent LECs, nor has a showing been made that the cost recovery guidelines will result in state rate orders that are inadequate to compensate LECs ''for the risk associated with their investments.''

56. Having already provisioned their switches with enough capacity to carry all of their customers' incoming and outgoing calls, incumbent LECs should incur no additional costs with respect to switch capacity when losing customers and using RCF to provide number portability. Although RCF will require additional switch capacity—and an increase in transport costs—to process incoming calls, this effect is offset by the fact that the incumbent LEC will no longer handle the outgoing calls originated by the ported customer. As a result, little or no change in the level of incumbent LEC switching and transport costs per ported number should occur. The Commission concludes, therefore, that the additional incremental costs of interim number portability to incumbent LECs will be extremely small. Additionally, incumbent LECs may be able to recover some portion of their costs from other carriers through state-mandated cost recovery mechanisms. Additionally, as discussed above, if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, a carrier has a variety of ways it may seek relief.

57. Moreover, as the Supreme Court has stated, ''[t]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.'' Based on the extensive public debate that preceded enactment of the 1996 Act, it cannot be said that investors lacked adequate notice of possible changes to the Communications Act, including the number portability requirement at issue here. Indeed, while courts have readily found that a taking has occurred when interference with property rights can be characterized as a physical invasion or permanent appropriation, such a finding has not been reached when the challenged interference arises from a public program adjusting the benefits and burdens of economic life to promote the common good. The Commission's number portability cost recovery guidelines, which are designed to facilitate local telephone competition and thereby benefit all consumers of telecommunications services, falls squarely into the latter category. In short, the petitioners have failed to demonstrate that the Commission's cost recovery guidelines violate the Fifth and Fourteenth Amendments.

F. Retroactive Application of Cost Recovery Guidelines for Interim Number Portability

1. Background

58. ACSI asks the Commission to allow new entrants to recover retroactively number portability costs paid to incumbent LECs in excess of that required pursuant to the guidelines set forth in the *First Report and Order*. Specifically, ACSI requests that the Commission provide for a true-up of rates paid in excess of those required pursuant to the *First Report and Order*

as far back as February 8, 1996, the date the 1996 Act became effective, or the date number portability was first provided to the new entrant, whichever is later.

2. Discussion

59. The Commission denies ACSI's request that its cost recovery rules for interim number portability be applied to number portability provided prior to the adoption and effective date of those rules. In section 251(e)(2) of the Act, Congress required that ''the cost of establishing. . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The plain language of this section demonstrates that, while establishing the parameters on how number portability costs are to be allocated and who should pay such costs, Congress intended that specific cost recovery rules were to be established by the Commission at some point in time following the enactment of the 1996 Act. The Commission rejects ACSI's argument that, because the number portability provision became effective on February 8, 1996, ACSI is merely seeking to have the Commission give effect to this pre-existing requirement. Section 251(e)(2) is not self-executing, but is dependent on Commission action. The Commission sees no basis in the record for applying the rules adopted pursuant to section 251(e) retroactively.

60. The Commission's cost recovery guidelines for interim number portability became effective August 26, 1996, however, and the Commission agrees that it may be appropriate for states to provide a true-up of interim number portability costs from that date through the effective date of a state-approved cost recovery program. To provide the states with the flexibility during the interim period to continue using a variety of cost recovery approaches, the Commission did not adopt a fixed cost recovery mechanism. Instead, it adopted guidelines for the states to follow in mandating cost recovery for interim number portability. The Commission recognizes, however, that a significant period of time may have elapsed before each state adopted a cost recovery mechanism for interim number portability. Thus, absent a true-up from the effective date of the *First Report and Order*, the benefits of a competitively neutral cost recovery mechanism for interim number portability may be lost for many new entrants if they have been paying cost recovery amounts in excess of what would be allowed under the competitive guidelines of the *First Report and Order*. The Commission notes that several state arbitration decisions have adopted a true-up approach pending the adoption of a state-approved cost recovery mechanism. The Commission strongly encourages states to review their cost recovery mechanisms. Consistent with its competitive neutrality principles, the Commission encourages states to adopt a true-up of amounts paid for interim number portability between August 26, 1996 and the date the state-approved cost recovery program takes effect, to the extent such amounts exceed what would have been paid under the state-approved plan, had it been in effect.

G. Terminating Access Charges

1. Background

61. In the *First Report and Order*, the Commission stated that terminating access charges for calls forwarded from an incumbent LEC to a competing provider through the use of a interim number portability method should be shared between the incumbent LEC, which is the donor switch and the terminating switch carrier. A ''donor'' switch is the end office switch to which the called telephone number was originally assigned. The Commission stated that the ''overarching principle'' in such billing arrangements was that carriers were to share in the access revenues for a ported call, because neither the incumbent LEC forwarding carrier nor the terminating carrier provides all the facilities used to terminate a ported call. The Commission also held that incumbent LECs and new entrants should assess their terminating access charges on IXCs through meet-point billing arrangements. MCI asserts that, regardless of what type of billing arrangement is adopted, IXCs should not be charged increased access charges as a result of the additional call routing and associated costs necessary to terminate a call to a ported number under interim number portability measures.

2. Discussion

62. IXCs currently pay LECs access charges for terminating calls on LEC switches. In a competitive local exchange market, an IXC terminating a call to a long distance customer that has ported his or her number to a new entrant will terminate the call to the incumbent LEC's switch, which then will forward it to the new entrant's switch utilizing interim number portability measures. Under this scenario, incumbent LECs and new entrants both provide facilities used to terminate calls to ported numbers using interim number portability. In the *First Report and Order*, the Commission required both forwarding and terminating carriers to assess charges on IXCs for terminating access through meet-point billing arrangements. In requiring that these revenues be shared, the Commission left to the carriers whether ''each issues a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved.'' The Commission further provided that, if carriers determine it more efficient to issue individual bills, the forwarding carrier must ''provide the terminating carrier with the necessary information to permit the terminating carrier to issue a bill.''

63. The Commission finds that the additional costs that local exchange carriers may incur should not be included in the access charges paid by IXCs for terminating long-distance calls because any additional routing and transport costs that are a result of interim number portability are incremental costs of providing number portability. Such costs may be recovered through a local number portability cost recovery mechanism, or borne by the local exchange carrier that forwards the call, as determined by the state, on a competitively neutral basis. Because they are telecommunications carriers, IXCs may be required to contribute to the costs of interim number portability through the cost recovery mechanism adopted by state commissions. The Commission clarifies that, to prevent double recovery on the part of the terminating switch carrier, new entrants receiving a portion of access charges from IXCs for terminating calls may not also impose terminating charges on the incumbent LEC.

64. As discussed in the *First Report and Order*, carriers may incur incremental costs for forwarding calls when utilizing interim number portability. MCI requests that the Commission clarify what is included in these incremental costs and, thus, what should be shared by all carriers on a competitively neutral basis. The incremental costs of providing number portability via RCF, DID, or other comparable technically feasible measures are the costs that the forwarding carrier incurs in forwarding the call that it would not incur if it did not forward the call. As mentioned in the *First Report and Order*, such costs may differ depending on where the call originates within the network, and on the type of technology utilized to forward the call. Thus, the Commission

declines to list each potential additional cost that may be incurred and who should be allowed to bill for those incremental costs.

65. Finally, the Commission notes that it has ''not foreclose[d] arrangements in which one exchange carrier bills the entire amount [of access charges] and remits the other exchange carrier its share.'' The *First Report and Order* does not require that the carrier that owns the donor switch and the carrier that owns the terminating switch each issue a separate bill to the IXC. The *First Report and Order* states that ''it is up to the carriers whether they each issue a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved.'' Thus, either the carrier that owns the donor switch or the carrier that owns the terminating switch may bill the entire amount of access charges and remit to the other local exchange carrier its share of the invoiced charges. In short, the *First Report and Order* does not prohibit carriers who mutually agree from sending one bill to the IXC and then splitting the access charges appropriately between themselves.

H. Modification of Billing Systems to Accommodate the Sharing of Access Charges in Meet-Point Billing Type Arrangements

1. Background

66. In the *First Report and Order*, the Commission concluded that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability. In complying with the Commission's directive that forwarding and terminating carriers share access revenues received from IXCs for ported calls through meet-point billing arrangements, GTE argues that LECs should not be required to modify their billing systems.

2. Discussion

67. The *First Report and Order* did not specify whether carriers must modify their billing systems in order to accommodate the requirement that access charges be shared in meet-point billing type arrangements. It requires that the forwarding carrier provide ''the necessary information to permit the terminating carrier to issue a bill,'' but does not specify whether carriers have to make modifications in their billing systems in order to do so. The Commission agrees with GTE and Time Warner that it would not be cost effective to require carriers to modify their billing systems to accommodate interim number portability. It does not require carriers to modify their billing systems to track and record the details of every call. It does require, however, that carriers adopt some method of implementing its requirement to share terminating access revenues, by, for example, providing information about PIU (percent interstate usage), traffic samples, or total access charges per line.

68. If carriers cannot agree on appropriate meet-point billing arrangements, the Commission agrees that this issue may be included in mediation or arbitration before a state commission, or be subject to other dispute resolution processes chosen by the carriers involved. The Commission rejects GTE's suggestion, however, that parties seek informal assistance from the Commission as a means of resolving meet-point billing arrangement disputes. Also, if a meet-point billing arrangement dispute arises in the context of an interconnection request made pursuant to section 251, the 1996 Act clearly places the responsibility for arbitration and/or mediation of unresolved issues on the state commissions.

IV. Supplemental Regulatory Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 601 *et seq.* (the RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA); Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order*. In addition, the Commission sought comments on the proposals included in the Initial Regulatory Flexibility Analysis (IRFA) in the *First Report and Order.* The Commission incorporated a Final Regulatory Flexibility Analysis in the *Third Report and Order.* The additional Regulatory Flexibility Analysis in this *Fourth Memorandum Opinion and Order* is as follows:

70. *Need for and Objectives of Action:* The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopted rules and procedures in the *Third Report and Order* that are intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that ''[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The Commission issued this *Fourth Memorandum Opinion and Order* to address issues relating to cost recovery for interim number portability. Interim number portability utilizes an interim method to allow consumers to change carriers while retaining their telephone numbers before long-term number portability becomes available.

71. *Summary of Significant Issues Raised by the Public Response to the FRFA:* There were no comments submitted specifically in response to the Regulatory Flexibility Analysis. In the *Third Report and Order*, the Commission adopted rules and regulations to ensure that the way all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace. This *Fourth Memorandum Opinion and Order* addresses issues relating to cost recovery for interim number portability. It affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. Finally, the item clarifies issues relating to terminating access charges, modification of billing systems, and the competitive neutrality of certain cost recovery allocators, as each of these issues relates to interim number portability.

72. *Description and Estimate of Number of Small Businesses to Which Actions Will Apply:* The Regulatory

Flexibility Act generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. *See* 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id.* According to SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. *See* 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

73. As described in the previous Regulatory Flexibility Analysis contained in the *Third Report and Order*, the Commission's rules governing number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXCs, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their filed of operations or are independently owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of ''small entities'' and ''small business concerns.'' *See In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16144–45, 16149–50 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.*, 119 S.Ct. (1998). Accordingly, the Commission's use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. *Local Competition Order*, 11 FCC Rcd at 16,150. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, *see* 13 CFR 121.902(b)(4), the Commission will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

74. Insofar as the Commission's rules apply to all telecommunications carriers, they may have an economic impact on a substantial number of small businesses, as well as on small incumbent LECs. The rules may have an impact upon new entrant LECs and small incumbent LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, the Commission estimates that 2,100 small entities could be affected. The Commission has derived this estimate based on the following analysis.

75. According to the 1992 Census of Transportation, Communications, and Utilities, there were approximately 3,469 firms with under 1,000 employees operating under the Standard Industrial Classification (SIC) category 481—Telephone. *See* U.S. Dept. of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities (issued May 1995). Many of these firms are the incumbent LECs and, as noted above, would not satisfy the SBA definition of a small business because of their market dominance. There were approximately 1,350 LECs in 1995. Industry Analysis Division, FCC, Carrier Locator: Interstate Service Providers at Table 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1995). Subtracting this number from the total number of firms leaves approximately 2,119 entities which potentially are small businesses which may be affected. This number contains various categories of carriers, including small incumbent LECs, competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these carriers, although not dominant, may not meet the other requirement of the definition of a small business because they are not ''independently owned and operated.'' *See* 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with a long distance company with more than 1,500 employees would not meet the definition of a small business. Another example would be if a cellular provider is affiliated with a dominant LEC. Thus, a reasonable estimate of the number of ''small businesses'' affected by this item would be approximately 2,100.

76. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules:* The *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. This *Fourth Memorandum Opinion and Order* affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. This item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines.

77. *The Fourth Memorandum Opinion and Order* also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocating costs among carriers. It states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, it affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call.

78. *Steps Taken to Minimize Impact on Small Entities Consistent With Stated Objectives:* The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. The Bureau has attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Fourth Memorandum Opinion and Order* affirms the Commission's earlier determination that meet-point billing

between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. Such determination recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services, but attempts to keep such costs to a minimum.

79. *Report to Congress:* The Commission will send a copy of this *Fourth Memorandum Opinion and Order,* including this supplemental RFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of the *Third Report and Order* and this supplemental FRFA (or summaries thereof) will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

80. *Paperwork Reduction Act:* This *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. The *Third Report and Order* concluded that carriers may recover the portion of their number portability joint costs that is demonstrably an incremental cost incurred in the provision of number portability. *Third Report and Order,* 13 FCC Rcd at 11,740, para. 73. The *Third Report and Order* also requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges. *Id.* at 11,776. The Commission also concluded that carriers may identify only those incremental overheads that they can demonstrate were incurred specifically in the provision of number portability. *Id.* at 11,740. In this *Fourth Memorandum Opinion and Order,* the Commission affirms its earlier decision that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The item also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocation costs among carriers. The item states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, the item affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

V. Ordering Clauses

81. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 2, 4(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332, and Parts 1, 20 and 52 of the Commission's rules, 47 CFR 1.106, 20, and 52, the Petitions for Reconsideration and/or Clarification *are granted* to the extent indicated herein and otherwise *are denied.*

82. *It is further ordered* that the Motion to Accept Late-filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of US WEST *are granted.*

83. *It is further ordered* that the Commission's Office of Public Affairs Reference Operations Division *shall send* a copy of this *Memorandum Opinion and Order* including the supplemental Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications, Common Carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22131 Filed 8–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 63 and 69

[CC Docket No. 98–131; FCC 99–173]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 11 of the Communications Act of 1934, as amended (Act), requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. As part of its 1998 biennial regulatory review, the Commission revised part 61 to, among other things, eliminate several rules that no longer seem to serve any useful purpose, and to reorganize part 61 to clarify which rules apply to which carriers.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Nitsche, Chief, Tariff and Pricing Analysis Branch, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1540.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and First Order on Reconsideration, adopted July 13, 1999, and released August 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St., S.W., Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, as

amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA), and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in this docket. The Commission sought written public comment on the proposals in the Notice of Proposed Rulemaking (NPRM), 63 FR 49520 (September 16, 1998), including comment on the IRFA. The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact this order might have on small entities, in conformance with the RFA.

Need for and Objectives of Rules

The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. Our objective is to repeal any rules in 47 CFR 61 that are no longer necessary in the public interest, as required by section 11 of the Communications Act of 1934, as amended.

Summary of Significant Issues Raised by the Public Comments to the IRFA

Only one party, NTCA, submitted comments directly in response to the IRFA. NTCA claims that the definition of ''small business'' in the Commission's IRFA does not comply with the RFA.[1] NTCA claims further that the Commission's IRFA resulted in inadequate consideration of whether the tariffs of small incumbent LECs should be subject to a different minimum effective period than the tariffs of large incumbent LECs.[2] We find that NTCA is mistaken on both its assertions.

The Commission has determined consistently that incumbent LECs are not ''small entities'' within the meaning of the RFA, and NTCA cites no legal authority that causes us to question this conclusion. Furthermore, regardless of the correct interpretation of the term ''small entities'' in this context, we included small dominant incumbent LECs in our IRFA. Therefore, NTCA has no basis to assert that the IRFA was inadequate. Second, all dominant LECs, including small dominant LECs, have market power by definition. As a result, these carriers do not face sufficient competition to enable their customers to switch to another carrier if they believe that they revise their rates too frequently. In addition, excessive rate churn could make it difficult or impossible for customers to determine the rates in effect on any given day, which in turn would make difficult for a customer to file a complaint against a carrier. NTCA provides no explanation as to why rate churn committed by a small LEC affects customers any differently than rate churn committed by a large LEC.

Although no party other than NTCA commented directly in response to the IRFA, we have kept small entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

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

In the NPRM, the Commission stated that the proposals under consideration, if adopted, would affect all telecommunications carriers regulated by the Commission. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3497 firms engaged in providing telephone service, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size, at Firm Size 1–123 (1995) (1992 Census). This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated. 15 U.S.C. 632(a)(1).

In the NPRM, Commission also explained that dominant carriers are not small businesses for IRFA purposes because they are dominant in their field of operation. We have found incumbent LECs to be ''dominant in their field of operation'' since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that incumbent LECs are not subject to regulatory flexibility analysis requirements because they are not small businesses. In order to remove any possible issue of Regulatory Flexibility Act compliance, however, the NPRM tentatively concluded that dominant carriers should be included in this IRFA. NTCA also argues that small dominant carriers should be included in the Regulatory Flexibility Act analysis. No one else commented on this issue.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In this document, we adopt several revisions to 47 CFR 61 that reduce the regulatory burdens placed on all telecommunications common carriers, including common carriers. The remaining rule revisions generally re-state existing requirements in clearer terms. Consequently, we project that this Order imposes no significant new reporting, recordkeeping, or other compliance requirements on small carriers.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In this proceeding, we have taken several steps to minimize the economic impact of our existing 47 CFR 61 rules on all carriers, including small carriers. For example, we have substantially relaxed our posting requirements, we have eliminated our minimum notice requirements for nondominant carriers, and we have expanded carriers' ability to submit tariff filing fees electronically. We also decided against requiring carriers to separate their domestic and international tariffs when the record revealed that such a requirement would have been burdensome. Finally, we limited the Internet posting requirement to incumbent LECs who choose to establish web sites.

Report to Congress

The Commission will send a copy of this order, including the FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). A summary of this Report and Order and this FRFA will also be published in the **Federal Register**, 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Summary of Report and Order

In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. See 47 U.S.C. 161. As part

[1] NTCA Comments at 2–4.

[2] NTCA Comments at 4.

of the 1998 biennial regulatory review, the Commission has conducted a review of the tariffing requirements contained in 47 CFR 61 of its rules and other related requirements.

This document revises and removes several 47 CFR 61 rules, as well as certain 47 CFR 63 and 69 rules that are interrelated with 47 CFR 61, to eliminate those that no longer serve any useful purpose, or are duplicative, and to improve their organization.

Ordering Clause

Accordingly, *it is ordered,* pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to 47 CFR 61, 63, 69, *are adopted* as set forth below.

It is further ordered, pursuant to sections 4(i), and 201–205 of the Communications Act, 47 U.S.C. 154(i), and 201–205, and 47 CFR 1.108, that revisions to 47 CFR 61.17(c) *are adopted* as set forth in below.

It is further ordered that the provision of this Order will be effective 30 days after a summary of this Order is published in the **Federal Register**.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Parts 63 and 69

Communications common carriers, Tariffs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 61, 63, and 69 as follows:

PART 61—TARIFFS

1. The authority citation continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

§§ 61.1 through 61.3 [Amended]

2. Designate §§ 61.1 through 61.3 as subpart A and add a subpart heading entitled ''Subpart A—General'' immediately preceding § 61.1.

3. Revise § 61.2 to read as follows:

§ 61.2 General tariff requirements.

(a) In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations.

(b) Tariff publications must be delivered to the Commission free from all charges, including claims of postage.

(c) Tariff publications will not be returned.

4. Remove the undesignated center heading ''Definitions'' immediately preceding § 61.3.

5. Amend § 61.3 by revising paragraphs (e), (f)(3), (m), (w), and (y), to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base period.* For carriers subject to §§ 61.41–61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall exclude amounts associated with exogenous adjustments to the PCI for the lower formula adjustment mechanism permitted by § 61.45(d)(1)(vii).

* * * * *

(f) * * *

(3) The related revenues of which are reflected in a Price Cap Index.

* * * * *

(m) *Contract-based tariff.* A tariff based on a service contract entered into between a nondominant carrier and a customer.

* * * * *

(w) *Price Cap Index (PCI).* An index of prices applying to each basket of services of each carrier subject to price cap regulation, and calculated pursuant to § 61.45.

* * * * *

(y) *Price cap tariff filing.* Any tariff filing involving a service subject to price cap regulation, or that requires calculations pursuant to §§ 61.45, 61.46, or 61.47.

* * * * *

6. Remove the undesignated center headings ''GENERAL RULES'' and ''Rules for Electronic Filing'' immediately preceding § 61.13.

§§ 61.13 through 61.17 [Amended]

7. Designate §§ 61.13 through 61.17 as subpart B and add a subpart heading entitled ''Subpart B—Rules for Electronic Filing'' immediately preceding § 61.13.

8. Amend § 61.14 by revising paragraph (b) to read as follows:

§ 61.14 Method of filing publications.

* * * * *

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter.

(2) Issuing carriers filing tariffing fees electronically must submit the Form 159. The issuing carrier may submit the Form 159 in either of the methods set forth in paragraphs (b)(2)(i) or (b)(2)(ii) of this section:

(i) Issuing carriers submitting tariffing fees electronically may submit a paper copy of the Form 159, and the original transmittal letter to the Secretary of the Commission in lieu of the Mellon Bank, or;

(ii) Issuing carriers submitting tariffing fees electronically may submit a copy of the Form 159 electronically as an associated document with their tariff filing publication. In this instance issuing carriers must provide an electronic signature on their letter of transmittal in accordance with section 1.52 of this chapter.

(iii) Regardless of whether the Form 159 is submitted pursuant to paragraph (b)(2)(i) or (b)(2)(ii) of this section, the Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved.'' Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

9. Amend § 61.17 by revising paragraph (c) to read as follows:

§ 61.17 Method of filing applications for special permission.

* * * * *

(c) In addition, if a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. _____
(Date)_____
Secretary
Federal Communications Commission
Washington, DC 20554.

Attention: Common Carrier Bureau (here provide the statements required by § 61.152).

(Exact name of carrier)_____
(Name of officer or agent)_____
(Title of officer or agent)_____

10. Remove the undesignated center heading ''General Rules for Domestic

and International Nondominant Carriers'' immediately preceding § 61.20.

§§ 61.20 through 61.24 [Amended]

11. Designate §§ 61.20 through 61.24 as subpart C and add a subpart heading entitled ''Subpart C—General Rules for Nondominant Carriers'' immediately preceding § 61.20.

12. Add § 61.18 to subpart C to read as follows:

§ 61.18 Scope.

The rules in this subpart apply to all nondominant carriers.

§§ 61.20 through 61.24 [Redesignated as §§ 61.19 through 61.23]

13. Redesignate §§ 61.20 through 61.24 as §§ 61.19 through 61.23.

14. In newly redesignated § 61.19, revise paragraphs (b) and (c) to read as follows:

§ 61.19 Detariffing of domestic, interstate, interexchange services.

* * * * *

(b) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file a tariff for such interstate service applicable to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

15. In newly redesignated § 61.20, revise paragraphs (b)(1) and (c) to read as follows:

§ 61.20 Method of filing publications.

* * * * *

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved.'' Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one 3½ inch diskette or CD–ROM containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette or CD–ROM of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff and Pricing Analysis Branch. The latter should be clearly labeled as the ''Public Reference Copy.'' The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section. In cases where the a single diskette or CD–ROM does not provide sufficient capacity for the carrier's entire tariff filing, the issuing carrier may submit two or more diskettes, or two or more CD–ROMs, as necessary.

16. In newly redesignated § 61.21, revise paragraph (a)(1) to read as follows:

§ 61.21 Cover letters.

(a)(1) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8.5 by 11 inches (21.6 cm × 27.9 cm) in size, and must be plainly printed in black ink. All transmittal letters should briefly explain the nature and purpose of the filing and indicate the date and method of filing of the original cover letter, as required by § 61.20(b)(1) of this part.

* * * * *

17. Immediately after newly redesignated § 61.21, remove the undesignated center heading ''Specific Rules For Domestic and International Nondominant Carriers''.

18. In newly redesignated § 61.22, revise paragraph (a), redesignate paragraph (c) as paragraph (c)(1), and add paragraphs (c)(2) and (e) to read as follows:

§ 61.22 Composition of tariffs.

(a) The tariff must be submitted on a 3½ inch (8.89 cm) diskette, or a 5 inch CD–ROM, formatted in an IBM-compatible form using either WordPerfect 5.1, Microsoft Word 6, or Microsoft Word 97 software. No diskettes shall contain more than one tariff. The diskette or CD–ROM must be submitted in ''read only'' mode. The diskette or CD–ROM must be clearly labelled with the carrier's name, Tariff Number, software used, and the date of submission. When multiple diskettes or CD–ROMs are submitted, the issuing carrier shall clearly label each diskette in the following format: ''1 of __'', ''2 of __'', etc.

* * * * *

(c) * * *

(2) Any issuing carrier submitting an individual tariff that requires ten or more diskettes that wishes to revise its tariff is permitted to do so by filing a diskette containing only those pages on which the changed material is located. Any such carrier shall file a current effective version of its entire tariff on the first business day of each month. For purposes of this paragraph, ''business day'' is defined in § 1.4(e)(2) of this chapter.

* * * * *

(e)(1) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal may accompany each tariff filed, or the above format may be modified for filing as many publications as may be desired with one transmittal letter. The transmittals must be numbered in a series separate from transmittals for non-contract tariff filing. Numbers must appear on the face of the transmittal and be in the form of ''CTT No. _____'', using CTT as an abbreviation for contract-based tariff transmittals, or some similar form that indicates that the transmittal is a contract-based tariff transmittal. Contract-based tariffs must also be numbered in a series separate from non-contract-based tariffs. Numbers must be in the form of ''CT No. _____'', using CT as an abbreviation for contract-based tariffs, or some similar form that indicates that the tariff is a contract-based tariff. Each contract-based tariff must be assigned a separate number. Transmittals and tariffs subject to this paragraph shall be filed beginning with the number ''1'' and shall be numbered consecutively.

(2) Composition of contract-based tariffs shall comply with §§ 61.54 (b) through (i).

(3) Contract-based tariffs shall include the following:

(i) The term of the contract, including any renewal options;

(ii) A brief description of each of the services provided under the contract;

(iii) Minimum volume commitments for each service;

(iv) The contract price for each service or services at the volume levels committed to by the customers;

(v) A general description of any volume discounts built into the contract rate structure; and

(vi) A general description of other classifications, practices and regulations affecting the contract rate.

19. In newly redesignated § 61.23, revise paragraph (c) to read as follows:

§ 61.23 Notice requirements.

* * * * *

(c) All tariff filings of domestic and international non-dominant carriers must be made on at least one day's notice.

20. Add § 61.25 to subpart C to read as follows:

§ 61.25 References to other instruments.

In addition to the cross-references permitted pursuant to § 61.74, a non-dominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier's FCC tariff publication, provided that the following conditions are met:

(a) The tariff being cross-referenced must be on file with the Commission and in effect;

(b) The issuing carrier must specifically identify in its tariff the cross-referenced tariff by Carrier Name and FCC Tariff Number;

(c) The issuing carrier must specifically identify in its tariff the rates being cross-referenced so as to leave no doubt as to the exact rates that will apply, including but not limited to any applicable credits, discounts, promotions; and

(d) The issuing carrier must keep its cross-references current.

21. Add a subpart D to part 61, consisting of § 61.28, to read as follows:

Subpart D—General Tariff Rules for International Dominant Carriers

§ 61.28 International dominant carrier tariff filing requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route due only to a foreign carrier affiliation pursuant to § 63.10 of this Chapter shall file tariffs for those services on at least one day's notice without cost support.

(b) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in subpart E of this part.

(c) Other than the notice and cost support requirements set forth in paragraphs (a) and (b) of this section, all tariff filing requirements applicable to all carriers classified as dominant for the provision of particular international communications services on a particular route are set forth in subpart C of this part.

§§ 61.32 through 61.52, 61.54, 61.58 and 61.59 [Amended]

22. Designate §§ 61.32 through 61.52, 61.54, 61.58, and 61.59 as subpart E and add a subpart heading entitled ''Subpart E—General Rules for Dominant Carriers'' immediately preceding § 61.32.

23. Add § 61.31 to subpart E to read as follows:

§ 61.31 Scope.

The rules in this subpart apply to all dominant carriers.

24. Amend § 61.32 by revising paragraph (b) to read as follows:

§ 61.32 Method of filing publications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved.'' Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

25. In § 61.33, revise the first sentence of the introductory text of paragraph (a), remove and reserve paragraph (h)(2), and redesignate the note following paragraph (h)(2) as a note to § 61.33, to read as follows:

§ 61.33 Letters of transmittal.

(a) Except as specified in § 61.32(b), all publications filed on paper with the Commission must be numbered consecutively by the issuing carrier beginning with Number 1, and must be accompanied by a letter of transmittal, A4 (21 cm x 29.7 cm) or 8½ by 11 inches (21.6 cm x 27.9 cm) in size.

* * *

* * * * *

§ 61.35 [Removed]

26. Remove § 61.35.

§ 61.36 [Removed]

27. Remove § 61.36.

28. Amend § 61.38 by revising paragraph (a), removing and reserving paragraph (b)(3), and adding paragraph (g) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (d), (e), and (g).

* * * * *

(g) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

29. Amend § 61.39 by revising paragraph (a) and by adding paragraph (f) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for

review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(f) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

§ 61.41 [Amended]

30. In § 61.41, remove and reserve paragraph (a)(1).

31. Amend § 61.42 by removing and reserving paragraphs (a), (b) and (c), by removing the semicolons at the end of paragraphs (d)(1), (d)(2), and (d)(3) and, in their place, adding periods, by adding a sentence at the end of paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(6), and by revising the first sentence of paragraph (g) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(1) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the ''common line basket.''

(2) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the ''traffic-sensitive basket.''

(3) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the ''trunking basket.''

(4) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the ''interexchange basket.''

* * * * *

(6) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the ''marketing expense basket.''

* * * * *

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced.

* * *

32. Revise § 61.43 to read as follows:

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming tariff year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.45 through 61.47, and that incorporate new services into the PCI, API, or SBI calculations pursuant to §§ 61.45(g), 61.46(b), and 61.47 (b) and (c). Carriers may propose rate, PCI, or other tariff changes more often than annually, consistent with the requirements of § 61.59.

§ 61.44 [Removed and Reserved]

33. Remove and reserve § 61.44.

34. § 61.45 is amended as follows:

a. Revise paragraphs (b) and (c);

b. Revise paragraph (d)(1)(iv);

c. In paragraph (f), remove the words ''paragraph (c)'' and add, in their place, the words ''paragraphs (b) and (c)''; and

d. Revise paragraphs (i) and (j)(2).

e. Remove paragraphs (k) and (l).

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(b)(1)(i) Adjustments to local exchange carrier PCIs, in those carriers' annual access tariff filings, for the traffic-sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), and the marketing expense basket described in § 61.42(d)(6), shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w(GDP–PI - X) + \Delta Z/R]$

Where

GDP–PI = the percentage change in the GDP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = 6.5%,

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1}, inclusive of the products of base period quantities for each PICC established in § 69.153 of this Chapter and the portion of that PICC that is associated with the basket, and summing the results,

w = R + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(ii) Adjustments to local exchange carrier PCIs for the interexchange basket described in § 61.42(d)(4), in those carriers' annual access tariff filings, shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w(GDP–PI - X) + \Delta Z/R + \Delta Y/R]$

Where

w = R – (access rate in effect at the time the PCI was updated to PCI_{t-1}, multiplied by base period demand) + ΔZ, all divided by R,

X = 3.0 percent,

ΔY = (new access rate – access rate at the time the PCI was updated to PCI_{t-1}) × (base period demand), and all other terms are defined in paragraph (b)(1)(i) of this section.

(2) Adjustments to local exchange carrier PCIs, in tariff filings other than the annual access tariff filing, for the traffic-sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), the interexchange basket described in § 61.42(d)(4), and the marketing expense basket described in § 61.42(d)(6), shall be made pursuant to the formulas set forth in paragraph (b)(1) of this section, except that the ''w(GDP–PI – X)'' component of those PCI formulas shall not be employed.

(c)(1) In the event that a local exchange carrier imposes a per-minute carrier common line charge pursuant to § 69.154 of this chapter, and subject to paragraphs (c)(2) and (c)(3) of this section, adjustments to local exchange carrier PCIs in the annual access tariff filing for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w[(GDP–PI - X - (g/2))/(1+(g/2))] + \Delta Z/R]$

Where

GDP–PI = the percentage change in the GDP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 6.5%,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, minus 1,

Δ Z = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1}, inclusive of the products of base period quantities for each PICC established in § 69.153 of this Chapter and the portion of that PICC that is associated with the common line basket, and summing the results,

w = R + Δ Z, all divided by R,

PCI_t = the new PCI value, and
PCI_{t-1} = the immediately preceding PCI value.

(2) Adjustments to local exchange carrier PCIs, in tariff filings other than the annual access tariff filing, for the common line basket described § 61.42(d)(1), shall be made pursuant to the formulas set forth in paragraph (b)(1) of this section, except that the ''w[(GDP–PI—X—(g/2))/(1 + (g/2))]'' component of that PCI formula shall not be employed. In non-annual price cap filings, g will be equal to 0.

(3) The formula set forth in paragraph (c)(1) of this section shall be used by a local exchange carrier only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in § 61.45(b)(1)(i).

(d) * * *

(1) * * *

(iv) Changes to the level of obligation associated with the Universal Service Fund obligation described in Part 54 of this chapter;

* * * * *

(i)(1)(i) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, including but not limited to the Δ Z reductions discussed in paragraph (j)(2), any price cap local exchange carrier that is recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the common line and traffic sensitive baskets, designated in §§ 61.42(d)(1) and (2), that result from the application of the formulas in paragraphs (b) and (c) of this section.

(ii) As specified in paragraph (j)(2) of this section, any price cap local exchange carrier that is targeting PCI reductions to the residual interconnection charge pursuant to paragraph (i)(1)(i) of this section shall exclude the Δ Z/R component of the PCI for the trunking basket designated in § 61.42(d)(3) from those calculations.

(iii) Any local exchange carrier that is targeting PCI reductions to the residual interconnection charge pursuant to paragraph (i)(1)(i) of this section shall not make any adjustment to its PCIs for the common line and traffic sensitive baskets, designated in §§ 61.42(d)(1) and (2) respectively, as a result of the application of the formulas in paragraphs (b) and (c) of this section, other than the adjustments resulting from calculation of the ''Δ Z/R component of those formulas.

(iv) The reductions described in paragraph (i)(1)(i) are to be made after the adjustment is made to the PCI for the trunking basket designated in § 61.42(d)(3) resulting from the application of the formulas in paragraphs (b) and (c) of this section.

(2) Notwithstanding the provisions of paragraph (b) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the basket designated in § 61.42(d)(6) that result from the application of the formula in § 61.45(b), but excluding from the calculations the Δ Z/R component, with no adjustment being made to the PCIs for the basket designated in § 61.42(d)(6). This adjustment, including any adjustment due to the Δ Z/R component, will be made after any adjustment made pursuant to paragraph (i)(1) of this section.

(3) [Reserved]

(4) Effective January 1, 1998, the reduction in the PCI for the trunking basket designated in § 61.42(d)(3) that results from paragraphs (i)(1) and (i)(2) of this section shall be determined by multiplying the PCI for the trunking basket by one minus the ratio of the sum of the dollar effects of the PCI reductions otherwise applicable to the common line, traffic-sensitive, and marketing expense baskets, to the revenues applicable to the trunking basket.

(j) * * *

(2) Exclude the amount of any exogenous adjustments permitted or required for the common line, traffic sensitive baskets, and marketing baskets, defined in §§ 61.42(d)(1), (d)(2), and (d)(6), from the retargeting adjustment to the PCI for the trunking basket defined in § 61.42(d)(3). Any such exogenous adjustments shall be reflected in the PCIs and SBIs in the same manner as they would have been reflected if there were no targeting.

35. Amend § 61.47 to revise paragraph (e), remove and reserve paragraphs (f), (g), and (h) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Each band shall limit the pricing flexibility of the service category, subcategory, or density zone, as reflected in the SBI, to an annual increase of a specified percent listed in this paragraph below, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x), there shall be no lower pricing band for any service category or subcategory.

(1) *Five percent:*

(i) Local switching (traffic sensitive basket)

(ii) Information (traffic sensitive basket)

(iii) Database Access services (traffic sensitive basket)

(iv) 800 Database Vertical Services subservice (traffic sensitive basket)

(v) Billing Name and Address (traffic sensitive basket)

(vi) Local switching trunk ports (traffic sensitive basket)

(vii) Signalling Transfer Point Port Termination (traffic sensitive basket)

(viii) Voice grade (Trunking basket)

(ix) Voice grade density zones (Trunking basket)

(x) Tandem-Switched Transport density zones (Trunking basket)

(xi) Audio/Video (Trunking basket)

(xii) Total High Capacity (Trunking basket)

(xiii) DS1 subservice (Trunking basket)

(xiv) DS1 density zones (Trunking basket)

(xv) DS3 subservice (Trunking basket)

(xvi) DS3 density zones (Trunking basket)

(xvii) Wideband (Trunking basket)

(2) *Two percent:*

(i) Tandem-Switched Transport (Trunking basket)

(ii) Signalling for Tandem Switching (Trunking basket)

(3) *Zero percent:* Interconnection charge (Trunking basket)

(f)–(h) [Reserved]

* * * * *

§ 61.48 [Amended]

36. Amend § 61.48 by removing and reserving paragraphs (a) through (h), and by removing and reserving paragraph (i)(3)(ii).

37. Amend § 61.49 to revise paragraphs (a), (c), and (g)(1)(ii), remove and reserve paragraphs (f)(1) and (i)(1), and add new paragraph (l) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

(a) Each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.45, 61.46, and 61.47, as applicable.

* * * * *

(c) Each price cap tariff filing that proposes rates above the applicable band limits established in §§ 61.47 (e) must be accompanied by supporting materials establishing substantial cause for the proposed rates.

* * * * *

(f)(1) [Reserved]

* * * * *

(g) * * *

(1) * * *

(ii) Estimates of the effect of the new tariff on the traffic and revenues from the service to which the new tariff applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (g)(1)(i) of this section.

* * * * *

(l) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

§ 61.50 [Removed and Reserved]

38. Remove and reserve § 61.50.

39. Remove the undesignated center heading entitled ''Specific Rules for Tariff Publications'' immediately before § 61.51.

§ 61.51 [Removed and Reserved]

40. Remove and reserve § 61.51.

§ 61.53 [Redesignated as § 61.83]

41. Redesignate § 61.53 as § 61.83.

42. Amend § 61.54 by revising paragraph (b)(3), redesignating paragraph (c)(1) as paragraph (c)(1)(i), adding paragraph (c)(1)(ii), redesignating paragraph (c)(3) as paragraph (c)(3)(i), adding paragraph (c)(3)(ii), and revising paragraph (i)(3), to read as follows:

§ 61.54 Composition of tariffs.

* * * * *

(b) * * *

(3) *Expiration date.* Subject to § 61.59, when the entire tariff or supplement is to expire with a fixed date, the expiration date must be shown in connection with the effective date in the following manner. Changes in expiration date must be made pursuant to the notice requirements of § 61.58, unless otherwise authorized by the Commission.

Expires at the end of ____ (date) unless sooner canceled, changed, or extended.

* * * * *

(c) * * *

(1) * * *

(ii) Alternatively, the carrier is permitted to number its tariff pages, other than the check sheet, to reflect the section number of the tariff as well as the page. For example, under this system, pages in section 1 of the tariff would be numbered 1–1, 1–2, etc., and pages in section 2 of the tariff would be numbered 2–1, 2–2, etc. Issuing carriers shall utilize only one page numbering system throughout its tariff.

* * * * *

(3) * * *

(ii) On each page, the carrier shall indicate the transmittal number under which that page was submitted.

* * * * *

(i) * * *

(3) Items which have not been in effect 30 days when brought forward on revised pages must be shown as reissued, in the manner prescribed in § 61.54(i)(1). The number and original effective date of the tariff publication in which the matter was originally published must be associated with the reissued matter. Items which have been in effect 30 days or more and are brought forward without change on revised pages must not be shown as reissued items.

§ 61.55 [Removed]

43. Remove § 61.55.

§ 61.56 [Redesignated as § 61.86]

44. Redesignate § 61.56 as § 61.86, and revise it to read as follows:

§ 61.86 Supplements.

A carrier may not file a supplement except to suspend or cancel a tariff publication, or to defer the effective date of pending tariff revisions. A carrier may file a supplement for the voluntary deferral of a tariff publication.

§ 61.57 [Redesignated as § 61.87]

45. Redesignate § 61.57 as § 61.87, and revise it to read as follows:

§ 61.87 Cancellation of tariffs.

(a) A carrier may cancel an entire tariff. Cancellation of a tariff automatically cancels every page and supplement to that tariff except for the canceling Title Page or first page.

(1) If the existing service(s) will be provided under another carrier's tariff, then

(i) The carrier whose tariff is being canceled must revise the Title Page or the first page of its tariff indicating that the tariff is no longer effective, or

(ii) The carrier under whose tariff the service(s) will be provided must revise the Title Page or first page of the tariff to be canceled, using the name and numbering shown in the heading of the tariff to be canceled, indicating that the tariff is no longer effective. This carrier must also file with the Commission the new tariff provisions reflecting the service(s) being canceled. Both filings must be effective on the same date and may be filed under the same transmittal.

(2) If a carrier canceling its tariff intends to cease to provide existing service, then it must revise the Title Page or first page of its tariff indicating that the tariff is no longer effective.

(3) A carrier canceling its tariff, as described in this section, must comply with § 61.22 or §§ 61.54(b)(1) and 61.54(b)(5), as applicable.

(b) When a carrier cancels a tariff as described in this section, the canceling Title Page or the first page of the canceled tariff must show where all rates and regulations will be found except for paragraph (c) of this section. The Title Page or first page of the new tariff must indicate the name of the carrier and tariff number where the canceled material had been found.

(c) When a carrier ceases to provide service(s) without a successor, it must cancel its tariff pursuant to the notice requirements of § 61.23 or § 61.58, as applicable, unless otherwise authorized by the Commission.

46. Amend § 61.58 as follows:

a. Revise paragraph (a)(2);

b. Revise paragraph (a)(3);

c. Remove and reserve paragraphs (b), (c), and (d);

d. Amend paragraph (e) by revising the paragraph heading, redesignating paragraph (e)(3) as paragraph (e)(4), and adding new paragraph (e)(3); and

e. Remove and reserve paragraph (f).

§ 61.58 Notice requirements.

(a) * * *

(2)(i) Local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15 days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

(ii) Local exchange carriers may elect not to file tariffs pursuant to section 204(a)(3) of the Communications Act. Any such tariffs shall be filed on at least 16 days' notice.

(iii) Except for tariffs filed pursuant to section 204(a)(3) of the Communications Act, the Chief, Common Carrier Bureau, may require the deferral of the effective date of any filing made on less than 120 days' notice, so as to provide for a maximum of 120 days' notice, or of such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of this chapter have been filed.

(3) Tariff filings proposing corrections or voluntarily deferring the effective date of a pending tariff revision must be made on at least 3 days' notice, and may be filed notwithstanding the provisions of § 61.59. Corrections to tariff materials not yet effective cannot take effect before the effective date of the original material. Deferrals must take effect on or before the current effective date of the pending tariff revisions being deferred.

* * * * *

(b)–(d) [Reserved]

(e) *Non-price* cap carriers and/or services. * * *

* * * * *

(3) Alascom, Inc. shall file its annual tariff revisions for its Common Carrier Services (Alascom Tariff F.C.C No. 11) on at least 35 days' notice.

* * * * *

(f) [Reserved]

Revise § 61.59 to read as follows:

§ 61.59 Effective period required before changes.

(a) Except as provided in § 61.58(a)(3) or except as otherwise authorized by the Commission, new rates or regulations must be effective for at least 30 days before a dominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions.

(c) Changes to rates and regulations that have taken effect but have not been in effect for at least 30 days may not be made unless the scheduled effective date of the proposed changes is at least 30 days after the effective date of the existing regulations.

§ 61.67 through 61.74 [Amended]

48. Designate §§ 61.67 through 61.74, and redesignated §§ 61.83, 61.86, and 61.87, as subpart F, and add a subpart heading entitled ''Subpart F—Specific Rules for Tariff Publications of Dominant and Nondominant Carriers'' immediately preceding § 61.67.

49. Add § 61.66 to subpart F to read as follows:

§ 61.66 Scope.

The rules in this subpart apply to all carriers, unless otherwise noted.

§ 61.67 [Removed]

50. Remove § 61.67.

51. Revise § 61.69 to read as follows:

§ 61.69 Rejection.

When a tariff publication is rejected by the Commission, its number may not be used again. This includes, but is not limited to, such publications as tariff numbers or specific page revision numbers. The rejected tariff publication may not be referred to as either cancelled or revised. Within five business days of the release date of the Commission's Order rejecting such tariff publication, the issuing carrier shall file tariff revisions removing the rejected material, unless the Commission's Order establishes a different date for this filing. The publication that is subsequently issued in lieu of the rejected tariff publication must bear the notation:

In lieu of —, rejected by the Federal Communications Commission.

§ 61.71 [Removed]

52. Remove § 61.71.

53. Revise § 61.72 to read as follows:

§ 61.72 Public information requirements.

(a) Issuing carriers must make available accurate and timely information pertaining to rates and regulations subject to tariff filing requirements.

(b) Issuing carriers must, at a minimum, provide a telephone number for public inquiries about information contained in its tariffs. This telephone number should be made readily available to all interested parties.

(c) Any issuing carrier that is an incumbent local exchange carrier, and chooses to establish an Internet web site, must make its tariffs available on that web site, in addition to the Commission's web site.

54. Add new paragraphs (e) and (f) to § 61.74 to read as follows:

§ 61.74 References to other instruments.

* * * * *

(e) Tariffs may reference other FCC tariffs that are in effect and on file with the Commission for purposes of determining mileage, or specifying the operating centers at which a specific service is available.

(f) Tariffs may reference technical publications which describe the engineering, specifications, or other technical aspects of a service offering, provided the following conditions are satisfied:

(1) The tariff must contain a general description of the service offering, including basic parameters and structural elements of the offering;

(2) The technical publication includes no rates, regulatory terms, or conditions which are required to be contained in the tariff, and any revisions to the technical publication do not affect rates, regulatory terms, or conditions included in the tariff, and do not change the basic nature of the offering;

(3) The tariff indicates where the technical publication can be obtained;

(4) The referenced technical publication is publicly available before the tariff is scheduled to take effect; and

(5) The issuing carrier regularly revises its tariff to refer to the current edition of the referenced technical publication.

§§ 61.131 through 61.136 [Amended]

55. Remove the undesignated center heading ''Concurrences'' immediately before § 61.131.

56. Designate §§ 61.131 through 61.136 as subpart G, and add a subpart heading entitled ''Subpart G—Concurrences'' immediately preceding § 61.131.

57. Amend § 61.132 by adding two sentences at the end of the section, to read as follows:

§ 61.132 Method of filing concurrences.

* * * Nondominant issuing carriers shall file revisions reflecting concurrences in their tariffs on the notice period specified in § 61.23 of this part. Dominant issuing carriers shall file concurrences in their tariffs on the notice periods specified in § 61.58(a)(2) or § 61.58(e)(1)(iii) of this part.

§§ 61.151 through 61.153 [Amended]

58. Remove the undesignated center heading ''Applications for Special Permission'' immediately preceding § 61.151.

59. Designate §§ 61.151 through 61.153 as subpart H, and add a subpart heading entitled ''Subpart H—Applications for Special Permission'' immediately preceding § 61.151.

60. Amend § 61.153 by revising paragraph (b) to read as follows:

§ 61.153 Method of filing applications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all special permission

applications requiring fees as set forth in part 1, subpart G of this chapter, the issuing carrier must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked ''reserved.'' Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

§§ 61.171 through 61.172 [Amended]

61. Remove the undesignated center heading ''Adoption of Tariffs and Other Documents of Predecessor Carriers'' immediately preceding § 61.171.

62. Designate §§ 61.171 through 61.172 as subpart I, and add a subpart heading entitled ''Subpart I—Adoption of Tariffs and Other Documents of Predecessor Carriers'' immediately preceding § 61.171.

§§ 61.191 through 61.193 [Amended]

63. Remove the undesignated center heading ''Suspensions'' immediately preceding § 61.191.

64. Designate §§ 61.191 through 61.193 as subpart J, and add a subpart heading entitled ''Subpart J—Suspensions'' immediately preceding § 61.191.

65. Revise § 61.191 to read as follows:

§ 61.191 Carrier to file supplement when notified of suspension.

If a carrier is notified by the Commission that its tariff publication has been suspended, the carrier must file, within five business days from the release date of the suspension order, a consecutively numbered supplement without an effective date, which specifies the schedules which have been suspended.

PART 61—[AMENDED]

66. In addition to the amendments set forth above, in 47 CFR part 61, remove the words ''Chief, Tariff Review Branch'' and add, in their place, the words ''Chief, Tariff and Pricing Analysis Branch'' in the following places:

a. Section 61.32(c);
b. Section 61.33(a)(3);
c. Section 61.38(c)(1);
d. Section 61.49(g)(2)(i);
e. Section 61.153(c).

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

67. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, and 533, unless otherwise noted.

68. Amend § 63.10 by revising paragraph (c)(1) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(1) File international service tariffs pursuant to § 61.28 of this chapter.

PART 69—ACCESS CHARGES

69. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.2 [Amended]

70. In § 69.2, remove and reserve paragraph (tt).

71. Amend § 69.3 to revise paragraph (a), revise the introductory text of paragraph (e), revise paragraph (e)(6), revise paragraph (f), revise paragraph (h), revise the introductory text of paragraph (i), and to remove and reserve paragraph (j), to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. Such tariffs shall be filed with a scheduled effective date of July 1. Such tariff filings shall be limited to rate level changes.

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such tariff must comply with the requirements hereinafter provided:

* * * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than December 31 of the preceding year, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(f) (1) A tariff for access service provided by a telephone company that is required to file an access tariff pursuant to § 61.38 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(2) A tariff for access service provided by a telephone company that may file an access tariff pursuant to § 61.39 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any odd numbered year. Any such telephone company that does not elect to file an access tariff pursuant to the § 61.39 procedures, and does not participate in the Association tariff, and does not elect to become subject to price cap regulation, must file an access tariff pursuant to § 61.38 for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(3) For purposes of computing charges for access elements other than Common Line elements to be effective on July 1 of any even-numbered year, the association may compute rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under part 61 of this chapter.

* * * * *

(h) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) of this chapter, shall file with this Commission a price cap tariff for access service for an annual period. Such tariffs shall be filed to meet the notice requirements of § 61.58 of this Chapter, with a scheduled effective date of July 1. Such tariff filings shall be limited to changes in the Price Cap Indexes, rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the incorporation of new services into the affected indexes as required by § 61.49 of this chapter.

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraph (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to paragraph (h) of this section.

* * * * *

§ 69.111 [Amended]

72. Amend § 69.111(g)(4), by removing the reference ''§ 61.43(e)(2)(v)'' and adding, in its place, the reference ''§ 61.42(e)(2)(v)'', and by removing the reference ''§ 61.43(e)(2)(vi)'' and adding, in its place, the reference ''§ 61.42(e)(2)(vi)''.

§ 69.113 [Amended]

73. In § 69.113(c), remove the reference ''§ 61.3(v)'' and add, in its place, the reference ''§ 61.3(x)''.

§ 69.114 [Amended]

In § 69.114(a), remove the reference ''§ 61.3(v)'' and add, in its place, the reference ''§ 61.3(x)''.

75. Amend § 69.153, by revising paragraphs (c)(1), (d)(1)(i), and (d)(2)(i), to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(c) * * *

(1) One twelfth of the sum of annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the historical base period local exchange service subscriber lines in use during such annual period, minus the maximum subscriber line charge calculated pursuant to § 69.152(d)(2); or * * *

* * * * *

(d) * * *

(1) * * *

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under our price cap rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c), and 69.156(b) and (c), divided by the total number of historical base period non-primary residential and multi-line business subscriber lines in use during such annual period; or * * *

(2) * * *

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under parts 61 and 69 of our rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c) and (d)(1), and 69.156(b) and (c), divided by the total number of historical base period multi-line business subscriber lines in use during such annual period; or

* * * * *

[FR Doc. 99–21721 Filed 8–25–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST–99–6158, Amdt. 1–301]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant of the United States Coast Guard, authority to implement and enforce measures to prevent the introduction and spread of aquatic nuisance species (ANS) into the waters of the United States.

DATES: Effective: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Lt. Mary Pat McKeown, Office of Operating and Environmental Standards (G–MSO), (202) 267–0500, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: In 1990, Congress passed the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) (Pub. L. 101–646) (codified at 16 U.S.C. 4701–4751). NANPCA authorized the Secretary of Transportation, as Secretary of the Department in which the Coast Guard was operating, to implement regulations to prevent the introduction and spread of aquatic nuisance species (ANS) into the waters of only the Great Lakes. In 1992, the Secretary of Transportation delegated to the Coast Guard his authority under NANPCA to implement ANS regulations for the Great Lakes. In 1996, Congress amended NANPCA by passing the National Invasive Species Act (NISA), (Pub. L. 104–332). NISA authorized the Secretary of Transportation, as Secretary of the Department in which the Coast Guard was operating, to implement regulations to prevent the introduction and spread of aquatic nuisance species into ALL waters of the United States by issuing voluntary guidelines which are to become mandatory if voluntary compliance proves ineffective. Thus, NISA simply expanded to include all waters of the United States, the authority previously granted under NANPCA for the Great Lakes only. The Secretary of Transportation is amending the existing delegation of authority to the Commandant of the Coast Guard to include NISA's additional authority to implement ANS requirements for all waters of the United States.

We publish this rule as a final rule effective on the date of publication. Since this amendment relates to the Departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Furthermore, since this amendment expedites the Coast Guard's ability to meet the needs of its conservation and enforcement obligations, the Secretary finds good cause, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice and public comment on the rule are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

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

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

PART 1—[AMENDED]

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

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

In § 1.46, paragraph (ww) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ww) Carry out the functions and exercise the authority vested in the Secretary by 16 U.S.C. 4711, which pertain to establishing and enforcing regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes and other waters of the United States through the ballast water of vessels. This authority may be redelegated.

* * * * *

Issued in Washington, DC this 18th day of June, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–22212 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1121

[STB Ex Parte No. 527 (Sub-No. 2)]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is modifying the regulations concerning exemption and revocation proceedings. This rule clarifies when additional information or public comment will be sought in response to a petition for a class exemption or a petition for an individual exemption.

EFFECTIVE DATE: September 25, 1999.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1642. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served and published in the **Federal Register** on June 25, 1999 (64 FR 34185) (NPR), the Board proposed revisions to our exemption regulations at 49 CFR 1121.4(c) to clarify when we would seek additional information or public comment in response to a petition for a class exemption or a petition for an individual exemption. In response to changes resulting from the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA), the Board had modified its rail exemption procedures in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Ex Parte No. 527 (STB served Oct. 1, 1996) (*Expedited Procedures*), *modified* by decision served Nov. 15, 1996, *aff'd sub nom. United Transp. Union-Ill. Legis. Bd.* v. *Surface Transp. Bd.*, 132 F.3d 71 (D.C. Cir. 1998). As a result, the regulations at 49 CFR 1121.4(c) state:

> If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, or a class exemption is sought, the Board will:
>
> (1) Direct that additional information be filed; or
>
> (2) Publish a notice in the **Federal Register** requesting public comments.

In our NPR, we noted that, in our decision in *San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA*, STB Docket No. AB–398 (Sub-No. 4X) (STB served Mar. 5, 1999), slip op. at 7, we indicated that the rule could be interpreted as requiring the Board to seek comments where a class exemption is sought, and whenever the impact of a proposed individual exemption cannot be determined or if there would be significant adverse impacts if an exemption were granted. While stating that the filing of additional comments would be sought for class exemption requests, we indicated that we believed we had the discretion to determine whether additional evidence was needed in individual exemption proceedings. *Id.*

Consequently, we issued our NPR proposing to modify § 1121.4(c) to make clear how we would treat petitions for class exemptions and individual exemptions. When a class exemption is sought, we proposed to require that additional information or public comments be filed before granting the new class exemption. We also proposed to modify the rule to indicate that, although we retain the discretion to do so, we are not required to seek public comment when we deny a class exemption petition. Finally, we proposed to modify the rule to indicate that, where the impact of an individual exemption could not be determined from the petition, or if significant adverse impacts might occur if the individual exemption were granted, we had the discretion to seek additional information or comment.[1]

The American Short Line and Regional Railroad Association (ASLRRA) filed the only comment in response to the NPR. No comments were filed opposing the substance of the rule. ASLRRA seeks clarification concerning proposed 49 CFR 1121.4(c)(2). Because 49 CFR 1121.1 indicates that the procedures under part 1121 ''also apply to notices of exemption,'' [2] ASLRRA expresses its concern that the proposed rule could be read to apply to notices of exemption filed under an already-existing class exemption. This, ASLRRA contends, could be read as requiring the publication of the notice in the **Federal Register** requesting comments, an ''unintended result that would undercut the effectiveness of these very important notice filing provisions.''

We will adopt the substance of the proposed rule, but clarify it to indicate that the notice and comment requirement pertains to petitions for class exemptions, and not to notices of exemption filed pursuant to an existing class exemption. Specifically, we will adopt a revised version of § 1121.4(c)(2), replacing the language proposed in our NPR (''If a class exemption is sought, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.'') with the following: ''If a petition for a new class exemption is filed, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.'' This is in conformance with our NPR at 3, which stated that we were ''modify[ing] § 1121.4(c) to make clear the treatment that will be accorded petitions for class exemptions and individual exemptions.''

In our NPR, we indicated that the proposed rule would not have a significant economic impact on a substantial number of small entities. No one addressed this issue, and we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: August 19, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49 chapter X, Part 1121 of the Code of Federal Regulations is amended to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 is revised to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

2. In § 1121.4, paragraph (c) is revised to read as follows:

§ 1121.4 Procedures.

* * * * *

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information

---

[1] Our NPR proposed that 49 CFR 1121.4 read:

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the **Federal Register** requesting public comments.

(2) If a class exemption is sought, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.

[2] Notices of exemption are filed under the Board's class exemption procedures that exempt a transaction as a class from the statutory prior approval requirements. These procedures are generally a simpler, more expedited method of proceeding than filing a petition for exemption.

contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the **Federal Register** requesting public comments.

(2) If a petition for a new class exemption is filed, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.

* * * * *

[FR Doc. 99–22125 Filed 8–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506120–9220–02; I.D. 082399B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, August 25, 1999, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.05 million lb (0.48 million kg) (63 FR 8353, February 19, 1998).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of Federal Register. NMFS has determined that the commercial quota of 1.05 million lb (0.48 million kg) for Gulf group king mackerel in the western zone will be reached on August 24, 1999. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12:01 a.m., local time, August 25, 1999, through June 30, 2000, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary.

Until July 1, 2000, no person aboard a vessel, other than a vessel operating as a charter vessel or headboat, for which a commercial permit for king or Spanish mackerel has been issued may fish for or retain king mackerel in or from the western zone in the EEZ. A vessel for which a charter vessel/headboat permit and a commercial king mackerel permit have been issued is operating as a charter vessel or headboat (for-hire vessel) when it carries a paying passenger or when more than three persons are aboard, including captain and crew. A person aboard a vessel operating as a charter vessel or headboat may fish for or retain king mackerel in or from the western zone under the bag and possession limits of 50 CFR 622.39(c)(1)(ii). However, beginning September 20, 1999, the bag limit is zero for captain and crew on for-hire vessels (64 FR 45457, August 20, 1999).

During the closure, king mackerel taken from the western zone in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

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

Dated: August 23, 1999.

Gary C. Matlock,

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

[FR Doc. 99–22176 Filed 8–23–99; 4:57 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 081199A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota

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

ACTION: Commercial quota adjustment for 1999.

SUMMARY: NMFS issues a listing of final adjustments to the 1999 commercial summer flounder state quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. The intent of this action is to continue the rate of rebuilding of the overfished stock of summer flounder in 1999 as described in the FMP's objectives, while also taking into account 1998 overages of state quotas.

DATES: Effective August 26, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fisheries Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a document in the **Federal Register** on April 15, 1999 (64 FR 18582) announcing preliminary adjustments to the 1999 summer flounder commercial quotas. Further adjustment is necessary in this notification due to late data received from the States of Connecticut, Maryland, Virginia, and North Carolina.

The final 1998 landings and resulting overages for all states are given in Table 1. The resulting adjusted 1999 commercial quota for each state is given in Table 2. In Table 3, the adjustment has been made to maintain the incidental component of the commercial quota at 32.7 percent of the total (as recommended in the final specifications).

TABLE 1.—SUMMER FLOUNDER FINAL 1998 LANDINGS AND OVERAGES BY STATE

State	1998 Quota		Final 1998 Landings		1998 Overage	
	Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
ME	4,791	2,173	5,626	2,552	835	379
NH	51	23	.....	.....	.....	.....
MA	721,899	327,448	709,387	321,773	.....	.....
RI	1,742,583	790,422	1,716,463	778,575	.....	.....
CT	250,457	113,605	262,732	119,173	12,275	5,568
NY	763,419	346,281	823,093	373,349	59,674	27,068
NJ	1,858,363	842,939	1,862,800	844,952	4,437	2,013
DE	(14,534)	(6,593)	(11,205)	(5,083)	(25,739)	(11,676)
MD	199,876	90,662	224,092	101,646	24,216	10,984
VA	2,362,877	1,071,783	2,615,750	1,186,484	252,873	114,701
NC	3,049,589	1,383,270	2,980,683	1,352,015	.....	.....
Total [3]	10,939,371	4,962,013	11,189,421	5,075,436	328,571	149,038

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2.—SUMMER FLOUNDER FINAL ADJUSTED 1999 QUOTAS

State	1999 Initial Quota		1999 Adjusted Quota	
	Lb	Kg [1]	Lb	Kg [1]
ME	5,285	2,397	4,450	2,018
NH	51	23	51	23
MA	757,842	343,751	757,842	343,751
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	238,516	108,189
NY	849,680	385,408	790,006	358,341
NJ	1,858,363	842,939	1,853,926	840,927
DE	1,977	897	(25,739)	(11,675)
MD	226,570	102,770	202,354	91,786
VA	2,373,569	1,076,633	2,120,696	961,932
NC	3,044,589	1,381,002	3,044,589	1,381,002
Total	11,111,300	5,039,999	10,729,274	4,866,717

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

TABLE 3.—FINAL SUMMER FLOUNDER 1999 STATE QUOTAS AND INIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Incidental Catch		Total	
		Lb	Kg [1]	Lb	Kg	Lb	Kg
ME	0.04756	2,995	1,358	1,455	660	4,450	2,018
NH	0.00046	34	16	17	8	51	23
MA	6.82046	510,028	231,345	247,814	112,407	757,842	343,751
RI	15.68298	1,172,758	531,954	569,825	258,468	1,742,583	790,422
CT	2.25708	160,521	72,811	77,995	35,378	238,516	108,189
NY	7.64699	531,674	241,163	258,332	117,177	790,006	358,341
NJ	16.72499	1,247,692	565,944	606,234	274,983	1,853,926	840,927
DE	0.01779	(17,322)	(7,857)	(8,417)	(3,818)	(25,739)	(11,675)
MD	2.03910	136,184	61,772	66,170	30,014	202,354	91,786
VA	21.31676	1,427,228	647,380	693,468	314,552	2,120,696	961,932
NC	27.44584	2,049,008	929,415	995,581	451,588	3,044,589	1,381,002
Total	100.00000	7,220,801	3,275,300	3,508,473	1,591,416	10,729,274	4,866,717

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: August 20, 1999.

Gary C. Matlock,

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

[FR Doc. 99–22214 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 165
Thursday, August 26, 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

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Production Crop Provisions; and Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Forage Production Crop Insurance Provisions and Forage Seeding Crop Insurance Provisions, and delete Forage Production Winter Coverage Endorsement. The intended effect of this action is to provide policy changes to better meet the needs of the insureds, and to restrict the effect of the current Forage Production and Forage Seeding Crop Insurance Regulations to the 2000 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 27, 1999 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. (Comments may be sent via Internet to pddirector@rm.fcic.usda.gov). A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW, Washington DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expires April 30, 2001.

Title: Multiple Peril Crop Insurance (Forage Production and Forage Seeding).

Abstract: This rule improves the existing forage production and forage seeding policies. Forage production is revised by: allowing optional units; changing the cancellation and termination dates in California, Nevada and Utah; requiring the insured to report all forage acreage on or before each date specified in the Special Provisions; changing dates when insurance attaches and when insurance ends; extending dates in some counties in California to allow year round coverage; clarifying that insurance is not available for damage or loss of production that occurs after removal from windrow; allowing forage to be direct marketed; and including optional unit procedures in the event of a loss.

Forage seeding is revised by: adding cancellation and termination dates for California and South Dakota; requiring the insured to report all insurable forage seeding acreage on or before each acreage reporting date specified in the Special Provisions; specifying in all states and in California, unless otherwise specified in the Special Provisions, forage damaged before the final planting date must be replanted to the extent that the forage has less than a 75 percent stand; allowing a replant payment in California, unless otherwise specified in the Special Provisions, on any acreage planted to the insured crop that is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of normal stand remains; allowing increased replanting payments if specified in the Special Provisions; and removed the 10 percent planted acreage requirements. The revisions are effective for the 2001 and succeeding crop years.

Purpose: The purposes of this proposed rule are to clarify existing crop provisions and methodology for calculating losses and provide additional coverage benefits and an improved risk management tool for forage producers in all regions of the country.

Burden statement: The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee or amount of insurance, calculating losses qualifying for a payment, etc. The burden hours have decreased because many forage

producers have canceled their forage coverage.

Estimate of Burden: We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .6 of an hour to provide the information required by the forage provisions.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 9,276.

Estimated annual number of responses per respondent: 2.1.

Estimated annual number of responses: 19,250.

Estimated total annual burden of respondents: The total public burden for this proposed rule is estimated at 5,941 hours.

Recordkeeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 the 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 the UMRA.

Executive Order 12612

It has been determined under section 6(a) of the Executive Order 12612, Federalism, that this rule does not have sufficient 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. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. 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 requires 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 proposed 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 against FCIC for judicial review 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

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.117 Forage Production Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring forage production are as follows:

1. Add definitions for ''direct-marketing'' and ''windrow'' for clarification. Revise the definition of ''cutting'' to eliminate reference to livestock feed. This change allows forage production coverage on forage grown for any use. For example, in some areas of the country, forage processing plants will process the leaves for high value animal feed and use the stems as fuel to generate electricity. Revise the definition of ''crop year'' for simplification. Delete the definitions for fall planted and spring planted as unnecessary because forage is insurable after the year of establishment not after planting and is designated by the calendar year is which the forage is normally harvested.

2. Remove provisions which state that optional units are not applicable and redesignated the following sections. This change will allow optional units in accordance with the provisions in the Basic Provisions. This change is being made to increase participation in the insurance program.

3. Redesignated section 4—Revise the cancellation and termination dates from September 30 to October 31 in California, Nevada, and Utah. This change was made to be consistent with actuarial filing and contract change dates that are similar to other crop policies in the region.

4. Redesignated section 5—Require the insured to report all forage acreage on or before each date specified in the Special Provisions. Currently, insureds with multiple crops can report forage production acreage on the last acreage reporting date in accordance with 6(a) of the Basic Provisions. In some cases, this is after the billing date for forage production insurance coverage.

5. Redesignated section 6—Deleted the provisions that required that forage crop be grown for livestock feed only. Currently, only forage grown for livestock feed is insurable but there are other commercial uses for forage.

6. Redesignated section 7—Revise the dates insurance attaches and ends because the Forage Production Winter Coverage Endorsement is eliminated and winterkill is now allowed as an insurable cause of loss. Extended dates in California counties except for Lassen, Modoc, Mono, Shasta, and Siskiyou to allow year round coverage. Forage is planted year round in these California counties, and the current policy does not reflect standard farming practices in these areas.

7. Redesignated section 8(b)—Clarify that insurance is not available for damage or loss of production that occurs after the removal from windrow.

8. Redesignated section 9—Added provisions that require the producer to give notification if the crop is going to be direct marketed so production to count can be established. These notices are consistent with other crop policies that permit direct marketing.

9. Redesignated section 10—Revise provisions to include optional unit procedures in the event of a loss. These

changes are consistent with other crop policies that allow optional units. Added examples of settlement of claim to section (b).

10. FCIC also proposes to eliminate the Forage Production Winter Coverage Endorsement (7 CFR 457.127) effective for the 2001 and succeeding crop years. Winterkill will be an insurable cause of loss under the proposed Forage Production Crop Insurance Provisions.

FCIC also proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.151 Forage Seeding Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to provisions for insuring forage seeding are as follows:

1. Section 1—Revise the definition of ''harvest'' to eliminate the reference ''with the intention of using it for livestock feed.'' This change allows forage seeding coverage on forage seeded for any use. For example, in some areas of the country, forage processing plants will process the leaves for high value animal feed and use the stems as fuel to generate electricity.

2. Section 5—Add cancellation and termination dates for California and South Dakota in response to producer requests to make insurance available in these states. Currently, forage seeding insurance is not offered in these states.

3. Add a new section 6 to require the insured to report all insurable forage seeding acreage on or before each date specified in the Special Provisions and redesignated the following sections. Currently, insureds with multiple crops can report forage seeding acreage on the last acreage reporting date, which, in some cases, is after the spring billing date for forage seeding.

4. Redesignated section 7(b)—Delete the reference to ''intended for harvest as livestock feed.'' Currently, only forage that was intended for harvest as livestock feed was insurable but there are other commercial uses for forage. This change makes coverage available for forage regardless of its intended use.

5. Redesignated section 8—In California, unless otherwise specified in the Special Provisions, add provisions to specify any acreage damaged anytime during the crop year to the extent that acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period. Forage is planted year round and replanting provisions as stated in the current policy do not reflect standard farming practices. Therefore, any acreage damaged anytime must be replanted to the extent it has less than 75 percent of a normal stand, unless it can not be replanted and reaching a normal stand within the insurance period.

6. Redesignated section 11(a)—For California, unless otherwise specified in the Special Provisions, add provisions to allow a replanting payment on acreage planted to the insured crop that is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains. This change makes replanting payments available anytime during the insurance period due to year round planting. Currently, a replanting payment is allowed only if the Special Provisions for the county designate both fall and spring final planting dates.

7. Redesignated section 11(b)—Change the words ''liability'' to ''indemnity.'' This change is consistent with other crop policies. Added provisions to allow a different calculation for replanting payments if specified in the Special Provisions. This change will allow FCIC to address higher costs of forage seed and replanting expenses in certain areas of the country.

8. Redesignated section 13—Add an example of a claim for indemnity. Removed as unnecessary from paragraph (a)(3) the addition of 10 percent of the planted acres for the insured acreage to the total acres with an established stand.

List of Subjects in 7 CFR part 457

Crop insurance, Forage production, Forage seeding, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.117 as follows:

a. Revise the heading.

b. Revise the introductory text.

c. Delete the definitions in Section 1 of ''Fall planted'' and ''Spring planted,'' add definitions of ''Direct marketing'' and ''Windrow,'' revise the definitions of ''Cutting'' and ''Crop year'' to read as follows.

d. Delete Section 2 and redesignate sections 3 through 12 as 2 through 11.

e. Revise newly designated Section 4.

f. Revise newly designated Section 5.

g. Revise paragraph (a) of newly designated section 6.

h. Revise newly designated Section 7 introductory text, paragraph (a), paragraph (b) introductory text, and paragraph (b)(6).

i. Revise newly designated Section 8 paragraph (b).

j. Revise newly designated Section 9.

k. Revise newly designated Section 10 paragraph (a) and add ''Example 1'' and ''Example 2'' following paragraph (b)(7).

The revisions and additions to section 457.117 read as follows:

§ 457.117 Forage production crop insurance provisions.

The Forage Production Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

Crop year—The period within which the forage production is normally grown, which is designated by the calendar year in which the forage is normally harvested.

Cutting—The severance of the forage plant from its roots.

Direct marketing—Sale of the forage crop directly to consumers without the intervention of an intermediary such as a wholesaler, shipper, buyer, or broker. An example of direct marketing is selling directly to other producers.

* * * * *

Windrow—Forage that is cut and placed in a row.

* * * * *

4. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation/ termination date
California, Nevada and Utah	October 31.
All other states	September 30.

5. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage production must be submitted on or before each forage production acreage reporting date specified in the Special Provisions.

6. *Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the forage in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown during one or more years after the year of establishment.

* * * * *

7. *Insurance Period.*

In lieu of the provisions of section 11 of the Basic Provisions:

(a) Insurance attaches on acreage with an adequate stand for the calendar year following the year of establishment for:

(1) All California counties except Lassen, Modoc, Mono, Shasta and Siskiyou .....December 1;
(2) Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington.....April 15;
(3) Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming, and all other states .....May 22;
(4) Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, and all other states.....October 16;
(5) All California counties except Lassen. Modoc, Mono, Shasta and Siskiyou.....December 1.

(b) Insurance ends at the earliest of:

* * * * *

(6) The following dates of the crop year:

(i) California counties of Lassen, Modoc, Mono, Shasta and Siskiyou, and all other states.....October 15;
(ii) The last day of the 12th month after the insured crop initially planted in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou.

* * * * *

8. *Causes of Loss.*

* * * * *

(b) In addition to the causes of loss specifically excluded in section 12 of the Basic Provisions, we will not insure against damage of loss of production that occurs after removal from the windrow.

9. *Duties in the event of Damage or Loss.*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the insured crop will not be harvested;

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the forage was direct marketed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal;

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and will be included as production to count; and

(d) You must notify us at least 5 days before grazing of insured forage begins so we can conduct an appraisal to determine production to count. Failure to give timely notice that the acreage will be grazed will result in an appraised amount of production to count of not less than the production guarantee per acre.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) * * *

(7) * * *

Example 1:

Assume you have a 100 percent share in 100 acres of type A forage in the unit, with a guarantee of 3.0 tons per acre and a price election of $65.00 per ton. Due to adverse weather you were only able to harvest 50.0 tons. Your indemnity would be calculated as follows:

1. 100 acres type A × 3 tons = 300 ton guarantee;
2 and 3. 300 tons × $65 price election = $19,500 total value guarantee;
4 and 5. 50 tons production to count × $65 price election = $3,250 total value of production to count;
6. $19,500 value guarantee − $3,250 = $16,250 loss; and
7. $16,250 × 100 percent share = $16,250 indemnity payment.

Example 2:

Assume you also have a 100 percent share in 100 acres of type B forage in the same unit, with a guarantee of 1.0 ton per acre and a price election of $50.00 per ton. Due to adverse weather you were only able to harvest 5.0 tons. Your total indemnity for forage production for both types A and B in the same unit would be calculated as follows:

1. 100 acres × 3 tons = 300 ton guarantee for type A; and
100 acres × 1 ton = 100 ton guarantee for type B;
2. 300 ton guarantee × $65 price election = $19,500 total value of the guarantee for type A; and
100 ton guarantee × $50 price election = $5,000 total value of the guarantee for type B;
3. $19,500 + $5,000 = $24,500 total value of the guarantee;
4. 50 tons × $65 price election = $3,250 total value of production to count for type A; and
5 tons × $50 price election = $250 total value of production to count for type B;
5. $3,250 + $250 = $3,500 total value of production to count for types A and B;
6. $24,500 − $3,500 = $21,000 loss; and
7. $21,000 loss × 100 percent share = $21,000 indemnity payment.

* * * * *

§ 457.127 [Removed]

3. Section 457.127 is removed and reserved.

4. Amend 457.151 as follows:

a. Revise the introductory text.

b. Revise the definition in Section 1 of ''harvest''.

c. Revise Section 5.

d. Redesignate section 6 through 13 as 7 through 14.

e. Add a new Section 6 Report of Acreage.

f. Revise newly redesignated Section 7 paragraph (b).

g. Revise newly redesignated Section 8.

h. Revise newly designated Section 11 introductory text, paragraph (a), and paragraph (b).

i. Revise newly designated Section 13 paragraph (a)(3) and add an example following paragraph (a)(6).

The revisions and additions to section 457.151 read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

Harvest—Severance of the forage plant from its roots. However, acreage that is grazed will not be considered harvested.

* * * * *

5. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State & county	Cancellation/termination dates
California, Nevada, New Hampshire, New York, Pennsylvania and Vermont.	July 31;
Montana, Minnesota, North Dakota, South Dakota and Wyoming.	March 15.

6. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage seeding must be submitted on or before each forage seeding acreage report date specified in the Special Provisions.

7. *Insured Crop.*

* * * * *

(b) That is planted during the current crop year, or replanted during the calendar year following planting, to establish a normal stand of forage;

* * * * *

8. *Insurable Acreage.*

In addition to the provisions of section 9 of the Basic Provisions:

(a) In California counties Lassen, Modoc, Mono, Shasta, Siskiyou and all other states, any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than 75 percent of a normal stand, must be replanted unless we agree that it is not practical to replant; and

(b) In California, unless otherwise specified in the Special Provisions, any acreage of the insured crop damaged anytime during the crop year to the extent that such acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period.

* * * * *

11. *Replanting Payment.*

In lieu of the provisions contained in section 13 of the Basic Provisions:

(a) A replanting payment is allowed if:

(1) In California, unless specified otherwise in the Special Provisions, acreage planted to the insured crop is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains and the crop can reach maturity before the end of the insurance period;

(2) In Lassen, Modoc, Mono, Shasta, Siskiyou Counties California, and all other states:

(i) A replanting payment is allowed only whenever the Special Provisions designate both fall and spring final planting dates;

(ii) The insured fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of a normal stand remains;

(iii) It is practical to replant;

(iv) We give written consent to replant; and

(v) Such acreage is replanted the following spring by the spring planting date.

(b) The amount of the replanting payment will be equal to 50 percent of the amount of indemnity determined in accordance with section 13 unless otherwise specified in the Special Provisions.

* * * * *

13. *Settlement of Claim.*

(a) * * *

(1) * * *

(2) * * *

(3) Multiplying the total acres with an established stand for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;

(4) * * *

(5) * * *

(6) * * *

Example:

Assume you have 100 percent share in 30 acres of type A forage in the unit, with an amount of insurance of $100.00 per acre. At the time of loss, the following findings are established: 10 acres had a remaining stand of 75 percent or greater. You also have 20 acres of type B forage in the unit, with an amount of insurance of $90.00 per acre. 10 acres had with a remaining stand of 75 percent or greater. Your indemnity would be calculated as follows:

1. 30 acres × $100.00 = $3,000 amount of insurance for type A
20 acres × $90.00 = $1,800 amount of insurance for type B;
2. $3,000 + $1,800 = $4,800 total amount of insurance;
3. 10 acres with 75% stand or greater x $100 = $1,000 production to count for type A
10 acres with 75% stand or greater × $90 = $900 production to count for type B;
4. $1,000 + $900 = $1,900 total production to count;
5. $4,800 − $1,900 = $2,900 loss;
6. $2,900 × 100 percent share = $2,900 indemnity payment.

* * * * *

Signed in Washington, D.C., on August 11, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–21991 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV99–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule would limit the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1999–2000 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11 week period. This proposal would provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by September 10, 1999.

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

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least $3\frac{5}{16}$ inches in diameter). Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 20. This rule would limit the volume of sizes 48 and/or 56 red seedless grapefruit entering the fresh market for each of the 11 weeks at 25 percent. This would allow the committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of size 48 and/or size 56 small red grapefruit as more information becomes available. The committee at its meeting on April 6, 1999, recommended this action, by a unanimous vote. This action is similar to those taken in the previous two seasons (1997–98 and 1998–99).

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes drops to within $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During those three seasons, the market did not recover, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless

grapefruit early in the season contributes to below production cost returns for growers and lower on-tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish a weekly percentage of size regulation during the first 11 weeks of the 1997–98 and 1998–99 seasons. The initial recommendation from the committee was to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met several times and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make its recommendations. The Committee has since used this regulation to the betterment of the industry. Prices have increased, and movement has been more stable. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first 3 weeks, and 35 percent for the other 8 weeks. Actual weekly percentages established during the 11 week period during the 1998–99 season were 37 percent for the first 3 weeks, and 32 percent for the other 8 weeks.

In making its recommendation for the upcoming season, the committee reviewed its experiences from the past seasons. The committee believes establishing weekly percentages during the last two seasons was successful. The committee examined shipment data covering the 11 week regulatory period for the last two regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. price figures. During the 11 week period, the regulations were successful at helping maintain prices at a higher level than previously, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. prices for these weeks were $6.28 for the 1996–97 season, $6.55 for the 1997–98 season, and $7.63 for the 1998–99 season. Total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season, the last season prior to establishing percentage size regulations. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small sized grapefruit.

The committee recommended that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believe that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without this action. The committee thought that to provide the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The committee believes it is best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The committee intends to meet on a regular basis early in the season to consider adjustments in the weekly percentage rates, as was done in the previous two seasons.

In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making this recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentages are appropriate.

Based on this information and the experiences from past seasons, the committee agreed to establish the weekly percentage at the most restrictive level. They can then meet in late August, or in September and October, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. They said this is essentially what was done in the prior two years, and it had been very successful. For example, the committee met in May 1998, and recommended a weekly percentage of 25 percent for each of the first 11 weeks of the 1998–99 season. In September, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and did not recommend any further relaxation. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages will be available after August. At the time of the April meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

While information concerning the coming season is limited prior to September, there are indications that setting the weekly percentage at 25 percent is the appropriate level. During deliberations in past seasons as to weekly percentages, the committee

considered how past shipments had affected the market. Based on available statistical information, the committee members believed that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As is the case for this season, they wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of approximately 234,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

While the committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated during the 1998–99 season remained close to the 250,000 carton mark. This may have contributed to the success of the regulation.

Based on the shipments from last year, a weekly percentage of 25 percent would not have been that much more restrictive on shipments than the percentages established, reducing in most cases just the excess available allotment. In setting the weekly percentage for each week at 25 percent this season, the total available allotment would closely approximate the 250,000 carton level. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week.

In addition, the production area is suffering through a period of insufficient rainfall. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger volume of small sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing economic problems affecting the European and Asian markets. In past seasons, the European market has shown a strong demand for the smaller sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last two years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The committee plans to meet in late August and as needed during the remainder of the 11 week period to work to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 25 percent, is multiplied by a handler's average week. The product is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this proposed rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. If the minimum size established under § 905.52 remains at size 56, handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers could fill their allotment with size 48 fruit such that the total of these shipments is within the established limits. The committee staff would perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season would then be divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This would be Handler A's base. The weekly percentage of 25 percent would then be applied to this amount. This would provide this handler with a weekly allotment of 400 cartons (1,600 × .25) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments would be calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, under this proposal, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

This proposed rule would establish a weekly percentage of 25 percent for each of the 11 weeks to be regulated. The regulatory period begins the third Monday in September. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee could meet and recommend a percentage above 25 percent to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of

sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party would promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee would confirm in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan.

The committee would compute each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped many grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this definition of prior period as the method that would provide each handler with an equitable base from which to establish shipments.

The procedures under which this rule is recommended provide flexibility through several different options. Handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provides a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

After considering the available information, the committee recommended that shipments of small sized red seedless grapefruit should be regulated this season.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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

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

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on industry and committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1998–99 season was around $7.20 per 4/5 bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition, and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 1999–2000 season, beginning the third Monday in September. This rule utilizes the provisions of § 905.153. The proposal would limit the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is

calculated using the recommended percentage.

By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee would calculate a handler's weekly allotment of small sizes. The rule would set the weekly percentage at 25 percent for the 11 week period. This proposal would provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns during the early part of the season.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. If a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been affected. A large percentage of this volume most likely could have been replaced by larger sizes. Under this proposal, a sufficient volume of small sized red grapefruit would still be allowed into all channels of trade, and allowances would be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry costs should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes typically drops to within $2 of the f.o.b. price for small sizes.

The over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation would have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimal effect on overall shipments. While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule would help limit the effects of an over supply of small sizes early in the season. Similar rules were enacted successfully the last two seasons. During the 11 week period, the regulations were successful in helping maintain prices at a higher level than in prior seasons, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season, $6.55 for the 1997–98 season and $7.63 for the 1998–99 season.

The rules were also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 25, 25, 20, and 14 percent, respectively, during the 1997–98 season. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. Prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period last season as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum, with sizes 48 and 56 having the largest gains and larger sized grapefruit registering modest improvements.

The report also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the 1997–98 season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Over 50 percent of red seedless grapefruit are shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action would only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from the last two seasons suggests the regulation could do both. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation. Accordingly, this action would provide the most beneficial results for the industry given any other alternatives.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the committee. The rule would increase the reporting burden on approximately 80 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate,

overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous two seasons, and it was unanimously recommended by the committee. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under § 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under § 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments is within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/20/99 through 9/26/99	25
(b) 9/27/99 through 10/3/99	25
(c) 10/4/99 through 10/10/99	25
(d) 10/11/99 through 10/17/99	25
(e) 10/18/99 through 10/24/99	25
(f) 10/25/99 through 10/31/99	25
(g) 11/1/99 through 11/7/99	25
(h) 11/8/99 through 11/14/99	25
(i) 11/15/99 through 11/21/99	25
(j) 11/22/99 through 11/28/99	25
(k) 11/29/99 through 12/5/99	25

Dated: August 23, 1999.

Bernadine M. Baker,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22253 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop 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 Rolls-Royce Limited Dart series turboprop engines. This proposal would require a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. This proposal is prompted by the discovery of unapproved low torque switches in fleet operation. The actions specified by the proposed AD are intended to prevent possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

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–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. 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: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–30–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce Limited (R–R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines. The CAA advises that in 1976, failure of a low torque switch resulted in a fatal military airplane accident. The investigation revealed problems with the low torque switch that were resolved in a subsequent airworthiness action.

Recently, however, the CAA has determined that a number of unapproved, Klixon low torque switches, part number (P/N) 6PS–25–1, are in service. These low torque switches have not been tested by R–R and are not approved for use by R–R or the CAA on R–R Dart series turboprop engines, and are of a different design than the approved, capsule and snap diaphragm assembly low torque switches. All low torque switches sense reduction gearbox torque pressure, which is related to engine power output, and is set to trigger at a predetermined pressure. While there have been no failures to date of the unapproved Klixon low torque switches, the CAA and R–R cannot determine whether the switch will function properly. The low torque switch remains dormant until an emergency situation, and there are no functional preflight checks of the low torque switch system to ensure safe operation. This condition, if not corrected, could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

Service Information

R–R has issued Service Bulletin (SB) No. Da61–13, dated December 1996, that specifies procedures for performing a visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. Externally, the Klixon low torque switches are indistinguishable from the approved low torque switches. The CAA classified this SB as mandatory and issued AD 002–12–96 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with approved low torque switches. This action would be required within 3 months after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB described previously.

Economic Analysis

There are approximately 890 engines of the affected design in the worldwide fleet. The FAA estimates that 139 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,500 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $1,754,180.

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:

Rolls-Royce Limited: Docket No. 99–NE–30–AD.

Applicability: Rolls-Royce Limited (R–R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines, installed on but not limited to Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F.27, Mitsubishi Heavy Industries YS–11, General Dynamics (Convair) 640 and 600 series, and Vickers Armstrongs (Aircraft Limited) Viscount.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag, accomplish the following:

(a) Within 3 months after the effective date of this AD, accomplish the following in accordance with the Action section of R–R Service Bulletin (SB) No. Da61–13, dated December 1996:

(1) Remove the switch cover, visually inspect the interior of the switch and replace the switch cover, all in accordance with the accomplishment instructions of the SB.

(2) If a Klixon low torque switch, part number (P/N) 6PS–25–1, is installed, prior to further flight remove the Klixon low torque switch from service and replace with an approved low torque switch.

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

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

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

Issued in Burlington, Massachusetts, on August 19, 1999.

David A. Downey,

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

[FR Doc. 99–22194 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

49 CFR Part 27

[Docket OST–99–6159; Notice No: 5]

RIN 2105–AC81

Nondiscrimination on the Basis of Disability in Air Travel: Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rules implementing the Air Carrier Access Act of 1986 and section 504 of the Rehabilitation Act of 1973 concerning the provision of equipment to facilitate the boarding by individuals with disabilities on aircraft where level-entry boarding is not now available. The proposed rule would require air carriers and airports to work jointly to make lifts or other boarding devices available for aircraft, of whatever size, where level-entry loading bridges or existing lifts are not present.

DATES: Comments are requested on or before November 24, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. OST–99–6159, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC, 20590. Comments will be available for inspection at this address from 10 a.m. to 5:30 p.m., Monday through Friday, and are also viewable through the Dockets Management System (DMS) portion of the Department's web (www.dot.gov). Commenters may also submit comments electronically. Commenters who wish to do so should follow the instructions on the DMS site. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: On November 1, 1996, the Department published a final rule requiring airports and airlines to work together to ensure that lifts were available to provide level-entry boarding for passengers with disabilities who were flying on small commuter aircraft. This rule applied to aircraft with a seating capacity of 19–30 passengers. The final rule, and the proposal that led to it, did not address the issue of level entry boarding for aircraft with 31 or more seats.

The original 1990 Air Carrier Access Act (ACAA) rule provided that, with an exception relevant only to the small commuter aircraft category, carriers must use ''ramps, mechanical lifts, or other devices (not normally used for freight)'' to provide boarding assistance, where level-entry boarding by loading bridge or mobile lounge was not available (14 CFR 382.39(a)(2)). The term ''other devices'' has been interpreted to include boarding chairs carried up aircraft stairs by carrier personnel.

Carrying passengers up stairs in a boarding chair is generally viewed as an undesirable way of providing access, for reasons having to do with the dignity, safety, and comfort of passengers. (It also increases risks to carrier personnel involved.) Consequently, the Department is proposing in this notice to require carriers to make lifts available for boarding assistance to any aircraft with a seating capacity of 31 seats or more where level-entry boarding by loading bridge or mobile lounge is not available. This requirement would apply to medium-size commuter aircraft or regional jets that are typically boarded from the tarmac in most airports, as well as to larger jets (up to and including ''jumbo jets'') at those airports or gates where, for some reason, level-entry boarding is not otherwise available.

The proposed regulatory provisions parallel those for small commuter aircraft. Carriers and airports would have to work together, create an agreement, and phase in implementation of lift service over a reasonable period of time. The Department seeks comment on whether there are any situations covered by the proposal in which providing lift access would be impracticable (e.g., analogous to the ''problem aircraft'' exempted from the small commuter aircraft lift rule).

The lift rule for small commuter aircraft had a phased-in implementation schedule, varying by size of airport. Because the draft regulatory evaluation for this rulemaking concludes that existing lifts, or lifts being put in place in response to the small commuter aircraft lift rule, will be sufficient to meet the proposed requirements, the

NPRM proposes an 18-month deadline for using lifts for larger aircraft at all airports. We specifically seek comment on this point.

Regulatory Analyses and Notices

This NPRM does not propose a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket. It concludes that incremental costs of the requirement would be negligible, because lifts already in place or required to be in place by existing rules could meet the proposal's requirements.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The basis for this statement is that the overall national annual costs are not great, and few airline companies operating aircraft of the type covered by the NPRM and commercial service airports could properly be regarded as small entities. Nevertheless, the Department specifically seeks comment on whether there are small entity impacts the Department should consider, and what those impacts are. If comments provide information that there are significant small entity impacts, the Department will provide a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 18th day of August, 1999, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 382 and 49 CFR part 27 as follows:

14 CFR PART 382—[AMENDED]

1. The authority citation for 14 CFR part 382 is revised to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. Section 382.39 is proposed to be amended as follows:

a. Paragraph (a)(2) is proposed to be revised;

b. Paragraphs (b) and (c) are proposed to be redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is proposed to be added. The proposed addition and revision to § 382.39 read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, boarding assistance to commuter aircraft with fewer than 30 seats shall be provided as set forth in § 382.40, and boarding assistance for aircraft with 31 or more seats shall be provided as set forth in paragraph (c) of this section. In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft).

* * * * *

(b) This paragraph applies to aircraft with a seating capacity of 31 or more passengers, in any situation in which passengers are not boarded by level-entry loading bridges or accessible passenger lounges. In these situations, carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than (insert date mine months from the effective date of this section), sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than (insert a date 18 months from the effective date of the rule). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) When boarding assistance cannot be provided as required by for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in paragraph (a)(2) of this section.

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(6) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

* * * * *

49 CFR PART 27—[AMENDED]

3. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142nt).

4. In 49 CFR part 27, § 27.72 is proposed to be revised to read as follows:

§ 27.72 Boarding assistance for small aircraft.

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19–30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c) (1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19–30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers. The airport operator and the carrier(s) shall, by no later than (a date nine months from the effective date of this section), sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than (a date 18 months from the effective date of this section). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) When boarding assistance cannot be provided as required by this paragraph for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(4) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

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BILLING CODE 4910–62–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend the Commission's regulations to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: those that carry customer omnibus accounts for U.S. FCMs; those that carry U.S. affiliate accounts which are proprietary to the foreign futures and options broker; and those that carry U.S. accounts which are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Commission Rules 30.1, 30.4 and 30.10—Registration and Exemption.''.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Susan A. Elliott, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

In 1987, the Commission adopted a new Part 30 to its regulations.[1] Part 30 governs, generally, the solicitation and sale of foreign futures [2] and foreign

[1] 52 FR 28980 (August 5, 1987). CFTC regulations may be found at 17 CFR Ch. I (1999).

[2] ''Foreign futures'' as defined in Part 30 means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Commission Rule 30.1(a).

option [3] contracts to customers [4] located in the United States. These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act (''Act''), which vested the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

When it adopted Part 30, the Commission recognized that many complexities would need to be addressed by the staff in the years after adoption of these rules.[5] Soon after the final rulemaking for Part 30 was published, the staff of the Division of Trading and Markets (the ''Division'') published several interpretative letters and no-action positions regarding the application of the registration requirements of Part 30 to foreign firms, and their ability to obtain an exemption from certain of the requirements of Part 30, pursuant to Rule 30.10. The Commission now proposes to codify some of those interpretations and positions. Each of the interpretative letters discussed below will cease to have any prospective applicability if the proposed rules are adopted. Those who properly relied on interpretative statements in the past must henceforth comply with the proposed rules if adopted. Since no-action letters may only be relied on by the entity seeking the no-action position, the entities who received the no-action letters discussed below may continue to rely on the relief provided. All other persons were, and are, required to comply with Commission rules.

[3] ''Foreign option'' as defined in Part 30 means ''any transaction or agreement which is or is held out to be of the character of, or in commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade.'' Commission rule 30.1(b).

[4] Pursuant to Commission Rule 30.1(c), ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of [Commission rule] 1.3 shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.''

[5] ''The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and exemptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed.'' 52 FR at 28980–28981 (August 5, 1987).

A. Registration Required by Rule 30.4(a)

Rule 30.4(a) requires anyone who solicits or accepts orders and/or money for foreign futures and options contracts from foreign futures and options U.S. customers to register as an FCM. Rule 30.4(e) requires registered FCMs to maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person (''AP''). Rule 30.10 allows any person to seek exemption form any provision of Part 30.

Shortly after Part 30 was adopted, it became clear that it might not be necessary for certain conduct to trigger the registration requirements of Rule 30.4(a). For example, foreign futures and options brokers that did nothing more than carry the customer omnibus account of a U.S. FCM fell within the registration provisions of Rule 30.4(a). As a result, the staff issued an interpretation in CFTC Letter 87–7 to make clear that a member of a foreign board of trade (or an affiliate of a U.S firm that is authorized to carry accounts under relevant foreign law), whose only contact with foreign futures and option customers was limited to carrying the customer omnibus account of a U.S. FCM, would not be required to register as an FCM under Rule 30.4(a). The Division reasoned that registration should not be required in that circumstance because of the presence of an ''intervening registrant [i.e., a U.S. FCM] to whom the rules would be fully applicable.'' [6] In other words, U.S. foreign futures and option customers would continue to have a relationship with and be clients of the U.S. FCM for which the foreign firm was carrying the omnibus account, and would not have direct contact with the foreign futures and options broker. Specifically, the Division stated:

[W]here an FCM transfers its customer omnibus account to an offshore firm which is either a member or a foreign exchange or is an offshore affiliate of a U.S. FCM licensed or authorized by the offshore jurisdiction where it is located, and such foreign exchange member's or affiliate's contact with foreign futures and options customers is limited to carrying the customer omnibus account of a U.S. FCM for execution on the foreign exchange, such activity should not bring it within the scope of the foreign futures and options rules.[7]

[6] CFTC Letter 87–7, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,972 (November 17, 1987). The scope of CFTC Letter 87–7 was limited to foreign exchange members and US FCMs' offshore affiliates which were licensed, authorized or otherwise subject to regulation in the offshore jurisdiction. With regard to affiliates, CFTC Letter 87–7 required the affiliate to identify to the CFTC and to the National Futures Association (''NFA'') the foreign clearing member through which the affiliate conducts business in order to ensure an adequate audit trail so that transactions may be traceable to the foreign exchange.

The Division sought to resolve other issues through the no-action process. For instance, CFTC Letter 87–7 was limited to the transfer of customer omnibus accounts to foreign firms and the existence of U.S. branches resulted in the bank being characterized as ''present'' in the United States.[8] Thus, despite the relief offered in CFTC Letter 87–7, foreign banks that, as brokers, carried US FCMs' customer omnibus accounts, could not take advantage of that relief if the banks had bank branches in the United States. In CFTC Letter 89–11, the Division stated that it would not recommend an enforcement action against a foreign bank with U.S. bank branches if the foreign bank availed itself of the relief of CFTC Letter 87–7.[9] The Division's no-action position was contingent upon three undertakings by the foreign bank: (1) the U.S. branches would not solicit or accept orders for foreign futures contracts or options or engage in any activities subject to regulation by the Commission, except in connection with proprietary trading conducted by its U.S. branches; (2) the foreign bank would provide upon request of the Commission or the National Futures Association, access to the books and records of the U.S. branches to ensure compliance with undertaking (1); and (3) the bank would designate an agent for the purpose of accepting delivery and service of any communication from the Commission relating to the foreign firm's activities in carrying the omnibus accounts.[10]

Still other ambiguities arose with regard to foreign firms. In the Part 30 rules, there is no specific provision relating to registration requirements for foreign futures and options brokers handling proprietary accounts. Commission Rule 3.10(c) provides a general exemption from FCM registration for persons trading solely for proprietary accounts, which is arguably applicable to foreign futures and options brokers.[11] Shortly after the

[7] *Id.* at 34,407–8.

[8] See discussion of CFTC Letter 89–5, *infra.*

[9] CFTC Letter 89–11, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,516 (August 15, 1989).

[10] The letter emphasized: ''The Division further understands that each such U.S. Branch is subject to extensive regulation, including reporting and recordkeeping requirements and examinations, either under state banking laws or under federal law by the Office of the Comptroller of the Currency.''

[11] Rule 3.10(c) provides: ''A person trading solely for proprietary accounts, as defined in 1.3(y) of this chapter, is not required to register as a futures commission merchant: Provided that such person

Commission adopted Part 30, an interpretative letter was requested regarding foreign firms soley carrying U.S. customer foreign futures and options accounts that would be proprietary accounts to the foreign firm. In CFTC Letter 88–15,[12] Division staff determined that, subject to certain conditions, ''in instances where a foreign firm *solely* carries accounts on behalf of customers in the United States which may be deemed to be proprietary accounts of the foreign firm, such foreign firm should not be subject to the registration requirement of Rule 30.4, or be required to apply for exemptive relief therefrom pursuant to Rule 30.10 based on comparability of regulation in the foreign jurisdiction.'' [13] The Division further stated that such a firm would, however, remain subject to all other applicable provisions of the Act and rules, regulations and orders thereunder.

While the staff previously has addressed the situation where a foreign firm carries its own ''proprietary'' account, it has not issued an interpretative letter relating to the applicability of the Rule 30.4 registration requirement to a foreign futures and options broker when the foreign futures and options broker carries the proprietary account of a U.S. FCM that is not proprietary to the foreign firm. Pursuant to Rule 30.4a, a U.S. FCM trading its proprietary account through a foreign futures and options broker is a ''U.S. foreign futures and options customer,'' requiring the foreign futures and options broker to register in order to carry the firm's proprietary account.[14] The logic of CFTC Letter 87–7, however, suggests that certain foreign futures and options brokers carrying FCM proprietary accounts similarly should not be required to register or to obtain a Rule 30.10 exemption.

The registration relief in CFTC Letter 87–7 was limited by its terms to a foreign firm which either was a member of a foreign board of trade or was an offshore affiliate of a U.S. FCM licensed, authorized or otherwise subject to regulation in the offshore jurisdiction where it was located. The staff took this position because, among other things, there would be no contact by a foreign firm with the FCM's customers and the U.S. FCM will have engaged in all sales practices and remain responsible for compliance with the Part 30 rules. Similarly, sales practice considerations are not of particular concern where an FCM opens a firm account (i.e., noncustomer account) with a foreign board of trade member. U.S. FCMs are professionals in the commodities industry and therefore should be familiar with the risks of trading foreign commodity futures and options contracts. The FCM does not need the added protections afforded by requiring the foreign firm to register as an FCM, provided of course that the foreign firm is a member of a foreign board of trade or a registered affiliate of the U.S. FCM. Moreover, where the foreign firm carries the proprietary account of a U.S. FCM, the requirement of registration and the attendant capital and customer funds rules are not necessary because the foreign jurisdiction generally has already imposed rules to protect the foreign clearing house.

B. Availability of Rule 30.10 Exemptions to Foreign Firms With U.S. Bank Branches

Those persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located [15] may apply under Appendix A to Rule 30.10 for relief from the registration requirements of Rule 30.4. Rule 30.10 and Appendix A thereto have been the basis for exemptions granted to a number of foreign firms that, along with their governmental agency or self-regulatory organization, have demonstrated that their particular foreign regulatory program is comparable to that of the Commission.

Although the Commission orders granting general Rule 30.10 exemptive relief from FCM registration have applied only with respect to persons located outside of the United States, the Division has permitted foreign futures and options brokers with U.S. bank branches to obtain a Rule 30.10 exemption under certain conditions. In CFTC Letter 89–5,[16] the Division stated that it would not recommend enforcement action if a division or branch of a foreign bank is *de facto* treated as a separate entity by the Office of the Comptroller of the Currency (OCC) and has no involvement with U.S. foreign futures and options customers. Under those circumstances, the branch could be treated by the bank as though it were a subsidiary or affiliate,[17] and the foreign firm would be eligible for an exemption under Rule 30.10. The Division staff has required foreign firms with U.S. bank branches that are seeking confirmation of Rule 30.10 relief to make representations which ensure that the U.S. branch does not solicit or otherwise have contact with U.S. customers for transactions governed by Commission rules. In so doing, the Division noted that the bank branch ''is viewed as a separate legal entity in many respects under the federal bank regulatory scheme.'' [18]

In the ten years following the issuance of CFTC Letter 89–5, staff has issued several no-action letters to foreign firms with U.S. bank branches permitting them to obtain confirmation of Rule 30.10 relief. Since that time, the staff has not become aware of problems with foreign firms using their U.S. bank branches inappropriately. Therefore, the Commission proposes to codify the procedure by which foreign firms with U.S. bank branches may obtain 30.10 relief. Doing so will obviate the need for affected persons to seek interpretative relief or a non-action position, and will

remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.''

[12] CFTC Letter 88–15, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,296 (August 10, 1988).

[13] The requestor of the letter had a U.S. affiliate whose account it carried; both firms were in turn wholly owned by a parent company. The term ''proprietary account'' as defined in rule 1.3(y), 17 CFR 1.3(y) (1998), includes an account carried on the books and records of a corporation or other type of association for a ''business affiliate that directly or indirectly is controlled by or is under common control with, such . . . corporation or association.''

[14] Rule 30.1(c) exempts an owner or holder of a proprietary account from the definition of foreign futures and options, cutomer only with regard to the disclosure requirements of Rule 30.6 and the secured amount requirement of Rule 30.7. Owners or holders of proprietary accounts currently are not excluded from the definition for purposes of Rule 30.4, thereby triggering the registration requirement for foreign futures and options brokers who do business with them.

[15] Appendix A, ''Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules,'' CCH ¶ 2707, 57 FR 49644 (November 2, 1992) (Emphasis added.)

[16] CFTC Letter 89–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,271 (December 5, 1988).

[17] In CFTC Letter 88–3, the Division distinguished between a foreign firm having U.S. divisions (which are ''legally part of the firm itself''), and a foreign firm with a U.S. subsidiary or affiliate (which ''is a separate legal entity.'') [1987–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,085 (January 15, 1988). The letter stated that while a foreign firm with a U.S. branch or division would not be eligible for Rule 30.10 relief, a foreign firm with a U.S. subsidiary or affiliate would be eligible for a 30.10 exemption. *Id.* The Division modified that position in CFTC Letter 89–5 by recognizing that branches and divisions are often operated separately and in a manner analogous to a subsidiary. CFTC Letter 89–5 at 36,071. Foreign firms with separately incorporated U.S. subsidiaries or affiliates must follow the guidelines in CFTC Advisory 41–93 (July 26, 1993) when petitioning for Rule 30.10 relief. *See* CFTC Letter 93–65, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,784 (July 26, 1993).

[18] CFTC Letter 89–5, *id.* at p. 36,071.

thus utilize Commission resources more efficiently.

II. The Proposed Amendments

The Commission believes it can provide clarity to its registration requirements under Part 30 by specifically addressing, in Rule 30.4, when registration by a foreign futures and options broker is not required. As discussed earlier, the Commission proposes to amend Rule 30.4(a) to clarify that it does not require registration by certain foreign futures and options brokers that carry U.S. foreign futures and foreign options customer omnibus accounts of U.S. FCMs and have no customer contact, including foreign brokers with U.S. bank branches. The Commission also proposes to amend Rule 30.4(a) to clarify that a foreign firm that carries a U.S. FCM's proprietary account, or a foreign firm which trades for its own proprietary account (including U.S. affiliates whose accounts are ''proprietary'' to the foreign firm), need not register as an FCM so long as certain conditions are met. Such foreign firms would, however, otherwise remain subject to provisions of Part 30 that are not dependent upon registration as an FCM, such as the antifraud provision of Rule 30.9. While the Commission is proposing to permit foreign brokers to carry ''proprietary'' accounts in the broader sense of the term (as defined in Rule 1.3(y)), not just firm trading accounts or ''house'' accounts [19], the Commission invites comment on the advisability of limiting the exemption to house accounts only.[20]

In addition, the Commission proposes to amend Rule 30.10 to clarify that foreign firms with U.S. bank branches may be eligible for Rule 30.10 relief if certain representations are made. A foreign firm with U.S. bank branches would be able to obtain a Rule 30.10 exemption without requesting a no-action position if it files the following representations with the NFA Vice-President, Registration & Membership:

(1) No U.S. bank branch, office of division of the foreign futures and options broker will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office of division of the foreign futures and options broker will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division of the foreign futures and options broker will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under Part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign futures and options broker will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign futures and options broker and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the NFA or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; [21] and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign futures and options broker will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Similarly, any foreign futures and options broker that would not be required to register under the proposed Rule 30.4(a) because it solely carries a U.S. customer omnibus account, its own proprietary account, or a U.S. FCM's proprietary account, will not be required to register solely because it has U.S. bank branches provided that it files with the NFA, Vice President, Registration & Membership, the above representations in accordance with Rule 30.10(b).

The Commission solicits comment regarding the number of foreign futures or options brokers' non-bank branches located in the United States, as well as information concerning their activities.[22] The Commission also requests comment on the advisability of expanding the relief provided by the proposed rule amendments to foreign futures and options brokers with any type of U.S. branch, not just bank branches.

Finally, the proposed rule defines ''foreign futures and options customer omnibus account'' in Rule 30.1(d), and ''foreign futures and options broker'' in Rule 30.1(e).

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[23] The proposed rules discussed herein would affect foreign members of foreign boards of trade who perform the functions of an FCM, some of which may be foreign affiliates of U.S. FCMS. The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. Therefore, the

[19] Firm trading or ''house'' accounts are defined as ''proprietary'' in Rule 1.17(b)(3) for regulatory capital purposes, while ''proprietary accounts'' comprise a broader category in the Rule 1.3(y) definition.

[20] When an FCM executes trades for its proprietary account with a foreign firm, funds other than those of the FCM are at risk (e.g., of affiliates and employees as per CFTC Rule 1.3(y)). One can assume that the class of persons defined by Rule 1.3(y) is in a relationship of trust and confidence to the FCM and thus the same considerations that would permit the FCM to open an account with foreign firm registering as an FCM also apply to the FCM's proprietary accounts.

[21] The Commission has recognized that Japanese and Hong Kong laws require that original books and records of any firm located within either country be maintained within the local jurisdiction. *See* CFTC Letter 95–83 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,559 at 43,490 (September 20, 1995) (no-action position permitting the Japanese and Hong Kong affiliates of a U.S. FCM to accept directly foreign futures and options orders from certain sophisticated U.S. customers); 62 FR 47792 (September 11, 1997) (extending the relief under CFTC Letter 95–83 to the Japanese and Hong Kong affiliates of all U.S. FCMs). For the purpose of this rulemaking, the Commission proposes to allow foreign futures and options brokers in Japan and Hong Kong to satisfy the books and records requirement by: (1) providing within 72 hours authenticated copies of its books and records upon request of a Commission representative; (2) providing within 72 hours access to original books and records in the foreign jurisdiction; (3) waiving objection to the admissibility of the copies as evidence in a Commission action against the foreign futures and options broker; and (4) agreeing in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission.

[22] The rationale for providing relief to foreign firms with bank branches in the U.S. is that those branches are otherwise regulated by the banking authorities. Although this rationale would be inapplicable to non-bank branches, there may be other reasons why exemption from registration under Part 30 would be appropriate.

[23] 47 FR 18618–18621 (April 30, 1982).

Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 [24] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection 3038–0023, including this proposed rule, is as follows:

Average burden hours per response: .1645.

Number of Respondents: 73,610.

Frequency of response: On occasion; annually, semi-annually; quarterly.

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response: .05.

Number of Respondents: 110.

Frequency of response: On occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, D.C. 20581, (202) 418–5160.

[24] Pub. L. 104–13 (May 13, 1995).

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Registratiaon requirements, Reporting and recordkeeping requirements. Registration requirements,

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b) 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.1 is proposed to be amended by adding paragraph (d) and (e) to read as follows:

§ 30.1 Definitions.

* * * * *

(d) *Foreign futures and options customer omnibus account* is defined as an account in which the transactions of one or more foreign futures and options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures and options customer.

(e) *Foreign futures and options broker* (FFOB) is defined as a non-U.S. person that is a member of a foreign board of trade, as defined in § 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located; or a foreign affitiate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

3. Section 30.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.4 Registration required.

* * * * *

(a)(1) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money securities or property (or extend credit in lieu thereof), to margin, guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that,* a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as an FCM:

(i) In order to accept orders from or to carry a U.S. futures commission merchant foreign futures and options customer omnibus account, as that term is defined in § 30.1(d);

(ii) In order to accept orders from or to carry a U.S. FCM proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; or

(iii) In order to accept orders from or to carry a U.S. affiliate account which is proprietary to the foreign broker, as ''proprietary account'' is defined in paragraph (y) of § 1.3 of this chapter.

(2) Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the above-listed activity are not required to register as an FCM if they file with the National Futures Association, Vice-President, Registration and Membership, 200 West Madison Avenue, Suite 1600, Chicago, Illinois 60606, the representations in § 30.10(b)(1)–(6).

* * * * *

4. Section 30.10 is revised to read as follows:

§ 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank

branches, offices or divisions if, in conjunction with a petition for confirmation of § 30.10 comparability relief under an existing § 30.10 Commission order, it files the following representations with the National Futures Association, Vice-President, Registration & Membership:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22019 Filed 8–25–99; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Exemption from Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend the Commission's rules and regulations on Foreign Futures and Foreign Options Transactions to include new Rules 30.12.[1] The new rule will permit certain foreign firms acting in the capacity of FCMs and IBs to accept and execute foreign futures and options orders directly from certain U.S. customers via telephone, facsimile and electronic message without having to register with the Commission.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to ''Commission Rules 30.12.''

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Formal Rulemaking

In 1987, the Commission adopted a new Part 30 to its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered into on or subject to the rules of a foreign board of trade.[2] These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act (''Act''), which vest the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

Part 30 sets forth regulations governing foreign futures [3] and foreign option [4] transactions executed on behalf of foreign futures or foreign options customers.[5] For example, Rule 30.4 requires any person engaged in the activities of a futures commission merchant (''FCM''), introducing broker (''IB''), commodity pool operator (''CPO'') and commodity trading advisor (''CTA''), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The transactions which are subject to regulation and require registration under Part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.[6]

Under Part 30, certain persons located outside the United States may obtain an exemption from registration and certain other requirements. For example, under Rule 30.10 and Appendix A thereto, the Commission may exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers from compliance with certain Commission rules, including those rules pertaining to registration, provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. investors, including an information-sharing arrangement between the Commission and the firm's home country regulator.[7] In addition, under

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] 52 FR 28980 (August 5, 1987).

[3] ''Foreign futures'' as defined in Part 30 means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Commission rule 30.1(a).

[4] ''Foreign option'' as defined in Part 30 means ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade,'' Commission Rule 30.1(b).

[5] Pursuant to Commission Rule 30.1(c), ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.''

[6] *See* Commission rule 30.4.

[7] *See* Appendix A to Part 30; 62 FR 47792 (September 11, 1997) (''Delegation Order''). Note that persons located inside the United States may petition for an exemption under Rule 30.10 separate

Rule 30.5, the Commission may exempt foreign persons acting in the capacity of an IB, CPO or CTA from registration, provided that the person complies with certain requirements.[8]

B. Interpretation of the Registration Requirement of Rule 30.4

The Division of Trading and Markets (''Division'') has issued advisories and interpretative letters that more specifically define the scope of permissible activity under Part 30 and what activities by foreign futures and options brokers (''FFOBs'')[9] trigger the Commission registration requirement under Rule 30.4(a). In 1987, the Division issued an interpretative letter regarding registration by an FFOB that carries an FCM's customer omnibus account. The Division indicated that certain unregistered FFOBs would not be required to register pursuant to Rule 30.4 if their activities on a foreign exchange on behalf of U.S. foreign futures and options customers were limited solely to carrying foreign futures and options accounts on an omnibus basis on behalf of an FCM and to performing the services incidental thereto.[10] The Division reasoned that registration should not be required in that circumstance because of the presence of an ''intervening U.S. registrant, i.e., a U.S. FCM, to whom the rules would be fully applicable.'' [11] The Division, however, limited this relief to the members of a foreign exchange and/or the affiliates of an FCM.[12]

In 1993, the Division issued an advisory permitting certain foreign affiliates of a U.S. FCM not registered with the Commission that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account.[13] The Division reasoned that the regulatory purposes of the Act would not be adversely affected if direct contacts between certain institutional customers and certain affiliates of an FCM were permitted under circumstances where the FCM could adequately control the transactions for which its omnibus account would be obligated by such direct customer contacts.[14] Accordingly, the Division interpreted Rule 30.4 to exempt from registration those foreign affiliates [15] that have received confirmation of Rule 30.10 relief [16] who receive orders directly from ''authorized customers'' [17] for or on behalf of such customers through the FCM's customer omnibus account.[18] This relief, however, was contingent upon the FCM's compliance with certain conditions. As outlined in the Advisory, an FCM was required to institute certain procedures with regard to its ability to adequately supervise the impact of such requests on its financial condition, confirm and supervise foreign futures and options orders placed through its customer omnibus account, and maintain an audit trail to track an order from the time it is placed to the time it is cleared and reported back to the foreign futures and options

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from the comparability relief provided for in Appendix A.

[8] An exemption from registration pursuant to Rule 30.5 requires a foreign person acting in the capacity of an IB, CPO or CTA to file a petition for exemption with NFA and to designate an agent for service of process. As set forth in the most recent amendments to Rule 30.5, 64 FR 28910 (May 28, 1999), the Rule 30.5 applicant must (1) provide general background information and information regarding the firm's fitness to conduct business with U.S. customers, (2) irrevocably agree to the jurisdiction of the commission and state and federal courts in the United States with respect to activities and transactions subject to Part 30, and (3) designate an agent for service of process. The agent for service of process must be a registered FCM, a registered futures association, or any other person located in the United States in the business of providing agency services. In addition, Rule 30.5 requires that only a U.S. FCM or a foreign broker who has received confirmation of Rule 30.10 relief, infra note 15, may carry accounts for or on behalf of any foreign futures or foreign options customer.

[9] For this preamble and the proposed rule, ''foreign futures and options broker'' will mean any person located outside the United States or its territories that is a member of a foreign board of trade, as defined in § 1.3(ss) of the Act, and is licensed, authorized or otherwise subject to regulation of a foreign jurisdiction. This term has not been previously defined in any of the Advisories. In another proposed rulemaking issued on this date, the term ''foreign futures and options broker'' will be similarly defined in proposed amendments to Rule 30.1. The Commission believes that a formal definition of ''foreign futures and options broker'' is necessary to distinguish it from the definition of ''foreign broker'' for purposes of Parts 15 through 21 of the Act. Commission Rule 15.00(a)(1) (''foreign broker'' means ''any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person'').

[10] CFTC Letter No. 87–7, Comm. Fut. L. Rep. (CCH) ¶23,792 (November 17, 1987).

[11] *Id.* at 34,408.

[12] *Id.* at 34,407–408. An affiliate of an FCM who is not also a member of the relevant foreign exchange must be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of that foreign jurisdiction. In addition, the foreign affiliate must identify to the Commission and the National Futures Association the foreign clearing member through which the affiliate conducts business and agree to respond to requests for information and records concerning transactions on such foreign exchange. *Id.* at 34,408.

[13] CFTC Advisory No. 93–115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (December 23, 1993).

[14] *Id.* at 41,052.

[15] The unregistered FFOB must either have a parent/subsidiary relationship with an FCM or otherwise be affiliated through common ownership. *Id.* at 41,054.

[16] Rule 30.10 and Appendix A thereto allows the Commission to exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers engaging in those acts described by Rule 30.4(a) from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or self-regulatory organization (''SRO'') can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission issues an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country. For a more detailed discussion of the Commission's comparability analysis and the representations to be made by foreign regulators and individual foreign firms, see FR 47792, 47793 (September 11, 1997).

[17] For the purpose of CFTC Advisory No. 93–115, ''authorized customers'' meant:

(i) An FCM, IB, CPO or CTA registered as such with the Commission;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(iii) An investment company registered under the Investment Company Act of 1940 or a business development company defined in section 2(a)(48) of the Act;

(iv) An insurance company as defined in section 2(13) of the Securities Act;

(vi) A plan established by and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(vii) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *provided* that the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is a bank, savings and loan association, insurance company, or registered adviser, or that the employee benefit plan has total assets in excess of $5,000,000;

(viii) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(ix) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(x) A corporation, Massachusetts or similar business trust, or partnership, other than a pool which has total assets in excess of $5,000,000;

(xi) A natural person who individually or with that person's spouse owns a portfolio of securities and other property with an aggregate market value of at least $5,000,000;

(xii) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000;

(xiii) A foreign person substantially equivalent to those persons described in paragraph (i) through (xii) above; or

(xiv) A governmental entity (including the United States, a state, or foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency or department of any of the foregoing.

Id. at 41,052–053.

[18] *Id.* at 41,052–054.

customer.[19] With these procedures in place, unregistered foreign affiliates of a U.S. FCM that had received confirmation of Rule 30.10 relief were permitted to accept directly orders from certain institutional investors for trades to be placed in the FCM's customer omnibus account,[20] and the Commission would have access to all the pertinent financial information should a problem arise.

In 1995, the Division issued another advisory expanding the bounds of permissible direct order transmittal to include contact between certain foreign futures and options customers and foreign affiliates of U.S. FCMs that were not registered and had not received confirmation of Rule 30.10 relief.[21] Subject to additional terms and conditions, the Division determined that the regulatory purposes of the Act would not be undermined by allowing these unregistered affiliates of FCMs to accept orders directly from ''authorized customers'' for execution for or on behalf of such customers through the FCM's customer omnibus account.[22] Similar to the terms and conditions described in Advisory No. 93–115, the relief in Advisory No. 95–08 was contingent upon the satisfaction of certain conditions by the FCM. In particular, an FCM was required to ensure that customers authorized to transmit orders directly to its foreign affiliate only deal with ''designated persons,'' i.e., a class of individuals working in the office of the foreign affiliate identified by and under the direct supervision of the FCM,[23] (2) that any ''designated person'' who accepted or entered orders in other than a clerical capacity be registered with the Commission as an AP, and (3) that all ''designated persons'' at the foreign affiliate were subject to the supervision of an AP of the FCM.[24] The FCM was also required to represent to the Commission that it was liable for all acts by the foreign affiliate through its ''designated person'' whether or not the ''designated person'' is registered with the Commission, or any person who acts in such capacity whether or not designated, for or on behalf of customers of the FCM under the circumstances described within the Advisory.[25] In addition, both the FCM, and the unregistered FFOB had to undertake to provide access to original books and records upon the request of the Commission, and represent that neither was aware of any law of the relevant foreign jurisdiction that would prohibit either entity from complying with this undertaking.[26] Moreover, a qualified, unregistered FFOC was required to consent to service of process in the United States with respect to its activities which are the subject of the Advisory.[27]

In the aggregate, the interpretative letter and advisories issued by the Division regarding Rule 30.4 have restricted the foreign order transmittal process to ''authorized customers'' of U.S. FCMs contacting the FCM's foreign affiliates. Recently, the Futures Industry Association (''FIA'') has approached the Commission about a new rule regarding foreign order transmittal that would expand the relief from registration pursuant to Rule 30.4 to certain qualified, nonaffiliated FFOBs.[28] The rule proposed by FIA would not only allow unregistered, non-Rule 30.10 FFOBs to accept orders directly from U.S. customers for execution for or on behalf of such customers through the FCM customer omnibus account carried by the FFOB, but also permit unregistered, non-Rule 30.10 FFOBs to accept directly and execute these orders for the purpose of giving the trades up to another unregistered FFOB carrying the FCM's customer omnibus account.[29] FIA's proposed rule significantly expands the relief permitted by the existing interpretative letter and advisories issued by the Division.

FIA claims that, without such relief, there is a risk that sophisticated and/or institutional U.S. investors will transfer their foreign futures and options business offshore.[30] According to FIA, sophisticated investors execute more than 90 percent of all foreign domestic futures and options transactions entered into by U.S. investors.[31] These sophisticated investors desire direct access to international cash and futures markets in order to implement their trading strategies throughout the 24-hour trading day and do not require the protections afforded by the Act to less sophisticated investors.[32] These customers want to have the operational and economic efficiencies that are the natural consequence of having all of their futures and options transactions carried by a well-capitalized U.S. FCM.[33] In particular, these customers seek the lower costs associated with centralized recordkeeping, trade reconciliation, risk management and the margining of funds. FIA has noted that such an arrangement also affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.[34]

The Commission has determined to propose Rule 30.12 to address the concerns raised by FIA, and invites public comment on all aspects of the proposed rule. The Commission believes that the proposed rule would provide for a significant liberalization of existing rules and interpretative statements.

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[19] *Id.*

[20] The relief extended to certain unregistered FFOBs in Advisory No. 93–115 was limited to an FCM's institutional customer's ability to place orders directly with the FCM's Rule 30.10 qualified foreign affiliate which carried that FCM's customer omnibus account. If that foreign affiliate in turn had an omnibus account with yet another affiliated firm (or firms) with Rule 30.10 relief, the FCM's institutional customer was not permitted to use procedure described therein to place orders with other foreign affiliate of the FCM unless the trade processing and recordkeeping systems of the FCM and relevant affiliates were linked in a manner which would have permitted the FCM and relevant foreign affiliates to remain in compliance with the terms of the Advisory. *Id.* at 41,051.

[21] CFTC Advisory No. 95–08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (January 25, 1995). In Advisory No. 95–08, the Division did not modify the list of ''authorized customers.''

[22] *Id.* at 42,490.

[23] *Id.* at 42,490–491; *see* CFTC Letter No. 92–11, Comm. Fut. L. Rep. (CCH) ¶ 25,325 at 39,051 (June 25, 1992), as *modified by* CFTC Letter No. 93–83, Comm. L. Rep. (CCH) ¶ 25,949 at 41,089 (August 9, 1993) (discussing procedures necessary for an FCM to allow a foreign affiliate to handle Globex orders placed by a customer after normal business hours in the United States, a.k.a., ''passing the book'').

[24] *Id.* 42,490–491.

[25] *Id.* at 42,490.

[26] *Id.* at 42, 491.

Shortly after it issued CFTC Letter No. 95–08, the Division learned that local laws in both Japan and Hong Kong prevented firms located in those jurisdictions from removing original books and records from the country without prior notice to and consent from the appropriate regulatory agencies. *See* CFTC Letter No. 95–83, Comm. Fut. L. Rep. (CCH) ¶ 26,559 at 43, 490 (September 20, 1995). Accordingly, the Division issued a no-action position with regards to a U.S. FCM's Japanese and Hong Kong affiliates without Rule 30.10 relief, provided that the U.S. FCM making the request and affiliates agreed to provide authentic copies of the original books and records upon the request of the Commission. *Id.* at 43,491. Citing CFTC Letter No. 95–08, the Commission extended this avenue of relief to all U.S. FCMs with Japanese and Hong Kong affiliates. Delegation Order, 62 FR at 47795, n.31.

[27] CFTC Letter No. 95–05, ¶ 26,300 at 42,491.

[28] Letter from Ronald H. Filler, President, FIA's Law and Compliance Division, to the Division of Trading and Markets, dated February 18, 1999. The FIA proposal did not restrict FCM participation to those firms that met certain minimum capital requirements, nor did it limit the category of foreign brokers to those that were clearing members of foreign exchange. The Commission believes that these limitations are essential and as discussed below, has incorporated those provisions into the proposed rule.

[29] *Id.* at Appendix A, p. 4 (''Example 4. Transaction Executed by Executing Firm and Given-Up to Firm Carrying US FCM Customer Omnibus Account'').

[30] *Id.* at 4.

[31] *Id.* at 2.

[32] *Id.* at 3.

[33] *Id.*

[34] *Id.*

II. Proposed Rule 30.12

As the Commission noted in its adoption of Part 30, ''the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex.'' [35] The Commission believes that it is appropriate to amend provisions of Part 30 at this time to continue the Commission's efforts to update and to modernize its regulations. This effort is particularly appropriate now, when many futures and options exchanges are accessible 24 hours per day and customers, particularly sophisticated customers, want prompt access to exchanges globally.

Specifically, the Commission proposes to allow certain foreign firms with sufficient capital and regulatory oversight to directly receive foreign futures and options orders from certain sophisticated U.S. customers without having to register with the Commission, regardless of whether such firm has received confirmation of Rule 30.10 relief or is an affiliate of a U.S. FCM, or whether such firm carries the FCM's customer omnibus account.[36] Further, a qualified customer of an FCM may, with the consent of the FCM,[37] directly place a foreign futures and/or options order with an unregistered FFOB who either carries the FCM's customer omnibus account, or transfers the trade pursuant to a give-up arrangement to the unregistered FFOB that carries the FCM's customer omnibus account, without requiring either FFOB to register or obtain a Rule 30.10 exemption. Such a rule will permit qualified U.S. investors to select execution and clearing firms based upon their analysis of the respective services that each firm provides. Under the proposed rule, a qualified investor would be able to execute foreign futures and options trades through unregistered FFOBs without having to sacrifice the operational and economic efficiencies offered by a single U.S. global clearing firm, such as centralized recordkeeping, trade reconciliation, and the margining of funds.

In proposing Rule 30.12, the Commission has also sought to protect customers and to minimize systemic risk. Both of these concerns were implicated in the recent failure of Griffin Trading Company (''Griffin''), which is instructive here. Late last year, a London customer of Griffin placed orders on Eurex Deutschland, a German electronic futures and options exchange, through an executing broker in London with instructions to give up the trades to the clearing firm with which Griffin maintained a customer omnibus account. The customer's orders executed by the executing broker for give-up to Griffin's customer omnibus account far exceeded the customer's ability to pay and exceeded the amount of funds on margin in the customer's account. While Griffin itself presumably would not have executed the customer's voluminous orders, the unaffiliated executing broker did. Since neither the customer nor Griffin was able to meet the margin calls issued by the broker carrying Griffin's customer omnibus account, Griffin defaulted and ultimately became insolvent.

It would be impossible to fashion regulations that would adequately protect against every rogue customer placing trades in excess of his financial resources; nor can the Commission guarantee that no broker will ever fail. Rather, the Commission must strike a reasonable balance between permitting and encouraging market efficiency and growth, and protecting against known risks, particularly those that have systemic implications. Accordingly, the Commission proposes to permit direct order transmittal to unregistered FFOBs only if the primary participants in direct foreign order transmittal (e.g., the customer, the U.S. FCM and the FFOB) posses the sophistication and the financial resources to mitigate the risk that any default or failure by an individual customer or firm will threaten the integrity of the market itself or cause other customers to lose their money. Had Griffin, the executing broker and the London customer been required to follow the proposed rules, the customer could not have lawfully placed the trades that resulted in Griffin's collapse because all of the rule's eligibility requirements would not have been met.

Under the proposed rule, an FFOB that is not registered with the Commission and has not received confirmation of Rule 30.10 relief will be permitted to receive orders directly from certain U.S. customers for execution on a foreign exchange only under the circumstances described below. The exemption from registration for qualified, unregistered FFOBs does not apply to the solicitation of U.S. foreign futures and options customers. Under the proposed rule, the qualified customer, or the U.S. FCM acting on its behalf, must initiate contact with the FFOB in an effort to establish a transactional relationship with consent of the U.S. FCM that carries its account. Once the transactional relationship is established, the FFOB may then provide services incidental to that relationship, including the provision of up-to-date market information to the customer and the confirmation of any trades placed by the customer directly with the FFOB. At no time may the qualified FFOB solicit current or prospective foreign futures and options customers, direct the trading in any authorized foreign futures and options customer account, or engage in any other activity that would require registration under the Act without an appropriate exemption.

A. Eligible Participants

(1) Authorized Customers

The Commission proposes to limit direct foreign order transmittal to only the most sophisticated of U.S. investors. In the past, the Commission has identified particular groups of investors who do not require the full customer sales practice protections afforded by the Act.[38] The Commission believes that the risks inherent in the procedures permitted by the proposed rule require a distinct, more narrowly-defined class

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[35] 52 FR at 28980.

[36] For the purpose of this proposed rulekmaking, ''customer omnibus account'' means an account in which the transactions of one or more customers are combined and carried in the name of the originating FCM rather than separately.

[37] Since ultimate responsibility for trades executed through the customer omnibus account lies with the FCM, the customer must receive approval from the FCM before engaging in direct foreign order transmittal.

[38] For example, in part 4 of the Commission's rules, the Commission defined certain investors to be ''qualified eligible participants'' (''QEPs'') and ''qualified eligible clients'' (''QECs'') for the purpose of allowing CPOs and CTAs, respectively, to avoid certain registration, disclosure, recordkeeping and reporting obligations with respect to activities undertaken in connection with these sophisticated persons. Working with the definition of an ''accredited investor,'' as defined by Regulation D of the Securities Act, 17 C.F.R. 230.501–230.508, the Commission defined QEP and QEC status by means of ''objective criteria that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments.'' 57 FR 3148, 3151 (January 28, 1992) (proposed Rule 4.7); 57 FR 34853, 34854 (August 7, 1992) (final Rule 4.7).

Similarly, the Commission adopted Parts 35 and 36 to allow certain sophisticated investors to engage in swaps and contract market transactions, respectively, in the absence of any Commission oversight. For the purpose of defining ''eligible swap participant'' for Part 35, the Commission generally used the list of ''appropriate persons'' set forth in new section 4(c)(3)(A) through (J) of the Act and utilized the authority granted by section 4(c)(3)(K) to include other persons. 58 FR 5587, 5589 (January 22, 1993). For the purpose of defining ''eligible participant'' for Part 36, the Commission created a class of sophisticated persons derived from the list of ''appropriate persons'' and the definition of ''eligible swap participant.'' 60 FR 51323, 51328 (October 2, 1995).

of sophisticated investors, called ''authorized customers'' for the purpose of this rule. Proposed Rule 30.12 will allow authorized customers to enter into transactions with parties that may or may not be (1) subject to the jurisdiction of the courts of the United States or the Commission's reparations or arbitration program, nor (2) supervised or controlled by a U.S. FCM. As a result, the transactions may implicate laws, rules, regulations, customs and/or usages that offer different or diminished protection from those that govern transactions on U.S. exchanges. Accordingly, the Commission seeks to identify those sophisticated investors who it reasonably believes will appreciate the additional risk associated with transmitting orders to foreign brokers not registered or supervised by the Commission and who are sufficiently well-capitalized to withstand the risk of such transactions. Note that, unlike the exemption granted to eligible swap participants pursuant to Part 35, proposed Rule 30.12 would focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA.

The Commission believes that financial institutions have the sophistication to manage and appreciate the risk of such transactions. These institutions include banks, savings associations, credit unions, insurance companies, investment companies subject to the regulation under the Investment Company Act of 1940, broker-dealers subject to regulation under the Securities Exchange Act of 1934, and FCMs. Moreover, these institutions are subject to ongoing regulation regarding, among other things, their financial condition.

Similarly, futures industry professionals, such as CPOs and CTAs, generally obtain professional licenses by passing proficiency exams which cover, among other things, the risks associated with commodity markets. However, their proficiency may not necessarily include an understanding of the risks of dealing in foreign futures and options. As a proxy for such understanding, the Commission proposes to require foreign brokers seeking relief under proposed Rule 30.12 to only accept orders from CPOs and CTAs that ''have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments.'' [39] In a like manner, business associations (including, but not limited to, corporations, proprietorships and partnerships) may not possess the financial acumen to appreciate adequately the risks of direct foreign order transmittal, and therefore, should also be required to maintain a significant asset level as a proxy for their financial sophistication. However, since business associations are putting their own funds at risk, and not the funds of a third party investor, the Commission proposes to require a lower level of net assets to serve as a proxy for financial sophistication. Accordingly, the Commission proposes to define authorized customer to include those CPOs and CTAs with $50,000,000 in funds under management, and those business associations with $10,000,000 in net assets, as well.

In addition, the Commission proposes not to include customer floor brokers [40] and floor traders in the definition of authorized customers.[41] U.S. floor brokers and floor traders may be well=versed in the risks of trading on U.S. futures exchanges, but are not required to be experts in trading foreign futures and options. For similar reasons, the Commission proposes not to include in the definition of ''authorized customer'' employee benefit plans and state and local government entities. It is important to note that, despite their exclusion from the list of authorized customers, small CPOs and CTAs, as well as state and local government entities and employee benefit plans, may continue to place orders for foreign futures and options through a U.S. FCM or a Rule 30.10 firm, in accordance with Part 30 of the regulations.

The Commission requests comments specifically addressed to whether these ''authorized customers'' eligibility requirements are appropriate and whether net asset, net worth or other financial criteria should be increased or decreased.

The Commission's proposed eligibility requirements for ''authorized customers'' apply equally regardless of whether the foreign executing broker directly receiving the order carries the FCM's customer omnibus account, or gives up the trade for clearing to either the foreign broker carrying the FCM's omnibus account or directly to the FCM. The Commission believes that, in order to simplify the operational aspects of complying with and enforcing the rule, one uniform standard should define ''authorized customers.'' For example, if the minimum financial requirements for authorized customers differed depending on whether there was a give-up trade, then a customer might be permitted to utilize direct foreign order transmittal for orders placed only in those jurisdictions where the FCM maintains an omnibus account. Thus, the U.S. FCM would have to create and maintain separate lists of those investors qualified to place orders on each exchange, and implement internal procedures necessary to monitor and apply the bifurcated rule. Similarly, a rule requiring different standards for those firms executing orders placed directly in an FCM's customer omnibus account and those firms executing orders pursuant to a give up arrangement would unnecessarily prejudice U.S. FCMs that do not maintain numerous customer omnibus accounts abroad. Accordingly, the Commission proposes a single standard to identify which ''authorized customers'' can participate in direct foreign order transmittal.

(2) U.S. FCM Carrying Brokers

The Commission also proposes to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds minimum requirements. In a typical FCM-customer relationship, the FCM limits the size of any one customer's open positions based upon the customer's financial condition and creditworthiness. These trading limits are generally correlated to the amount of assets available to the customer to satisfy its contractual obligations, and serve to protect the FCM (and derivatively, other market participants) in the event that a customer's aggregate position declines significantly. Should the customer place an order directly with an FCM that exceeds the customer's trading limits, the FCM may reject the order. If the FCM does not reject the order, and the customer cannot deposit additional funds to cover any subsequent loss, then the FCM will have to use its own capital to satisfy the margin call from a clearinghouse or clearing broker or it will be in default.

Under the proposed rule, an FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated

[39] *See, e.g.*, 57 FR 3148, 3151.

[40] ''Floor Broker'' means ''any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market.'' Section 1a(8) of the Act.

[41] ''Floor Trader'' means ''any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market.'' Section 1a(9) of the Act.

FFOB.[42] More specifically, an authorized customer may place trades with an FFOB in multiple international markets without the immediate knowledge of the FCM. Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thus mitigate against the increased systemic risk.[43] Accordingly, the Commission proposes to require FCMs whose authorized customers use direct foreign order transmittal to possess either $50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5)[44], or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).[45] The FCM's compliance with this requirement will be determined by reference to the most current Form 1–FR filed (or required to have been filed) by the FCM with the Commission. With either amount of capital in reserve, the FCM would more likely be able to satisfy the obligations of its authorized customers without implicating the integrity of the market as a whole or impacting other customers. In addition, the alternative minimum capital requirement will allow smaller FCMs to participate in the direct foreign order transmittal process, provided that they maintain a proportionate amount of excess capital to mitigate the risk associated with the activities of their authorized customers.[46] Should an FCM fail to satisfy both of the minimum financial requirement alternatives outlined above, it may seek relief from this requirement by petitioning the Division for a no-action position accordance with Rule 140.99.

The Commission requests comments specifically addressed to whether these thresholds are appropriate in light of the increased systemic risk associated with direct foreign order transmittal and whether other financial criteria should be applied to determine the eligibility of a U.S. FCM to participate in the process.

The FCM is responsible, along with the unregistered FFOB, for determining which of the FCM's customers qualify as authorized customers and for ensuring that the FCM maintains excess capital as required by the rule. An FCM's breach of either of these core obligations shall be considered a violation of the proposed rule. In addition, the proposed rule requires each participating FCM to also establish, or continue to maintain, reasonable procedures to facilitate compliance with the other obligations imposed by the proposed rule regarding its ability to supervise adequately the impact of such orders on its financial condition, confirm and supervise foreign futures and options orders placed through its customers omnibus account, and maintain an audit trail to track an order from the time it is placed in the customer omnibus account to the time it is cleared and reported back to the foreign futures and options customer. An FCM's breach of any of these obligations shall be considered a violation of the proposed rule. Note that nothing in the proposed rule discharges an FCM of its duty to comply with the requirements set forth in the Act, including, but not limited to, its obligation to maintain the secured amount set forth in Rule 30.7.

(3) Foreign Futures and Options Brokers

The Commission also proposes to specify which FFOBs may receive foreign futures and options orders via direct foreign order transmittal from U.S. customers without being required to register or obtain Rule 30.10 relief. Absent registration with the Commission, the Commission believes that FFOBs should be, at a minimum, registered, licensed or otherwise subject to regulation in the jurisdiction in which they are located. While the Commission recognizes that such registration, licensing or other regulation may offer different or even diminished protection to U.S. investors (and carrying brokers), authorized customers and qualified FCMs will know that the unregistered FFOB is subject to the jurisdiction of a foreign regulatory authority. In addition, the Commission believes that an FFOB's decision to register abroad evidences its intent to act according to the governing statutes. Accordingly, the Commission proposes that FFOBs not registered with the Commission that accept orders pursuant to the guidelines of proposed Rule 30.12 be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of the foreign jurisdiction in which they are located.

The Commission also proposes to require unregistered FFOBs seeking to accept orders via direct order transmittal to demonstrate an ability to mitigate against the effect of default on the exchange on which the order is placed in the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades. As one alternative, the Commission proposes to require that an unregistered FFOB that accepts orders from authorized persons in accordance with Rule 30.12 be a clearing member (or a majority-owned affiliate thereof) on the exchange on which the trade is executed. Although minimum capital requirements for FFOBs vary from jurisdiction to jurisdiction, in general, clearing members must maintain greater capital. In the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades, the clearing member, or derivatively, its majority-owned affiliate, would be able to prevent a series of potential defaults by other intermediaries and/or counterparties by absorbing the loss. As a second alternative, the Commission proposes to allow those unregistered FFOBs affiliated with FCMs to accept orders from authorized persons in accordance with proposed Rule 30.12. As described in the existing advisories, the Commission believes that an FCM and its affiliates have a relationship that fosters the ability to exchange information as necessary to prevent an authorized customer from exceeding its trading limits without authorization and thereby putting the affiliate and the FCM at risk. Accordingly, the Commission proposes that unregistered FFOBs operating pursuant to proposed Rule 30.12 be clearing members on the exchange on which the order is executed, a majority-owned affiliate of a clearing member located in the

[42] Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the laws, rules and regulations of the exchange governing such a transaction.

[43] While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

[44] Commission Rule 1.17(c)(5).

[45] Commission Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various statutorily defined amounts, including:

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: *Provided*, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

[46] The Commission notes that as of March 31, 1999, 41 out of the 200 firms currently registered as FCMs would not satisfy the threshold financial requirements. Of those 41, only 14 (or 7% of the total number of FCMs) carry accounts on behalf of foreign futures and options customers.

jurisdiction in which the trade is executed or be an affiliate of the U.S. FCM that carries the authorized customer's account.

The Commission request comments specifically addressed to whether these requirements for unregistered FFOBs are appropriate in light of the increased risk associated with direct foreign order transmittal.

B. Procedural Safeguards

In addition to limiting direct order transmittal to a select class of investors, carrying brokers, and FFOBs, the Commission proposes to require carrying brokers to perform certain tasks designed to apprise authorized customers of the risks of dealing directly with a foreign broker and to mitigate against the risks of customer default. Under both FIA's proposal and the Commission's proposed rule, the U.S. FCM carrying the account of an authorized customer will be required to furnish an additional risk disclosure document to authorized customers advising them of the risks of placing orders directly with an unregistered foreign broker before the authorized customer contacts any FFOB. While the Commission is sensitive to the costs imposed upon carrying brokers by an additional disclosure requirement, it believes the additional disclosure is necessary in light of the risks associated with direct foreign order transmittal. In addition, the U.S. FCM will be required to establish guidelines for direct contacts between any of its authorized customers and any FFOB exempt from registration under the proposed rule, and devise appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets. The Commission believes that these requirements will serve to further mitigate the increased systemic risk associated with direct foreign order transmittal by promoting the flow of relevant information among the parties to the transaction.

This proposed rule will apply to transmittal of orders to an FFOB by telephone, facsimile and electronic mail messages. The rule shall not address the transmission of orders via a screen-based direct trading system or automated order routing system for execution on an electronic foreign exchange. The relief under the proposed rule also is not available to any FFOB that directly carries the customer account for any foreign futures or options customers,[47] unless the FFOB has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures [48] or is registered with the Commission as an FCM.

Note that this proposed rule would replace prior Commission advisories as the sole source of authorization for those unregistered FFOBs that directly accept orders from foreign futures and options customers.[49] In addition, note that the proposed rule does not alter any obligation to comply with other provisions of the Act, or any existing regulatory obligations to the Securities and Exchange Commission or state securities administrators. The Commission seeks comments on this proposed rule at that time and invites comment regarding any other amendments to Part 30 that may be appropriate in light of these proposed rules.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[50] The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[51] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[52] Due to the minimum capital requirements for CTAs under proposed Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the proposed rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

While the proposed rule discussed herein has no burden, the group of rules (3038–0023, Rules, Regulations and Forms for Domestic and Foreign Futures and Options Related to Registration with the Commission) of which it is a part has the following burden:

Average Burden Hours Per Response: 18.11.

Number of Respondents: 76,750.

Frequency of Response: Annually and On Occasion.

The Office of Management and Budget (OMB) approved the collection of information associated with this group of rules on May 26, 1999. Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC, 20581 (202) 418–5160.

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[47] The relief described herein will extend to those FFOBs that accept orders directly from an authorized customer of a U.S. FCM that maintains a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with FFOBs on various foreign exchanges, provided that the U.S. FCM independently satisfies the minimum capital requirements prescribed by the proposed rule, and the U.S. FCM, its foreign affiliate and the FFOB otherwise comply with the conditions outlined therein.

[48] Unlike an unregistered FFOB, a Rule 30.10 firm must, among other things, consent to jurisdiction in the United States, agree to provide access to its original books and records, represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and consent to NFA arbitration. Information regarding the registration status of any FFOB, including those firms with exemptions from registration pursuant to Rules 30.5 and 30.10, is publicly available through NFA. Interested parties may contact NFA or access NFA's registration database, BASIC, at http://www.nfa.futures.org.

[49] The following advisories will be rescinded if the proposed rules are adopted: CFTC Advisory No. 93–115 (permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customers omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief) and CFTC Advisory No. 95–08 (extending the relief in Advisory No. 93–115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). The Commission seeks comments from any party adversely affected by the determination to rescind CFTC Advisories Nos. 93–115 and 95–08.

[50] 47 FR 18618–18621 (April 30, 1982).

[51] 47 FR 18619–18620.

[52] 47 FR 18618–18620.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.12 is proposed to be added to read to follows:

§ 30.12 Direct foreign order transmittal.

(a) *Authorized customers defined.* For the purposes of this section an ''authorized customer'' of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1 of this chapter, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and foreign options customer omnibus account and

(2) Is:

(i) A bank or trust company acting on its own behalf;

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); provided, that such investment company is not formed solely for the specific purpose of constituting an authorized customer;

(v) A commodity pool operator subject to regulation under the Act, provided, that such commodity pool operator has funds, securities or property exceeding $50,000,000 under management for the purpose of trading in any commodity for future delivery or commodity option on or subject to any contract market or foreign board of trade, irrespective of whether the owner of the funds, securities or property under management independently satisfies any of the requirements set forth in paragraph (a) of this section;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an authorized customer:

(A) Which has total assets exceeding $10,000,000, or

(B) The obligation which under the customer agreement with the futures commission merchant are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (a)(2)(vi)(A) of this section or by an entity referred to in paragraph (a)(2) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this section;

(vii) Any United States governmental entity, or political subdivision thereof, of any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(viii) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), acting on its own behalf, provided, however, that if such broker-dealer is a natural person or sole proprietorship, the broker-dealer must also meet the requirements of paragraph (a)(2)(vi) of this section;

(ix) A futures commission merchant subject to regulation under the Act acting on its own behalf, provided, however, if such futures commission merchant is a natural person or sole proprietorship, the futures commission merchant must also meet the requirements of paragraph (a)(2)(vi) of this section;

(x) A commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as such under the Act or Commission regulations, with total assets under management exceeding $50,000,000, irrespective of whether the owner of the assets under management independently satisfies any of the requirements set forth in paragraph (a) of this section.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and foreign options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the FCM's most recent required filing of a Form 1–FR with the Commission:

(i) Possesses $50,000,000 in adjusted net capital, as defined by Rule 1.17(c)(5); or

(ii) Possesses three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B); and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraph (c) or (d), and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3)(i) Furnishes a written disclosure statement to each such authorized customer, in a form acceptable to the Commission, advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker.

(ii) The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers [1] of [US FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an ''Executing Firm'') that execute transactions on behalf of [FCM's] customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures

transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.

- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program will be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.
- Unless you object within five (5) days by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

[1] You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, *provided*, that such person accepts orders for foreign futures and foreign options transactions from authorized customer via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section carried by the person, but does not solicit, or accept any money, securities or property (or extend credit in lieu thereof) directly, from any U.S. foreign futures and options customer to margin, guarantee to secure any trades or contracts that result or may result therefrom; and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

(d) Exemption for foreign futures and options brokers carrying a customer omnibus account. Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will exempt from such registration, *provided*, that such person carries the customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section, and accepts orders for foreign futures and foreign options transactions from authorized customers via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement, and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22020 Filed 8–25–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 115

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

Food Labeling: Safe Handling Statements: Labeling of Shell Eggs; Shell Eggs: Refrigeration of Shell Eggs Held for Retail Distribution; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of July 6, 1999 (64 FR 36492). The document proposed to require safe handling statements on labels of shell eggs that have not been treated to destroy Salmonella microorganisms. The document also proposed to require that, when held by retail establishments, shell eggs be stored and displayed under refrigeration at a temperature of 7.2°C (45°) or less. The document was published with some inadvertent errors. This documents corrects those errors.

DATES: Submit written comments by September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–17122, beginning on page 36492 in the **Federal Register** of Tuesday, July 6, 1999, the following corrections are made:

1. On page 36497, in the second column, in the first full paragraph, the 19th line is corrected by inserting the word ''eggs'' before the word ''into''.

2. On page 36498, in the first column, in the first full paragraph, the second line is corrected by inserting the phrase ''consumption of'' before ''SE-''.

3. On page 36507, in the first column, the last paragraph is corrected after the last line by adding ''One comment suggested allowing existing safe handling labels. Several comments advocated some form of HACCP for shell eggs. Comments regarding the regulatory impact of the proposed rule are addressed below.''

§ 101.17 [Corrected]

4. On page 36513, in § 101.17(h)(8)(i)(E)(*1*), in the second column, in the second line, ''(h)(8)(iv)'' is corrected to read ''(h)(8)(i)(A)''.

§ 115.50 [Corrected]

5. On page 36514, in § 115.50(e), in the second column, in the 19th line, ''paragraphs (f)(2)(iii) through (f)(2)(v)'' is corrected to read ''paragraph (f)(2)(iii)''.

§ 115.50 [Corrected]

6. On page 36514, in § 115.50(f)(1)(ii)(D), in the third column, in the fourth line, ''(g)(4)'' is corrected to read ''(f)(1)(v)''.

§ 115.50 [Corrected]

7. On page 36514, in § 115.50(f)(1)(iv), in the third column, in the forth line, ''(g)(1)'' is corrected to read ''(f)(1)(i)''.

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22103 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of the Treasury, Internal Revenue Service (IRS) is withdrawing the proposed rule to exempt the system of records Treasury/IRS 00.003—Customer Feedback System (TBOR 2) from certain provisions of the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service, at 202–622–6200.

SUPPLEMENTARY INFORMATION: The IRS published a proposed rule on August 7, 1997, at 62 FR 42443 to exempt IRS 00.003—Customer Feedback System from certain provisions of the Privacy Act pursuant to section 5 U.S.C. 552a(k)(4). The records were to be maintained and used solely for statistical purposes. The Department of the Treasury is withdrawing the proposed rule because the records will no longer be used solely for statistical purposes due to passage of the Internal Revenue Service Restructuring and Reform Act of 1998, (Pub. L. 105–206, July 22, 1998).

Dated: July 28, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99–22206 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1998–3385]

Port Access Routes; Prince William Sound via Cape Hinchinbrook Entrance and Passages Within the Sound Between Port Valdez and Cape Hinchinbrook

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard announces the results of a Port Access Route Study which evaluated the need for modifications to current vessel routing and traffic management measures in the approaches to, departures from, and within Prince William Sound, Alaska. The study was completed in March of 1999. This notice summarizes the study recommendations.

ADDRESSES: The Docket Management Facility, U.S. Department of Transportation (DOT), 400 Seventh Street SW, Washington, DC 20590–0001 maintains the public document for this notice. Documents and enclosures as indicated in this preamble, will become part of the docket and will be available for viewing electronically on the internet at http://dms.dot.gov/. The docket is also available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Chris Holmes, Vessel Traffic Service Prince William Sound, telephone 907–835–7209; or Mr. Ed LaRue, Coast Guard Headquarters, Office of Waterways Services, telephone 202–267–0416. For questions on viewing material in the Docket, contact Dorothy Walker, Chief Dockets, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Definitions

The following definitions should help you review this notice.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Separation Zone means a zone separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Shipping Safety Fairway means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted.

Traffic lane means an area within defined limits in which one-way traffic is established.

Traffic Separation Scheme or (*TSS*) means a designated routing measure, which is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Background and Purpose

Why Did the Coast Guard Conduct This Port Access Route Study?

During recent years, many commercial vessel operators in the Prince William Sound area have expressed the need to modify the existing TSS in Prince William Sound to reduce risk and improve vessel traffic efficiency. In late 1996, the Prince William Sound Risk Assessment Steering Committee completed an analysis of oil shipping risk within Prince William Sound (referred to as the Prince William Sound Risk Assessment). While this risk assessment focused on oil transportation, it did address all facets of maritime commerce in Prince William Sound. The risk assessment included recommendations to improve vessel routing measures. Based on public input and the findings of the Prince William Sound Risk Assessment, the Coast Guard conducted this Port Access Route Study to review and evaluate the need for modifications to current vessel routing and traffic management measures in the Prince William Sound area.

When Did the Coast Guard Conduct the Port Access Route Study?

The Coast Guard announced the study in a notice published in the **Federal Register** on February 9, 1998 (63 FR 6502). The Coast Guard completed the study in March, 1999.

What Are the Existing Vessel Routing Measures in the Approaches to, Departures From, and Within Prince William Sound?

Existing vessel routing measures include the TSS in Prince William Sound and Prince William Sound Safety Fairway.

The TSS runs from the vicinity of Cape Hinchinbrook through Prince William Sound and into the Valdez Arm (the entrance to Port Valdez). The TSS includes a network of traffic lanes with a separation zone in between the lanes. The traffic lanes are 1,371.6 meters (1,500 yards) wide from Hinchinbrook Entrance to the vicinity of Bligh Reef at the southeast end of the Valdez Arm, then gradually decreases in width to 914.4 meters (1,000 yards) and terminate at Rocky Point. The separation zone is 1,828.8 meters (2,000 yards) wide from Hinchinbrook Entrance to the vicinity of Bligh Reef, then gradually decreases in width to 914.4 meters (1,000 yards) and terminates at Rocky Point. The southern extremity of the TSS leads through the middle of Cape Hinchinbrook Entrance.

The Prince William Sound Safety Fairway is described in 33 CFR 166.400. Most vessels operating in the area use the Prince William Sound Safety Fairway. The one exception is laden tankers chartered by British Petroleum departing from Cape Hinchinbrook. Instead of using the Hinchinbrook to Gulf Safety Fairway, these tankers use an alternate route to reduce the risk of an oil spill near the Copper River Flats and Delta.

What Data Did the Coast Guard Use to Help Conduct the Port Access Route Study?

We relied on data from a variety of sources. Two documents, the 1994 Disabled Tanker Towing Study and the 1996 Prince William Sound Risk Assessment, provided supporting data and analysis for the Port Access Routes Study. Copies of these studies are available from either of the persons listed under **FOR FURTHER INFORMATION CONTACT**. They are also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS website at http://dms.dot.gov. In addition, Coast Guard Vessel Traffic Service Prince William Sound collected up-to-date vessel transit data to ensure data in the Prince William Sound Risk Assessment remained valid.

We also considered the 12 written comments we received from the public. The comments generally support the recommendations in the study.

Study Recommendations

The study recommends four changes to existing vessel routing and traffic management measures.

1. Remove the southern dogleg to provide a straight traffic lane between the Pilot Station and Cape Hinchinbrook

The study found that implementing this recommendation should reduce risk for vessels operating in the area. Removing the dogleg decreases the length of transit in Prince William Sound, reducing overall exposure time for vessels. It should also result in a smoother flow of traffic and reduce traffic congestion. In addition, if the dogleg were removed, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from 6 nautical miles to 9 nautical miles, reducing the risk of drift groundings.

To implement this recommendation, the following coordinates would connect the TSS in central Prince William Sound:

Latitude	*Longitude*
60°49′29.4″ N	146°58′11.6″ W
60°20′35.3″ N	146°48′10.5″ W
60°20′36.0″ N	146°54′18.7″ W
60°49′06.3″ N	147°04′11.5″ W

Within the TSS, the Separation Zone would be connected by the following coordinates:

Latitude	*Longitude*
60°48′17.6″ N	146°59′46.1″ W
60°20′56.1″ N	146°50′19.3″ W
60°20′45.9″ N	146°52′18.7″ W
60°48′07.2″ N	147°01′47.0″ W

2. Establish a Precautionary Area at Bligh Reef Pilot Station

Implementing this recommendation should reduce risk for vessels operating in the area. Several vessels converge in this area, including ferries, cruise ships, and tankers. Navigation can sometimes be difficult in the area because of outflows from the Columbia Glacier. In addition, since the area offers little protection from the weather, vessels occasionally alter course to provide safe embarking and disembarking for pilots.

To implement the recommended Precautionary Area, the southbound traffic lane of the TSS within Valdez Arm would be widened to meet up with the Precautionary Area. The TSS would be modified to the following coordinates:

Latitude	*Longitude*
60°58′55.6″ N	146°48′51.3″ W
60°58′02.6″ N	146°46′31.1″ W
60°50′36.8″ N	147°03′36.1″ W
60°49′29.4″ N	146°58′11.6″ W

The recommended Precautionary Area would consist of a 1.5 nautical mile radius around the following position:

Latitude	*Longitude*
60°49′38″N	147°01′20″W

3. Establish a Precautionary Area southeast of Cape Hinchinbrook

Implementing this recommendation should reduce the potential for traffic congestion in this area. As discussed in the *Background and Purpose* section of this document, laden tankers chartered by British Petroleum departing from Cape Hinchinbrook do not follow the existing Prince William Sound Safety Fairway. Instead, the vessels use an alternate route to provide an extra measure of protection for the environmentally sensitive Copper River Flats Delta area. The recommended Precautionary Area would provide two distinct routes for departing and returning vessels, improving vessel traffic management and safety.

The following coordinates would bind the recommended Precautionary Area:

Latitude	*Longitude*
60°20′35.3″N	146°48′10.5″W
60°12′40.1″N	146°40′25.9″W
60°11′00.7″N	146°28′39.0″W
60°05′28.2″N	146°00′00.6″W
60°00′48.6″N	146°03′31.7″W
60°05′26.1″N	146°27′34.9″W
59°51′47.8″N	146°37′30.4″W
59°53′31.1″N	146°46′50.2″W
60°07′45.6″N	146°36′14.6″W
60°11′30.7″N	146°46′38.1″W
60°20′36.0″N	146°54′18.7″W

4. Remove the Separation Zone within the Valdez Arm

Implementing this recommendation may improve safety in the area. Traffic in and out of the Valdez narrows is relatively light and is monitored by the Vessel Traffic Service (VTS). Due to ice conditions, the VTS often imposes ''custom ice routing measures'' which typically involve one way traffic requirements. During the study, vessel operators stated that they would like to have more access to the center of the waterway when there are no vessels on opposing courses. This option may reduce the risk of powered and drift groundings since vessels could stay as far off shoal water as possible and offer the vessel masters the flexibility to consider prevailing weather and ice conditions to identify the safest track for their vessels.

However, there are concerns that removing the Separation Zone may increase the risk of collisions in the area.

The Coast Guard will seek public comment on the recommended changes to the existing routing measures before making any submission to the International Maritime Organization.

Dated: August 6, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–21921 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF EDUCATION

34 CFR Ch. VI

Office of Postsecondary Education; Review of Regulations Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Outreach to customers and partners for advice and

recommendations on regulatory review for Title IV of the Higher Education Act of 1965, as amended.

SUMMARY: We solicit advice and recommendations from interested parties (our customers—such as students and borrowers, and our partners—such as guaranty agencies, lenders, and schools) regarding a review of the regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended.

DATES: You may submit comments in writing by September 30, 1999, to the addresses in this notice or at topic sessions and regional sessions we are holding in September. (See dates, times and locations of topic and regional sessions under the **SUPPLEMENTARY INFORMATION** section of this notice.)

ADDRESSES: Address all comments to Colleen McGinnis, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 5102, Washington, DC 20202–5132. If you prefer to send your comments through the Internet, use the following address: ODS__regs@ed.gov

FOR FURTHER INFORMATION CONTACT: Colleen McGinnis, Telephone: (202) 708–7263. You may also obtain information on the Department's website at: http://www.ed.gov/offices/ODS/regreview

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:

Background

On October 7, President Clinton signed into law Public Law 105–244, the Higher Education Amendments of 1998, (Amendments) amending the Higher Education Act of 1965 (HEA). Section 498B of the HEA, as amended, requires that we review each regulation issued under title IV of the HEA that is in effect at the time of the review and that applies to the operations or activities of any participant in the programs assisted under title IV. The review will include a determination of whether the regulation is duplicative or no longer necessary. The review may also involve:

- An assurance of the uniformity of interpretation and application of the regulations under title IV.
- The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.
- A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of regulations prescribed for purposes of regulating industrial and commercial enterprises.

In addition, we will review and evaluate, in accordance with section 498B, the extent to which regulatory and statutory provisions may be improved, streamlined, or eliminated for institutions of higher education (other than institutions described in section 102(a)(1)(C) of the HEA) that have received less than $200,000 in title IV funds in each of the last two award years.

We will then prepare a report to Congress based on the results of this review. To assist us in preparing the report for Congress, as required by section 498B, we are consulting with relevant participants in title IV programs. Through this notice, the topic sessions and regional sessions that we will conduct, and other contacts with these customers and partners, we will collect the information necessary to complete the report to Congress.

We have already conducted listening sessions relating to title IV of the HEA through the Office of Student Financial Assistance's (OSFA's) Customer Service Task Force (CSTF). In the 1998 Amendments, Congress made OSFA the first Performance-Based Organization in the Federal government. Congress further mandated that OSFA improve service to students and cut the overall cost of postsecondary financial assistance. To achieve this end, OSFA conducted over 200 listening sessions and received over 8,000 comments through the listening sessions and over the Internet. OSFA received comments from students, schools, financial institutions, and employees. Many of the comments concerned the title IV regulations and their impact on our customers and partners.

We also received numerous useful suggestions from members of the student financial aid community for improving current title IV regulations during negotiated rulemaking sessions held from January–June, 1999.

In addition to the work that the Department has already done, we will hold several more topic sessions and regional sessions. We will be holding four topic sessions in Washington D.C., and three additional regional sessions, one each in Atlanta, Chicago, and San Francisco, to solicit comments, advice, and recommendations on our title IV regulations, in accordance with section 498B.

We recognize that the timing of these sessions is difficult for some of our customers and partners because of the beginning of the new school year. Unfortunately, when combined with the time required to complete negotiated rulemaking, the statutory deadline for producing a report leaves us with no alternative. Please note, however, that you can submit comments even if you are unable to attend the topic or regional sessions, to Colleen McGinnis, at the address listed in the **ADDRESSES** section of this notice, or by e-mail to the internet address listed in the **ADDRESSES** section of this notice.

Moreover, the process of reviewing regulations will not end with our report to Congress in October. We view this report as part of a continuing review and analysis of title IV regulations that will extend well beyond this report. If you are unable to provide comments at this time, there will be additional opportunities later this year, or next. Both the regional and listening sessions are intended to surface regulatory issues and identify regulatory sections in need of improvement. In addition, we would like to talk about an ongoing process for regulatory reform. The report will chronicle the issues identified at the sessions and outline the process for continuing our work on regulatory reform.

Specifically, we are interested in answers to the following five questions:

1. Are there any regulations that are duplicative or no longer necessary?
2. Are there any regulations that are not being interpreted and applied uniformly?
3. Are unnecessary burdens being placed on schools through the eligibility and compliance process? For example, is there a need to consider eligibility and compliance issues simultaneously?
4. Are unnecessary costs imposed on institutions of higher education by regulations that were designed to apply primarily to industrial and commercial enterprises?
5. Are there any regulations affecting public and private colleges and universities and proprietary schools that receive less than $200,000 in title IV funds each year that could be improved, streamlined, or eliminated?

The Department is also engaged in a broader effort to reduce regulatory burdens while simultaneously assuring the effective administration of the title IV programs. This endeavor includes the recommendations of our customers and partners collected by the CSTF. In addition, to the extent time permits, this current review will also examine other ways in which our regulations could be improved.

In general, how can the Department's title IV regulations be revised to make them more effective? How can we reduce administrative burdens while still assuring the effective administration of the title IV programs? How can we improve the way we develop our regulations? Participants are welcome to address these issues either by attending the topic sessions, the regional sessions or by submitting written comments.

Topic Sessions

We are hosting four topic sessions in Washington, DC, in September. All four sessions are open to the public and will be held at the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. The sessions are:

September 13, 1999; 8:30–12:30

Lender and Guaranty Agency Issues

September 13, 1999; 1:30–5:30

Loan Issues (FFEL, Direct Loan, and Perkins Loan Programs)

September 14, 1999; 8:30–12:30

Refunds, Program, and Student Eligibility Issues

September 14, 1999; 1:30–5:30

Institutional Eligibility Issues

Regional Sessions

We are also holding regional sessions in Atlanta, Chicago, and San Francisco. Individuals who wish to present comments at one of these regional sessions are encouraged to do so. It is likely that each participant choosing to make a statement will be limited to 5 minutes. Individuals interested in making oral statements will be able to sign up to make a statement beginning at 8:30 a.m. on the day of the session at the Department's regional session on-site registration table on a first-come, first-served basis. If additional time slots remain, individuals may be given additional time to speak. If no time slots remain, the Department has reserved one additional hour at the end of the day for people who were not able to register to speak. The amount of time available will depend upon the number of individuals who request reservations. Speakers may also submit written comments.

The Department has reserved a limited number of rooms at each of the following hotels at or below a special government per diem room rate. To reserve these rates, be certain to inform the hotel that you are attending the regional sessions with the Department of Education.

Dates, Times, and Locations of Regional Sessions

1. September 17, 1999, 9:00 a.m., Four Points Hotel Atlanta Perimeter, 1850 Cotillion Drive, Atlanta, GA. Call 1–770–394–5000 and ask for reservations. Sleeping room rate for September 16: $89.00 plus taxes.

2. September 24, 1999, 9:00 a.m., The Sheraton Chicago Hotel and Towers, 301 E. North Water Street, Chicago, Illinois. Call 1–312–464–1000, and ask for reservations. Sleeping room rate for September 23: $89.00 plus taxes.

3. September 27, 1999, 9:00 a.m., Clarion Hotel San Francisco Airport, 401 Millbrae Avenue East, San Francisco, CA. Call 1–650–692–6363 and ask for reservations. Sleeping room rate for September 26 and 27: $109.00 plus taxes.

In addition, for anyone unable to attend any of the sessions, the Department will also accept, and strongly encourages, written comments. You should send your comments to Colleen McGinnis at the address listed in the **ADDRESSES** section of this notice, or by e-mail to the internet address listed in the **ADDRESSES** section of this notice.

Assistance to Individuals With Disabilities at the Listening Sessions

The listening session sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service other than an interpreter to participate in the listening session (e.g., assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled listening session date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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
http://www.ed.gov/legislation/HEA/rulemaking/

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.

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. 1099c–2.

Dated: August 23, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–22283 Filed 8–25–99; 8:45 am]

BILLING CODE 4000–01–U

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This document rescinds a proposal published on June 9, 1999, (64 FR 30929) to amend the Postal Service's regulations to allow the disclosure of certain information contained in PS Form 1583, Application for Delivery of Mail Through Agent. Under that proposed rule change, the recorded business name, address, and telephone number of the addressee using a Commercial Mail Receiving Agency (CMRA) private mailbox (PMB) for the purpose of doing or soliciting business with the public would be furnished to any person upon request without charge. The rule change would have been consistent with current postal policy applicable to post office boxholders.

As a result of public comment, discussed below, this document proposes a rule to preserve current postal policy that prohibits disclosure of information contained in PS Form 1583 except to federal, local, and state government agency requesters, including those engaged in law enforcement activities, or pursuant to subpoena or court order. In addition, this proposal would amend the Postal Service's current policy for disclosing information about post office boxholders contained in PS Form 1093, Application for Post Office Box or Caller Service. Under current policy, the recorded business name, address, and telephone number of the holder of a post office box used for doing or soliciting business with the public, or of any person applying for a box on behalf of a holder, are provided to any person. Under this proposed rule change, core disclosure policy for post office boxholder information will parallel that for PMB customers in that disclosure to

the general public will be prohibited, and permitted only to federal, state, and local government agency requesters; when needed for service of legal process; or pursuant to a subpoena or court order.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Written comments should be mailed to Manager, Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268–2608.

SUPPLEMENTARY INFORMATION:

A. Background

This proposal was preceded by a notice of proposed rulemaking (NPRM) published on June 9, 1999 (64 FR 30929). As explained in that NPRM, the Postal Service has adopted rules (March 25, 1999, at 64 FR 14385–14391) amending sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a CMRA. Section D042.2.6(b) as amended requires an applicant for delivery of mail through an agent to indicate on PS Form 1583 whether the private mail box (PMB) will be used for the purpose of doing or soliciting business with the public. The June 9 NPRM would have changed postal policy set out in 39 CFR 265.6(d)(8) to permit disclosure of certain information from PS Form 1583 upon request to the Postal Service, when the PMB is being used for the purpose of doing or soliciting business with the public. This policy was intended to be consistent with disclosure policy currently applicable to post office boxholders, as set out in 39 CFR 265.6(d)(3), Post office boxholder information.

B. Analysis of Comments Received

Comments on the proposed rule were due on or before July 9, 1999. The Postal Service received a total of 1,239 comments, including a petition with 72 names of customers of a CMRA generally disagreeing with the new CMRA rules. Of the total, 1,226 comments were from CMRA customers, 10 were from CMRA owners or franchisers, two were from public interest groups, and one was from a member of Congress. These comments were largely identical in content and format, and all opposed the proposed rule, except for one commenter whose comment was limited to a statement requesting that the Postal Service not change the way the proposal reads. The Postal Service also received a number of comments after the deadline that were similar in nature and content to those received on time that generally opposed the proposed rule. Comments received in response to the June 9 NPRM were considered in reaching the decision to rescind the June 9 NPRM and in the formulation of this proposed rule.

The comments received in response to the June 9 NPRM most often expressed concern that disclosure of CMRA customer information could leave the public vulnerable to identity theft; harassment or harm; and theft of property. They expressed particular concern about potential harm to domestic violence victims; children at risk of exploitation and abduction; stalking victims; witnesses; celebrities; and law enforcement personnel and others who hold high profile or dangerous jobs. They also expressed concern that business owners dealing in valuable commodities, such as antiques, rare coins, jewelry, or gems, would be subjected to theft.

Many commenters had been misinformed and thought that any information on any PS Form 1583 would be disclosed to any member of the public upon request. One commenter stated ''I am horrified that anyone could walk into the (CMRA) or post office to examine my personal identification.'' Similar sentiments were expressed by several other commenters who misunderstood the circumstances of disclosure. The proposed rule in fact limited release of information to the name, address, and telephone number of the CMRA customer, and only if the PMB was being used to do or solicit business with the public. Such a disclosure policy would have been consistent with the Postal Service's longstanding policy on the disclosure of post office boxholder information, premised on the idea that a consumer should be able to know to whom and where money is sent for goods or services. Nevertheless, many commenters, particularly business owners operating out of the home, believed such a regulation would subject them to harassment and harm and asked that the proposed rule be rescinded. Despite the lack of any significant reported harassment or harm to business post office boxholders about whom such information historically has been disclosed, the Postal Service recognizes these concerns and the paramount importance of public safety and has determined to publish this proposed rulemaking for public comment. Consequently, this proposed rulemaking reverses the June 9 NPRM and prohibits disclosure of information about either a post office box or PMB holder to the general public, regardless of how the box is used.

Another concern frequently expressed is that the Postal Inspection Service already has ample opportunity to investigate and prosecute suspected mail fraud cases and other crimes. The commenters stated that consumers doing business with PMB users are already adequately protected since the home address always has been available to law enforcement personnel and for anyone with a legal cause of action (interpreted to mean pursuant to a subpoena or court order). It is true that the home address of CMRA customers historically has been available to government agencies, most of which may be engaged in law enforcement, upon written request meeting Privacy Act requirements. To the Postal Service's knowledge, such disclosure has occurred without threat to the safety of these parties. Although the June 9 proposed rulemaking was intended to take a proactive approach to reducing the opportunities to use a PMB for fraudulent purposes, the policy proposed by this rule will continue the previous practice of disclosure only to government agency requesters who certify that the information is required for the performance of official duties.

One special interest organization stated that it had received many messages from individuals who are concerned about the ''privacy-intrusive database that will be compiled as a result of having to complete Form 1583.'' Others expressed concern about the establishment of a database that would simplify and increase datasharing. The Postal Service has never intended to create a national database with information from PS Form 1583. PS Forms 1583 are maintained locally and are subject to Privacy Act safeguards.

Some comments related to procedural issues, such as the timing of the June 9 NPRM. The discussion of these issues would add no significance since this notice rescinds and reverses the June 9 NPRM. However, in response to comments that the PS Form 1583 contained no OMB number as required by the Paperwork Reduction Act, the Postal Service is not subject to the Paperwork Reduction Act of 1980; its forms are approved and prescribed in accordance with its own forms management program.

Other comments received related to other aspects of the revisions to CMRA requirements not pertinent to the

proposed rule discussed here. Those concerns were responded to in the March 25, 1999, final rule amending the DMM.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out above, the Postal Service proposes to amend 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.6(d)(3) and (d)(8) are revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(3) *Post office boxholder information.* Information from PS Form 1093, Application for Post Office Box or Caller Service, will be provided only as follows:

(i) In those circumstances stated at paragraphs (d)(4)(i) through (d)(4)(iv) of this section.

(ii) Copies of PS Form 1093 will not be furnished except in those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section.

* * * * *

(8) *Private mailbox information.* Information from PS Form 1583, Application for Delivery of Mail Through Agent, will be provided only as follows:

(i) In those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–22124 Filed 8–25–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6423–7]

Hazardous Waste Management Program: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to incorporate by reference the Oklahoma Department of Environmental Quality's (ODEQ) hazardous waste program under the for Resource Conservation and recovery Act (Cluster V) and to approve the revisions to that program submitted by the State of Oklahoma. In the ''Rules and Regulations'' section of this **Federal Register** (FR), the EPA is approving the State's request as immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to the immediate final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before September 27, 1999.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444.; or the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, phone number (405) 702–7180.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register.**

Dated: June 24, 1999.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 99–21937 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6427–6]

National Oil and Hazardous, Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Neal's Dump Superfund site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Neal's Dump Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all responses under CERCLA have been implemented by the responsible party and U.S. EPA, in consultation with the State of Indiana, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before September 27, 1999.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information

repository located at: The Monroe County Public Library, 303 E. Kirkwood, Bloomington, IN 47408 or The Monroe County Public Library-Elletsville Branch, 600 West Temperance, Ellettsville, IN. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Thomas Alcamo at (312) 886–7278 (SR–6J), Remedial Project Manager or Gladys Beard Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Derrick Kimbrough (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9749.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Neal's Dump Site from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time Critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Neal's Dump site is approximately one-half acre in size and is located in southeast Owen County, Indiana. The site was owned by Ray Neal between 1967 and 1971, and closed in 1971. Richard Neal, son of Ray Neal, was the transporter to Neal's Dump of capacitors filled with polychlorinated biphenyl (PCB) containing oil, PCB oil stained rags and PCB contaminated sawdust from the former Westinghouse facility on Curry Pike in Bloomington, Indiana. The site is currently owned by Betty White. In November 1980, the U.S. EPA inspected the site and discovered exposed capacitors, some which were leaking oil. Soil samples showed PCBs as high as 188,000 parts per million.

In May 1982, the U.S. EPA's Field Investigation Team collected 6 soil samples on the Neal's Dump site and discovered PCB levels ranging from 0.41 ppm to 19,000 ppm. In addition, in June 1982, a magnetometer survey to determine the site boundaries along with the installation of 4 monitoring wells were completed. By September 1982, a monitoring well program was implemented and a residential survey as to well water usage was also completed. Based upon the data collected at the site, Neal's Dump was estimated to contain 14,000 cubic yards of contaminated material. The site was listed on the National Priorities List (NPL) on June 10, 1986.

In December 1983, CBS Corporation implemented a removal action which included the following:

- Removal of 46 exposed capacitors, capacitor paper and some soils in close proximity of the exposed capacitors. Approximately 60 capacitors were reburied at two locations within the dump.
- Seeding of disturbed areas so that a full coverage of vegetative growth as established and maintained.
- Implementation of erosion control measures including erosion control fences.
- Placement of a chain-link security fence around the site to restrict access and posting of warning signs.

On January 4, 1983, the United States filed a civil action against Westinghouse, now known as CBS, pursuant to section 7003 of the Resource Conservation and Recovery Act (RCRA) and sections 104, 106, and 107 of CERCLA, alleging an imminent and substantial endangerment to human health or the environment due to improper disposal of Polychlorinated Biphenyl (PCBs) at two sites in the Bloomington area. During the fall of 1983, CBS expressed its interest in negotiating a settlement of that suit as well as a civil action filed by the City of Bloomington for improper PCB disposal at two of the sites owned by the City. After negotiations among CBS,

U.S. EPA, the City of Bloomington, Monroe County, and the Indiana State Board of Health, (hereinafter collectively referred to as the ''Parties'') a Consent Decree was signed in 1985 and subsequently entered by the court on August 22, 1985, for the cleanup of Neal's Dump. The Consent Decree called for the construction of a permitted, Toxic Substances Control Act municipal (TSCA) approved, solid waste fired incinerator to be used to destroy PCB contaminated material excavated from Neal's Dump.

In 1994, the parties agreed to jointly explore, alternatives to the incineration remedy required by the Consent Decree. In November 1997, Federal Judge Hugh Dillin issued a judicial order stating that the six Consent Decree sites must be remediated by December 1999 and assigned Magistrate Judge Kennard Foster to oversee the progress of the parties toward meeting the December 1999 deadline. On February 1, 1999, Judge Dillin issued an order directing that the Consent Decree parties have until December 31, 1999 to complete the source control remedies for the Consent Decree sites.

After discussions with governmental parties, and under court supervision, the U.S. EPA issued a Proposed Plan for the Neal's Dump site on August 23, 1998. After addressing public comments, on October 16, 1998 the U.S. EPA signed a Record of Decision (ROD) Amendment for the Neal's Dump site. The ROD Amendment modified the August 3, 1984, Enforcement Decision Document (EDD). The ROD Amendment called for the following:

- Excavation of the site soils to residential/high occupancy PCB cleanup standards with disposal of the soils in a off-site, permitted Toxic Substances Control Act/chemical waste landfill.
- Off-site incineration in a permitted, TSCA approved, incinerator of all capacitors containing PCB oil.
- Placement of a minimum of a 10-inch soil cover over the excavated areas and implementation of drainage controls, including providing a vegetative cover.
- Implementation of deed restrictions for the site.
- Monitoring groundwater surrounding the site for a minimum of five years.

Remedial Construction Activities

CBS began excavating PCB contaminated soil/material on September 29, 1998, after approval by the governmental parties of the RD/RA Work Plan. A total of 7,250 tons of PCB contaminated material was disposed of at Wayne Disposal in Belleville, Michigan. In addition, 2,430 capacitors, which weighed approximately 250,000 pounds and filled with PCB oil were incinerated at ChemWaste in Port Arthur, Texas. The U.S. EPA, the State of Indiana, and Monroe County performed oversight of the CBS activities at the Neal's Dump site.

As described in the ROD Amendment, CBS was required to meet a 10 ppm PCB average concentration in the soils. Excavated areas were then covered with a 10-inch soil cover. CBS completed a magnetometry study along with soil borings for PCB analysis around the dump to verify the site boundaries. Verification sampling by CBS after the excavation was completed showed that residual PCBs was well under the cleanup standard, at 0.8 ppm on average. The U.S. EPA split 20 verification samples for PCBs with CBS and the results were similar to CBS's sampling. In addition, the U.S. EPA analyzed for volatiles, semi-volatiles and metals in 7 samples and the results showed no additional risk. To assure that fill and final soil cover was free of contamination, CBS completed sampling of the two borrow areas for PCBs and pesticides.

CBS completed construction of the site on November 17, 1998, excluding final placement of topsoil, and the U.S. EPA completed the pre-final inspection on November 20, 1998. CBS Corporation completed the final site grading and seeding and the final inspection was completed on June 8, 1999. CBS has also filed deed restrictions with Owen County.

CBS has developed a groundwater monitoring plan to conduct groundwater monitoring until the Five-Year Review is completed. Groundwater monitoring in the proposed monitoring wells have shown low levels of PCBs, but under the maximum contaminant level (MCL) for PCBs. By completely removing the source material, the U.S. EPA expects no additional action for groundwater. At the Five-Year review, the U.S. EPA will make a determination if the groundwater monitoring will continue.

Community Relations Activities

The Consent Decree sites in and near Bloomington, Indiana, have been the object of considerable public interest. The Region's community relations staff conducted an active campaign to ensure that the residents were well-informed about the activities at the Neal's Dump site. Activities included meeting every 4 to 6 weeks with the Citizens Information Committee to discuss the Consent Decree sites, including Neal's Dump. These meetings are broadcast over the local cable television station.

Conclusion

No hazardous substances remain at the site above health based levels. Historical groundwater monitoring has shown PCBs to be present and CBS Corporation is required to monitor groundwater semi-annually until the Five-Year review. At the Five-Year review, the U.S. EPA will determine if groundwater monitoring will continue.

U.S. EPA, with concurrence from the State of Indiana has determined that all appropriate Fund-financed responses under CERCLA at the Neal's Dump Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: August 17, 1999.

Francis X. Lyons,

Regional Administrator, Region V.

[FR Doc. 99–21939 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080999E]

RIN 0648–AM15

Fisheries of the South Atlantic; Pelagic *Sargassum* Habitat in the South Atlantic; Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan for the pelagic *Sargassum* habitat of the South Atlantic Region; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted a Fishery Management Plan for the Pelagic *Sargassum* Habitat Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. The FMP would establish the management unit for *Sargassum*; specify optimum yield (OY) for pelagic *Sargassum* as zero harvest; specify overfishing levels as occurring when the fishing mortality rate is greater than zero; identify essential fish habitat (EFH) for *Sargassum*; establish habitat areas of

particular concern (HAPC) for Sargassum; and phase out the harvest or possession of pelagic *Sargassum* in or from the exclusive economic zone off the southern Atlantic states starting January 1, 2001, or when 50,000 lb (22,680 kg) wet weight is harvested, whichever occurs first.

DATES: Written comments must be received on or before October 25, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a Final Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Phone: 843–571–4366; fax: 843–769–4520; e-mail: safmc@noaa.gov. Additional information may be obtained from the Council's website at http://www.safmc.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Regional Fishery Management Councils to submit any proposed fishery management plan or plan amendment to NMFS for review, approval, and implementation. The Magnuson-Stevens Act also requires that NMFS, upon receiving such plan or plan amendment, immediately publish a document in the **Federal Register** stating that the plan or plan amendment is available for public review and comment.

The FMP addresses conservation and management of pelagic *Sargassum* off the U.S. Atlantic coast from the North Carolina/Virginia border through the east coast of Florida, including the Atlantic side of the Florida Keys.

Need for Management

Pelagic *Sargassum* is an abundant brown algae that occurs near the surface in warm waters of the western North Atlantic that supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, five species of sea turtles, and numerous marine birds. The Council has designated pelagic *Sargassum* as EFH and as an HAPC for snapper-grouper species and coastal migratory pelagic species.

The FMP indicates that the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 4 to 11 million metric tons (roughly 9 to 24 billion lb). One company has harvested a total of 448,000 lb (203,213 kg) of pelagic *Sargassum* off the southern Atlantic states from 1976 to the present. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize, to the extent practicable, adverse effects on EFH caused by fishing. Even though there is no indication that the harvest, to date, has had an adverse impact on *Sargassum* EFH, the Council concluded that any removal of pelagic *Sargassum* constitutes a net loss of EFH off the southern Atlantic states, and thus is contradictory to the goals and objectives of the Council's Comprehensive Habitat Plan for the South Atlantic Region.

Data are insufficient to calculate a maximum sustainable yield (MSY) for pelagic *Sargassum*, and the Council chose not to specify an MSY in the FMP. Nevertheless, section 303(a)(3) of the Magnuson-Stevens Act requires that a fishery management plan ''assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification.'' MSY is a necessary fundamental FMP component, upon which such other FMP measures as an MSY control rule, as specified in NMFS guidelines (see 50 CFR 600.310), would depend.

With the inability to estimate MSY for pelagic *Sargassum* with any certainty and to meet other provisions of the Magnuson-Stevens Act concerning the requirements of an FMP, the Council may wish to pursue alternative management actions that would achieve its goals to conserve and maintain sustainable pelagic *Sargassum* habitat. Therefore, NMFS invites comments specifically on this aspect of the FMP and the propriety of control rule measures such as an OY specification of zero in the absence of any specification of MSY.

Endangered and Threatened Species Issues

In compliance with requirements of the Endangered Species Act, NMFS evaluated the impact of harvesting *Sargassum* on endangered or threatened species. That consultation concluded that continued harvest of pelagic *Sargassum* until January 1, 2001, or until the 50,000 lb (22,680 kg) wet weight cap is reached, is not likely to jeopardize the continued existence of any listed species under NMFS purview, although the loggerhead, green, leatherback, Kemp's ridley, and hawksbill sea turtles are likely to be adversely affected by the action. As part of the consultation, NMFS developed an incidental take statement that included reasonable and prudent measures necessary to minimize the impacts of the takings.

NMFS will consider comments received by October 25, 1999 in its decision to approve, disapprove, or partially approve the FMP. NMFS will not consider comments received after that date in this decision; NMFS will address all comments received on the FMP in the preamble of the final rule.

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

Dated: August 20, 1999.

Gary C. Matlock,

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

[FR Doc. 99–22215 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 165

Thursday, August 26, 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

Animal and Plant Health Inspection Service

[Docket No. 99–066–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD. Sessions will be held from 8 a.m. to 5 p.m. on September 14–15, 1999, and from 8 a.m. to 12 noon on September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may also file written comments at the time of the meeting. Please refer to Docket No. 99–066–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 19th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22222 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on September 9–10, 1999, in Yreka, California. On Thursday, September 9, the meeting will be at the Miner's Inn Convention Center, 122 E. Miner Street, starting at 9:00 a.m. and will adjourn at 5:00 p.m. On Friday, September 10, the meeting will start at 8:00 a.m. and adjourn at 1:00 p.m. Agenda items for the meeting include: (1) Socio-economic Panel Discussion; (2) Total Maximum Daily Load Letter Proposal; (3) 12–PAC/IAC Joint Meeting Update; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: August 13, 1999.

Nancy J. Gibson,

Acting Forest Supervisor.

[FR Doc. 99–22172 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 25, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1789, Use of Consultants Funded by Borrowers.

OMB Control Number: 0572–0115.

Type of Request: Extension of a previously approved collection.

Abstract: On November 1, 1993, Public Law 103–129 amended section 18 of the RE Act to provide a mechanism for expediting RUS reviews. As amended, section 18(c) authorized RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. Consultants may be used to facilitate timely action on loan applications by borrowers for financial assistance and for approvals required by RUS, pursuant to the terms of outstanding loans, or otherwise. RUS may not require borrowers to fund consultants. The provisions of section 18(c) may be utilized only at the borrower's request.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 2 hours per response.

Respondents: Small cooperatives or similar organizations.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 12 hours.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

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: August 19, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–22244 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe From Korea: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Administrative Review.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3782 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351, (1999).

Background

On December 30, 1998, the Department of Commerce (the Department) received a request from Avesta Sheffield Pipe Co., Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as ''the domestic industry,'' for administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe from Korea. On January 25, 1999, the Department published its initiation of this administrative review covering the period of December 1, 1997 through November 30, 1998 (64 FR 3682).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Administrative Review of Certain Welded ASTM A–312 Stainless Steel Pipe from Korea*, dated August 17, 1999, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to December 13, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 17, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–22196 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands

[A–421–701]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Brass Sheet and Strip from the Netherlands.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on brass sheet and strip from the Netherlands (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of a dumping.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Imports covered by this order are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under order is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C20000 series. This order does not cover products the chemical composition of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse-wound), and cut-to-length products are included. The merchandise subject to this order is currently classifiable under items numbers 7409.21.00 and 7409.29.20 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 subject to this order is dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from the Netherlands was published in the **Federal Register** on August 12, 1988 (53 FR 30455).[1] In that order, the Department announced estimated weighted-average dumping margins of 16.99 percent for the Metallverken Nederland B.V. and all-others.[2]

The Department has conducted several administrative reviews since that time.[3] The order remains in effect for all producers and exporters of brass sheet and strip from the Netherlands.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from the Netherlands (64 FR 4840) pursuant to section 751(c)(6)(A)(i) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. (''Heyco''), Hussey Copper Ltd. (''Hussey''), Olin Corporation-Brass Group (''Olin''), Outokumpu American Brass (''American Brass''), PMX Industries, Inc. (''PMX''), Wieland Metals, Inc. (''Wieland''), Revere Copper Products, Inc. (''Revere''), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL-CIO/CLC) (collectively referred to as ''domestic interested parties''), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

In their Notice of Intent to Participate, the domestic interested parties acknowledge that American Brass is related to Outokumpu Copper Strip, B.V. (''OBV''),[4] a Netherlands producer/exporter of the subject merchandise and respondent interested party in this proceeding; PMX is related to Poongsan Corp., a Korean producer of the domestic like products; and Wieland is related to Wieland Werke Metallwerke AG,[5] a German producer and exporter of the domestic like products. Moreover, American Brass, PMX, and Wieland stipulate that they have had experience of importing the subject merchandise and/or the domestic like products.

We received a complete substantive response to the notice of initiation from the domestic interested parties on March 3, 1999. In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic party also notes that American Brass was formerly known as American Brass Company.[6]

The Department received a complete substantive response on behalf of OBV on March 4, 1999. In its substantive response, OBV, a Dutch producer of the subject merchandise, indicates that it was the respondent in the original investigation and a participant in several administrative reviews of the order. *See* March 4, 1999, Substantive Response of OBV at 1. Also, OBV states that American Brass belongs to the same parent company to which OBV belongs. *Id.* OBV further notes that it is the sole producer of the subject merchandise in the Netherlands; therefore, OBV's exports account for 100 percent of the subject merchandise imported to the United States.[7] *Id.* at 9. We received rebuttal responses on behalf of both the domestic interested parties and OBV on March 12, 1999.[8]

Using the Department's Trade Statistics, the United States Census Bureau's IM146s, and the information provided by OBV concerning its exports of the subject merchandise to the United States, the Department determined that OBV accounted for significantly more than 50 percent of the total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review; hence, respondent interested parties provided an adequate response.[9] Since OBV provided an adequate response to the notice of initiation, the Department determined to

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip From the Netherlands*, 53 FR 30455 (August 12, 1988).

[2] In the original investigation, Outokumpu Copper Strip, B.V. (''OBV'') was doing business under the name Metallverken Nederland B.V., *see*, March 4, 1999, Substantive Response of OBV at 5 (footnote 4); also, March 3, 1999, Substantive Response of the domestic interested parties at 24.

[3] *See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews* (Corrections), 57 FR 11352 (April 2, 1992); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Administrative Reviews*, 57 FR 9534 (March 19, 1992) (this review consolidated first and second reviews); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324 (January 19, 1996); *Brass Sheet and Strip From the Netherlands; Amendment to Final Results of Antidumping Duty Administrative Review*, 62 FR 33395 (June 19, 1997); *Brass Sheet and Strip From The Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, (January 19, 1996); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 62 FR 51449 (October 1, 1997); and *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 63 FR 49544 (September 16, 1998).

[4] American Brass, indicated that it does not support continuation of this antidumping duty order against OBV, *see* March 3, 1999 Substantive Response of the domestic interested parties, at page 3, footnote 1; also, *see* American Brass's February 26, 1999 letter in Exhibit 8 of OBV' March 4, 1999 substantive response. Also, American Brass subsequently disassociated itself from the Rebuttal of the domestic interested parties, *see* the domestic interested parties' rebuttal at 2, footnote 1. Consequently, the Department excluded American Brass from the domestic interested parties in the instant review.

[5] Wieland subsequently withdrew its name from the domestic interested parties claiming it no longer supports continuation of the antidumping order, *see* March 1, 1999 letter from Counsel to the domestic interested parties.

[6] In 1990, OBV's parent company, Outokumpu Oyj, purchased American Brass Company (hereinafter referred to as ''the acquisition'') and renamed the latter as Outokumpu American Brass (''American Brass''), *see* OBV's March 4, 1999 substantive response at 11 & Exhibit 7 thereof.

[7] OBV also provides the Department with affidavits from the Ministry of Economic Affairs of the Government of the Netherlands and the Dutch Federation of the Non-Ferrous Industries, certifying that OBV is the sole producer of the subject merchandise, *see* Exhibits 6A & 6B in March 4, 1999, Substantive Response of OBV.

[8] On March 4, 1999, the domestic interested parties requested a four (4) day extension of the deadline for filing rebuttal comments to the substantive responses. The Department extended the deadline until March 12, 1999 for all participants who are eligible to file rebuttal comments.

[9] As noted earlier, OBV is the only producer of brass sheet and strip from the Netherlands, *see* footnote 7.

conduct a full (240 day) sunset review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.[10]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995, *see* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from the Netherlands is extraordinarily complicated. Therefore, on May 28, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[11]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

The domestic interested parties, in their substantive response of March 3, 1999, at 32, argue that dumping of brass sheet and strip by OBV will continue if the order is revoked. To support their argument, the domestic interested parties point to decreased import volumes of the subject merchandise after the issuance of the order, *id.* at 43–44. Although they acknowledge that OBV's average dumping margins have had a downward trend and are currently at zero, the domestic interested parties, nonetheless, insist that OBV achieved lower weighted-average dumping margins primarily by drastically reducing import volumes of the subject merchandise after the issuance of the order, *id.* To illustrate their contention, first, the domestic interested parties put forth import data pertaining to the period before and the period after the issuance of the order. The domestic interested parties compare a three year (1984–1986) average of import volumes prior to the issuance of the order with a three year (1989–1991) average subsequent to the order: 15.1 million pounds versus 7.8 million pounds—a 48.3 percent decrease, *id.*

Next, the domestic interested parties indicate that, with respect to imports of brass sheet and strip from the Netherlands, between 1992 and 1998, imports of the subject merchandise never exceeded 552,000 pounds. This volume, the domestic interested parties note, is less than four percent of the average volume in the pre-petition period, *id.*

Therefore, the domestic interested parties conclude that the Department must determine that OBV is incapable of selling commercially significant quantities of the subject merchandise in the U.S. without resuming the practice of dumping. In other words, to the domestic interested parties, revocation of the current order would result in resumed dumping and major increases in import volumes of the subject merchandise, *id.*

OBV, in its Substantive Response of March 4, 1999, at 1 and 12–14, argues that if the order were revoked, OBV is not likely to resume dumping. OBV also states that mere existence of the order and past margins, in and of themselves, should not be justifications for the maintenance of the order; instead, the Department should consider all other relevant information and arguments that OBV put forth in its substantive response, *id.*

Although OBV points out that the Department has found zero average-dumping margins for OBV in the two most recent administrative reviews, *id.* at 17,[12] OBV's primary contention lies with its notion that the comparison of pre- and post-order volumes is a meaningless way to determine whether dumping of the subject merchandise would recur. While not denying its export volumes of the subject merchandise to the U.S. have declined since the issuance of the order, OBV goes one step further by asserting that the volume comparison is not a valid measure and carries no probative value in determining OBV's ability to continue to export without dumping, insofar as OBV poses unique circumstances, *id.* at 14–17.

As to why its situation is unique, OBV claims that it does not have to dump to preserve its position in the United States market because it has a sister company, American Brass, as a U.S. domestic producer, *see* OBV's substantive response at 15.[13] In other words, OBV argues that it no longer has to dump the subject merchandise in order to maintain or preserve market share in the United States, for its sister company American Brass, alone, is adequate in producing and in selling the subject merchandise in the United States. Put differently, OBV argues that, via its sister company, OBV can maintain its market share in the U.S. while exporting significantly smaller quantities than before the imposition of the order, *id.* at 17. Consequently, in a situation like this, OBV avers, the fact that imports of subject merchandise have significantly declined carries no probative value with respect to OBV's ability to continue to export the subject merchandise without dumping.

OBV goes on to point out that it is not even permitted to compete with American Brass in the U.S. market because OBV and American Brass are sister companies, thereby precluding OBV from competing with any other domestic producers and eliminating the possibility that OBV would even consider dumping its products in the U.S. market.[14] Consequently, OBV states, since the acquisition, it only played and will continue to play, a

[10] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a full sunset review, in which the domestic party concurred with the Department's decision, *see* May 12, 1999 the domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[11] *See Brass Sheet and Strip From Canada, Brass Sheet and Strip From the Netherlands, Porcelain-on-Steel Cooking Ware From Mexico, Porcelain-on-Steel Cooking Ware From Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews*, 64 FR 28983 (May 28, 1999).

[12] *See* footnote 3, supra.

[13] *See* footnote 6, supra. Also, according to OBV, American Brass is the largest mill (almost four-times larger than OBV in terms of production capacity) in the world for rolled copper and copper alloy (*i.e.*, brass) products, *see* substantive response of OBV at 20.

[14] OBV currently exports only a specific type of brass strip (radiator strip) in which OBV claims a comparative advantage over American Brass, and which American Brass does not produce in significant quantity, *id.* at 27–28.

relatively minor role as a supplier of brass sheet and strip products in the United States, *id.* at 21–22.[15] According to OBV, it merely wants the order revoked so that it can avoid costs, burdens, legal fees, inherent uncertainties, and management disruptions that are intrinsic to administrative reviews of the order, *id.* at 17.

In support of its assertions, OBV compiles an extensive Economic Experts' Report, which lists various findings: assuming no foreseeable major changes in the U.S. market, due to a significant investment, OBV became world cost leader in radiator strip achieving its objective; regarding radiator strip, OBV faces no competition from U.S. mills; OBV is operating at full capacity while American Brass's production capacity is expanding; the Dutch guilder has been weak against the U.S. dollar, and an appreciation of the former is unlikely; OBV will not export any products besides radiator cap because it does not want to compete with American Brass; and the circumstances surrounding the production and importation of the subject merchandise have changed significantly and permanently since the original investigation, *id.* at 26–29. The upshot of these economic findings is that OBV would not resume dumping if the order is revoked, *id.*

OBV further elaborates that strong and increasing U.S. domestic demand coupled with projected new and technology-induced demand will not permit downward pricing pressure on the subject merchandise in the U.S. market.[16] That is, OBV would not have to sell the subject merchandise at less than normal value, *id.* 29–32. Also, making reference to the effects of currency fluctuations upon the imports of the subject merchandise, OBV explains that, even if the Dutch guilder becomes stronger, such a change would not create an environment in which OBV has to resort to dumping. Finally, OBV points out that it has reached full production capacity (*i.e.*, no excess capacity), that it has well-diversified and well-established world-wide markets,[17] and that it has made a commitment not to dump in the U.S. market, *id.* 34–39.[18]

In conclusion, OBV argues strenuously that the Department's normal policies and procedures for determining likelihood of continuation or recurrence of dumping based on pre- and post-order import volumes and dumping margins are not valid measurements with respect to OBV. OBV urges that a wide range of other information and arguments it has submitted should be taken into account by the Department in making its likelihood determination; that, on the basis of this additional information the Department should find that it is unlikely that OBV will continue to dump the subject merchandise in the United States; and, consequently, that the Department should revoke the antidumping order.

In their rebuttal, the domestic interested parties emphasize that the decline in OBV's weighted-average dumping margin from 16.99 percent to the current rate of 0.00 percent was achieved by one method only—the virtual elimination of its exports to the United States, *see* Rebuttal Response of the domestic interested parties at 18.[20] The domestic interested parties state that OBV's behavior can be best described as one with dual characters: OBV has high dumping margins when it exports large volumes of the subject merchandise to the United States, and has small dumping margins when it exports low volumes, *id.* at 19.

Regarding OBV's argument that the Department to consider various other factors outside of dumping margins and import volumes, the domestic interested parties urge that the Department should not be distracted by OBV's speculative contentions and claims, *id.* at 20. The domestic interested parties claim that the acquisition does not change the fact that, previously, OBV was unable to sell brass sheet and strip without dumping. Furthermore, the evidence (with its zero current dumping margin, OBV is only exporting very small, commercially insignificant volumes) indicates that, currently, OBV cannot sell in the United States without dumping.

While citing the case of Wieland-Werke AG, an exporter of brass sheet and strip from Germany, the domestic interested parties urge the Department to be consistent with the findings of that review.[21] Also, the domestic interested parties argue that OBV's ''Economic Experts Report'' is, in many respects, flawed and that it makes unsupported and incorrect claims, *id.* at 22. In short, the domestic interested parties argue that OBV's characterization of the multinational nature of the automotive industry is completely irrelevant in ascertaining the possibility of price discrimination; that OBV used the wrong period in discerning ''price effects of Dutch imports''; and that OBV's usage of aggregate import data provide no meaningful information with respect to relative product mix of imports of like products from various countries, *id.* at 22–25.

In concluding their rebuttal, the domestic interested parties contend that OBV has not demonstrated why the Department should consider other factors, outside of import volumes and dumping margins, in determining whether continuation or recurrence of dumping of the subject merchandise is likely if the order is revoked. As in their substantive response, the domestic interested parties urge the Department to find that dumping would recur were the order revoked.

OBV, in its rebuttal to the substantive response of the domestic interested parties, restates its positions from its own substantive response: dumping will not recur if the order is revoked because its situation is unique, and import levels do not provide a reliable indicator of the likelihood of OBV's resumption of dumping, *see* OBV's March 12, 1999 Rebuttal to Petitioners' Substantive Response at 1–3.

OBV stresses, again, that its pre- and post-order import volumes of the subject merchandise are not valid measurements and bear absolutely no probative value in the Department's making of likelihood determination because American Brass maintains market share for OBV without OBV having to dump in the United States. In

[15] To this effect, OBV presents a company memo, a letter written by the President of Outokumpu Copper Products Oy in which the President indicated that American Brass should be the sole supplier of brass and strip products in the U.S., *id.* at 25.

[16] OBV strongly believes that a new and better product ''CuproBraze radiator strip,'' which is created to compete with aluminum radiator strip, would further increase demand of brass products in general including the demand for the subject merchandise although CuproBraze itself is not covered by the scope of the order, *see* substantive response of OBV at 30–32.

[17] Over the ten year period (1988–1998) after the issuance of the order, OBV has exported brass strip products to seventy-five countries: exports to the U.S. account for twenty-seven percent of OBV's total exports. Furthermore, over ninety percent of OBV's total shipments to the U.S. during the period of 1996–1998 is non-subject merchandise, *id.* 36–38.

[18] For this last point, OBV stresses that for last two review periods covering 1995–96 and 1996–97, the Department's administrative reviews show OBV's dumping margins were zero. Also, OBV points out that Resolutions Adopted by the Board of Directors of OBV on 18 November 1998 resolve not to violate the U.S. antidumping laws, *see id.* at 38 and Exhibit 23.

[20] To support this, the domestic interested parties utilize proprietary information provided by OBV in its March 3, 1999 substantive response, which seem to indicate that the current rate of zero percent is associated with rather insignificant import volumes of the subject merchandise, compared to those of pre-order volume.

[21] *See Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 61 FR 49727 (September 23, 1996).

addition, OBV argues that, because of the size of American Brass and the large investment that Outokumpu OYJ has made in it, American Brass clearly has virtually exclusive responsibility for the sale of the broad range of brass sheet and strip products required by U.S. customers, *id.* at 2–3. Therefore, OBV implies, there is no need for OBV to resume dumping were the order revoked.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicates that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.)

The order on brass sheet and strip from the Netherlands remains in place for the sole respondent interested party: OBV.[22]

Consistent with section 752(c) of the Act, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. Although dumping of the subject merchandise continued until 1991 at varying and generally declining degrees, we preliminarily determine that OBV did not dump, at any level above *de minimis,* during the periods, 1995–1996 and 1996–1997 (last two administrative review periods).[23]

With respect to import volumes of the subject merchandise, the data supplied by both OBV and the domestic interested parties indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Moreover, data in United States Census Bureau IM146s and import data from the United States International Trade Commission clearly indicate that imports of the subject merchandise have declined over the life of the order: in 1985, import volumes of brass sheet and strip exceeded 20 million pounds; whereas, in 1998 import volumes were well under 1 million pounds. In addition, as noted above, OBV does not negate the statistics which show that OBV's import volumes of the subject merchandise decreased significantly during the life of the order. Therefore, the Department preliminarily determines that import volumes of the subject merchandise decreased significantly after the issuance of the order.

Normally, as per (c) of section II.A.3. of the *Sunset Policy Bulletin* (a situation in which dumping is eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly), the Department would determine that dumping is likely to recur if the order is revoked. Nonetheless, in the instant case, the Department has decided to consider other relevant information and arguments, which OBV provides to the Department in its substantive response.

First and foremost, the Department agrees with OBV's contention that the acquisition of American Brass makes OBV's position in the U.S. market rather unique: OBV no longer has to dump in order to supply in the U.S. market because its much bigger sister company, American Brass, has more than adequate capacity to meet the demand in the U.S. market for the subject merchandise. The fact that immediately after the acquisition, imports of the subject merchandise fell to zero and stayed zero until 1995, also buttresses the above notion that American Brass basically took over OBV's exports of the subject merchandise.

Consequently, OBV's argument that it does not make sense for OBV to jeopardize the economic well being of American Brass by undercutting the prices of the subject merchandise in the U.S. by resuming dumping, is persuasive. This point is especially relevant considering Outokumpu OYJ spent hundreds of millions of dollars in purchasing and investing in American Brass.

In addition, given the facts of this case, we believe that the zero dumping margins calculated in the most recent reviews to be probative: when OBV resumed exporting the subject merchandise to the United States in 1996, it could export without dumping.[24] This is contrary to domestic interested parties' contention that OBV cannot export the subject merchandise without dumping.

Considering all the relevant information and arguments provided by OBV, the Department is convinced that American Brass bears the primary responsibility of satisfying the U.S. customers and that OBV will play a minor role by supplying only radiator strip at a normal price in the U.S. market. Therefore, in conclusion, although import volumes of the subject merchandise declined significantly after the issuance of the order, since the two most recent administrative reviews indicate that dumping of the subject merchandise has been eliminated, and since OBV presents effective ''other relevant information and arguments'' explaining why it is unlikely that OBV would resume dumping in the U.S., the Department preliminarily determines that recurrence of dumping of brass sheet and strip from the Netherlands is not likely if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all-others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

However, since the Department determined that dumping would not be likely to recur, the question of magnitude of margin is moot.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of dumping.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR

[22] *See* footnote 2, supra.

[23] *See* footnote 3, supra, for the list of final determinations of administrative reviews in which the Department found zero weighted-average margins for OBV in respective period of investigation. Also, *see* OBV's substantive response at 7.

[24] *See* footnote 3, for the Department's findings that OBV did not dump during 1995–1996 and 1996–1997.

351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22198 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Preliminary Results of Full Sunset Review: Brass Sheet and Strip From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Brass Sheet and Strip from Canada.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on brass sheet and strip from Canada (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic interested parties and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Preliminary Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Imports covered by this order are shipments of brass sheet and strip, other than leaded or tinned, from Canada. The chemical composition of the subject merchandise is defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000 Series. This order does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this order have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classifiable under item numbers 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule of the United States (''HTS''). The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

On February 28, 1990, the Department determined that Arrowhead Metals Limited (''Arrowhead'') had officially gone out of business and, therefore, would no longer be subject to the order (55 FR 39682, September 28, 1990). On November 8, 1991, the Department revoked the order with regard to Ratcliffs/Severn Limited (''Ratcliffs'') (56 FR 57317, November 8, 1991). Finally, on May 13, 1992, the Department determined that Wolverine Tube, Inc. (''Wolverine'') had acquired the production facilities of Noranda Metals, Inc. (''Noranda'') and, therefore, had become the successor-in-interest to Noranda (57 FR 20460, May 13, 1992). Only Arrowhead and Noranda were involved in the original investigation. Due to the revocations of the order for Arrowhead and Ratcliffs, Wolverine is currently the only company subject to the order.

History of the Order

The antidumping duty order on brass sheet and strip from Canada was published in the **Federal Register** on January 12, 1987 (52 FR 1217). During the original investigation, the Department calculated a dumping margin of 2.51 percent for Arrowhead and 11.54 percent for Noranda. The Department also established an all others rate of 8.10 percent.

Since that time the Department has conducted eight administrative reviews of this order.[6] On May 13, 1992, the Department determined that Wolverine was the successor-in-interest to Noranda (57 FR 20460). As discussed in the section above, the only known producer/exporter currently subject to the order is Wolverine. The Department notes that, to date, there have been no duty absorption findings in this proceeding.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from Canada (64 FR 4840) pursuant to section 751(c) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate on behalf of the Heyco Metals, Inc., Hussey Copper Ltd., Olin Corporation-Brass Group, Outokumpu American Brass, PMX Industries, Inc., Revere Copper Products, Inc., the International Association of Machinists and Aerospace Workers, the United Auto

[6] *See Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 55 FR 31414 (August 2, 1990); *Brass Sheet and Strip from Canada; Final Results and Revocation, in Part, of Antidumping Duty Administrative Review,* 56 FR 57317 (November 8, 1991); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (''*1990 Review Final*''); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 60 FR 49582 (September 26, 1995); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 61 FR 46618 (September 4, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 62 FR 16759 (April 8, 1997); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 63 FR 33037 (January 17, 1998); and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part;* issued on August 9, 1999, the expected date of publication in the **Federal Register** is August 24, 1999.

Workers, and the United Steelworkers of America (AFL–CIO/CLC) (collectively, ''the domestic interested parties''), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States. We received a complete substantive response to the notice of initiation from the domestic interested parties on March 3, 1999. We received a complete substantive response on behalf of Wolverine on March 4, 1999. In its substantive response, Wolverine, a Canadian producer of brass sheet and strip, claimed interested party status under section 771(9)(A) of the Act. We received rebuttal responses on behalf of both the domestic interested parties and Wolverine on March 12, 1999.

Using the Department's trade statistics, the United States Census Bureau's IM146 Reports, and the information provided by Wolverine concerning its exports to the United States, and the fact that Wolverine is the only company still subject to the order, the Department determined that Wolverine accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review. Therefore, the Department determined that respondent interested parties provided an adequate response to the notice of initiation, and the Department determined to conduct a full (240 day) sunset review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations.*

The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from Canada is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 21, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[1] The Department, therefore, intends to issue the final results of this review not later than December 28, 1999.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

In its substantive response, the domestic interested parties state that it is highly likely that dumping would continue if the order were revoked. (*See* Substantive Response of the Domestic Interested Parties of March 3, 1999 at 31.) The domestic interested parties recognize that, currently, only Wolverine is subject to the order.

With respect to whether imports of the subject merchandise have either fallen dramatically or ceased following imposition of the antidumping duty order, the domestic interested parties argue that imports of the subject merchandise from Canada declined significantly. To illustrate this, the domestic interested parties state that from 1983 to 1985, the three years before imposition of the order, Canadian imports of brass sheet and strip averaged 10.2 million pounds. However, in 1987, the year immediately after the imposition of the order, Canadian imports fell to 6.8 million pounds and only averaged approximately 7 million pounds for the period from 1987 to 1989. (*See* Substantive Response of the Domestic Interested Parties at 35–36.)

Additionally, the domestic interested parties argue that the increase in the dumping margins for Arrowhead and Noranda in 1990 caused imports to fall from roughly 6 million pounds in 1989 to below 2 million pounds in 1990. The domestic interested parties also argue that the only reason for the later reduction in Wolverine's margins (to *de minimis* levels) was due to the fact that it was only selling modest volumes of subject brass sheet and strip in the United States. (*See* Substantive Response of the Domestic Interested Parties of March 3, 1999 at 36.) Finally, the domestic industry claims that imports of brass sheet and strip from Canada have risen by 11 million pounds in 1998 and that they believe Wolverine resumed significant volumes and dumping of exports of the subject merchandise to the United States in the belief that revocation would occur in mid-1998.

In conclusion, the domestic interested parties argue that the behavior of Canadian producers and exporters, specifically Wolverine, indicates that commercially significant volumes of brass sheet and strip cannot be sold in the United States without dumping.

Wolverine, in its substantive response of March 4, 1999, argues that it is in a very unique position, as compared to other companies in other sunset reviews of antidumping duty orders. The reason for this is that, according to the company, the Department has found a *de minimis* dumping margin for Wolverine in the preliminary and final results of each administrative review conducted by the Department since the 1993.[2] Furthermore, Wolverine argues that, were it not for the Department's error in the final results of the 1996 administrative review which resulted in a dumping margin in excess of *de minimis,* the Department likely would have revoked the order with respect to Wolverine in the final results. Between the preliminary results of the 1996 administrative review, in which the

[1] *See Brass Sheet and Strip From Canada, Brass Sheet and Strip From the Netherlands, Porcelain-on-Steel Cooking Ware From Mexico, Porcelain-on-Steel Cooking Ware From Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews,* 64 FR 28983 (May 28, 1999).

[2] *See Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 1560 (January 22, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 61 FR 46618 (September 4, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 62 FR 16759 (April 8, 1997); *Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 6039 (February 8, 1999). In April 1999, the Department granted Wolverine's request to terminate the 1993 administrative review (63 FR 23269). In the final results of the 1996 administrative review, the Department calculated an above *de minimis* margin for Wolverine. However, the final results of the 1996 administrative review are currently being reviewed by a NAFTA Dispute Resolution Panel.

Department preliminarily determined to revoke the order with respect to Wolverine, and the final results of that review, the Department collected no additional information that would cause the preliminary results to change and, therefore, according to Wolverine, the order should have been revoked.

Furthermore, Wolverine provided, in the course of this sunset review, additional information in support of its proposition that dumping is unlikely to resume if Wolverine were revoked from the order. Wolverine asserts that it services small customers that require small quantities of a variety of products and that its ''market niche'' in North America appears to be largely saturated. Wolverine argues that its production capacity is limited and that it has no excess capacity to use to manufacture additional subject merchandise for export to the United States. In addition, Wolverine contends that its budgeting and marketing processes are focused on the development of non-subject merchandise and increasing Canadian sales. Lastly, Wolverine asserts that its sales process incorporates monitoring to ensure against future dumping.

In rebuttal, the domestic interested parties argue that Wolverine has shipped very small volumes of subject merchandise to the United States over the past several years and that these volumes are far below the total volume of imports of subject merchandise from Canada around the time of the imposition of the order. The domestic interested parties further argue that the Department's preliminary determination in the 1996 administrative review should not be relied upon in making sunset determinations. Furthermore, the domestic interested parties argue that the 0.67 percent dumping margin found in the 1996 administrative review should stand, despite the Department's admission of error in the calculation of Wolverine's dumping margin.

In summation, the domestic interested parties argue that the Department should conclude that revocation of the Canadian antidumping duty order would likely lead to continuation or recurrence of dumping. The domestic interested parties assert that both Noranda and Wolverine persisted in dumping at increased rates for several years after the order entered into force and Wolverine has managed to obtain *de minimis* or zero dumping margins only in periods when it has had U.S. sales volumes so low as to not be in commercial quantities. Because of this, the domestic interested parties argue that the Department should find a likelihood of continuation or recurrence of dumping.

In its rebuttal comments, Wolverine argue that it has sold and continues to sell commercially meaningful and increasing volumes of subject merchandise in the United States without dumping. Wolverines further argues that the Department has determined, in previous administrative reviews, that Wolverine's sales in the United States are of commercially meaningful volumes. Wolverine also asserts that 13-year old dumping margins from the investigation in this proceeding are logically, factually, and legally irrelevant. Wolverine asserts that prior to its acquisition of Noranda's Fergus facility in 1988, it (Wolverine) had no legal or managerial responsibility for the Fergus plant. Thus, Noranda's pricing policies and costs of production, presumably reflected in the Department's calculation of Noranda's dumping margin in the investigation, have no relevance to Wolverine's dumping margins or the Department's sunset determination, with respect to likelihood of continuation or recurrence of dumping.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

On August 9, 1999, the Department issued its final results of the 1997 administrative review.[3] In that determination, the Department found an above *de minimis* dumping margin of 0.71 percent for Wolverine. As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

With respect to whether imports of the subject merchandise ceased following the imposition of the order, the Department has reviewed the U.S. Census Bureau IM146 Reports, the final results and publicly ranged import volumes from previous administrative reviews, and participants' submissions in this sunset review. Based on these sources, we find that imports of subject merchandise have existed throughout the life of the order, and continue to exist.[4] However, an examination of this information demonstrates a significant decrease in the import volumes of subject merchandise during the periods in which the Department calculated *de minimis* dumping margins for Wolverine compared with the periods in which Wolverine had significant dumping margins. The Department finds that such a situation may indicate that Wolverine was only able to eliminate dumping by significantly reducing its exports of subject merchandise to the United States (*see* Memo to File, Re: Import Volumes of Brass Sheet and Strip from Canada, dated August 19, 1999).

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence

[3] This determination was issued on August 9, 1999, however, it has not yet been published. The expected date of publication in the **Federal Register** is August 24, 1999.

[4] The Department notes, as stated in *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992), that there were no imports of subject merchandise from Noranda/Wolverine during calendar year 1990.

of dumping. A deposit rate above a *de minimis* level continues in effect for imports of the subject merchandise from the only known Canadian producer/exporter. Therefore, given that dumping has continued during the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

Because the Department is basing its likelihood determination on the continued existence of above *de minimis* dumping margins and continued imports of the subject merchandise, it is not necessary to address parties comments concerning the reduction in import volumes of the subject merchandise over the life of the order, the *de minimis* dumping margins found by the Department in previous administrative reviews, Wolverine's budgeting and marketing process, its market demographics, or its sales monitoring program.

Magnitude of the Margin

Parties' Comments

In its substantive and rebuttal responses, the domestic interested parties assert that a dumping margin of 25.49 percent, from the 1992 administrative review, is likely to prevail if the order were to be revoked because it was calculated based upon the Department's first analysis of Wolverine's data after Wolverine had taken over Noranda's Fergus facility and because it is the highest margin calculated by the Department for Wolverine. The domestic interested parties argue that in the three year period before the filing of the petition (1983–1985), imports of brass sheet and strip from Canada averaged 10.2 million pounds annually. However, in the first full year following the imposition of the order (1987), imports from Canada fell to 6.8 million pounds. Since 1990, import volumes of the subject merchandise have remained below 2 million pounds. The domestic interested parties further argue that the *de minimis* margins obtained by Wolverine for the calendar years 1995, 1996, and 1997, have only been achieved through a substantial reduction in its exports of the subject merchandise.

The domestic interested parties claim, however, that in 1998, imports of brass sheet and strip surged by 11 million pounds. It asserts that Wolverine resumed significant volumes and dumping of exports of the subject merchandise to the United States in the belief that revocation would occur in mid-1998. Based on these factors, the domestic interested parties assert that this apparent pattern of behavior by Wolverine is indicative of the fact that Wolverine cannot sell any commercially meaningful volumes of the subject merchandise in the United States without dumping and, therefore, the report of a *de minimis* margin to the Commission would be inappropriate.

Wolverine, in its substantive and rebuttal responses, argues that the dumping margin likely to prevail if the order were to be revoked is zero. Wolverine asserts that it has demonstrated this to the Department in four consecutive administrative reviews. Further, they argue that the dumping margin established for Wolverine in the 1994 administrative review was based on the best information available and is in no way relevant to the dumping margin likely to prevail if the order were to be revoked. In addition, the 21.32 percent dumping margin calculated for Noranda and subsequently assigned to Wolverine in the 1990 administrative review also is inappropriate. Wolverine argues that Noranda's pricing policies and costs of production, presumably reflected in the Department's calculation of Noranda's dumping margin in the original investigation and subsequent two administrative reviews, have no relevance to Wolverine's dumping margins because Wolverine had no affiliation with Noranda at the time the 21.32 percent dumping margin was calculated.

Department's Determination

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two producers/exporters of brass sheet and strip from Canada (51 FR 44319, December 9, 1986). The Department also published an ''all others'' rate in this determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

The Department disagrees with the domestic interested parties, in part, concerning the dumping margin likely to prevail if the order were to be revoked. The domestic interested parties' argument, that the Department should use the 25.49 percent dumping margin from the 1992 administrative review because it is the first dumping margin calculated after the Department made a successor-in-interest determination (and is the highest dumping margin ever calculated in the proceeding) is inconsistent with the Department's ''successorship'' finding.

In the 1990 administrative review, the Department examined Wolverine's purchase of Noranda in order to make its ''successorship'' determination. *See 1990 Review Final*, 57 FR at 20461. At issue in ''successorship'' cases is the appropriate rate to be assigned to entities affected by, for example, an acquisition of all or part of another company's assets, a transfer of another company's corporate control, or some other change which raises the questions of the company's status in the proceeding. In determining the appropriate rate, the Department examines the totality of circumstances. In the *1990 Review Final*, therefore, after considering all of the information on the record, the Department determined that Wolverine should receive the same cash deposit rate as Noranda because Wolverine was essentially the same business operation as Noranda. Specifically, the Department found that production facilities, essential personnel, customers, and management were transferred from Noranda to Wolverine without interruption. *Id.* Because the Department has previously determined that, at the time of the purchase of Noranda by Wolverine, there was no change in the business operations of the company, the domestic interested parties' argument that there is a distinction between Wolverine and Noranda for the purposes of dumping margin calculations provides insufficient reason for the Department to choose the ''first'' rate calculated for Wolverine as the dumping margin likely to prevail if the order were to be revoked.

With respect to the decreases in import volumes during the life of the order, the Department disagrees with the domestic industry's interpretation and evaluation. After an examination of the record in this proceeding as well as the submissions from the participants in this sunset review, the Department found that Wolverine is currently the only Canadian producer and/or exporter of the subject merchandise. Therefore, the Department finds that it would be

unreasonable to compare the present import volumes of Wolverine with the pre-order import volumes of two (or more) producers/exporters who were subject to the order in 1987. If this comparison were made, the Department would almost certainly find that total imports had decreased over the life of the order because there are fewer producers/exporters who are currently subject to the order. Because of this, the Department believes that it is more appropriate to examine all available import volumes for Wolverine (Noranda) over the life of the order.

With respect to the domestic interested parties' claims concerning the surge in imports in 1998, the Department is not persuaded by its argument. The Department agrees with Wolverine and the proprietary argument that it has made concerning this purported surge. As a result of the information concerning this increase in import volumes provided by both the domestic industry and Wolverine, the Department preliminarily finds that there was no surge in imports of subject merchandise from Wolverine in calendar year 1998 (*see Memo to File, Re: 1998 Import Volume Surge*, dated August 19, 1999).

However, the Department also disagrees with Wolverine's argument concerning the dumping margin likely to prevail. The Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. More importantly, a deposit rate above a *de minimis* level continues in effect for imports of the subject merchandise from Wolverine. Because a dumping margin above a *de minimis* level is currently in effect and because imports of the subject merchandise continue, we find the use of a zero dumping margin to be inappropriate to report to the Commission.

Furthermore, Wolverine's argument implies that the Department should report a more recently calculated dumping margin to the Commission. The Department disagrees with Wolverine's basis for this argument. According to the SAA at 890–91 and the House Report at 64, declining (or no) dumping margins accompanied by steady or increasing imports may indicate that companies do not have to dump in order to maintain market share. As a result, decreasing margins may be more representative of a company's behavior in the absence of the order. In the instant case, however, the zero or *de minimis* dumping margins have not been accompanied by steady or increasing imports. Instead, as noted above, they have been associated with periods where Wolverine's imports were significantly below its imports in prior periods.

Based on the above analysis, the Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of producers and exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we preliminarily determine that the margin calculated in the Department's original investigation is probative of the behavior of Canadian producers and exporters of brass sheet and strip if the order were revoked. We will report to the Commission the company-specific and all others rates from the original investigation contained in the Preliminary Results of Review section of this notice.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the order is likely to lead to continuation or recurrence of dumping at the margins listed below: [5]

Manufacturer/Exporter	Margin (percent)
Wolverine (formerly Noranda) ..	11.54
All Others	8.10

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[5] On September 28, 1990, the Department acknowledged that Arrowhead had gone out of business (*see Brass Sheet and Strip From Canada; Termination in Part of Antidumping Duty Administrative Review*, 55 FR 39682 (September 28, 1990).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–505]

Preliminary Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily determines that revocation of the countervailing duty order would not be likely to lead to continuation or recurrence of a countervailing subsidy.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Imports covered by this order are shipments of porcelain-on-steel (''POS'') cooking ware from Mexico, except teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. This merchandise is classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTSUS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

On October 10, 1986, the Department issued a final affirmative countervailing duty determination on POS cooking ware from Mexico.[1] During the investigation, the Department reviewed two companies, Cinsa, S.A. (''Cinsa'') and Troqueles y Esmaltes, S.A. (''TRES'').[2] The Department calculated a country-wide estimated net subsidy of 1.97 percent *ad valorem* based on two programs found to confer subsidies—the Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX), 1.69 percent *ad valorem*, and the Fund for Industrial Development (FONEI), 0.28 percent *ad valorem*. As a result of a program-wide change in the FOMEX program, which occurred prior to the preliminary determination, the Department adjusted the duty deposit rate to 1.90 percent ad valorem.[3] On December 12, 1986, the countervailing duty order on POS cooking ware from Mexico was published in the **Federal Register**.[4]

Since the issuance of the countervailing duty order on POS cooking ware from Mexico, the Department has conducted several administrative reviews.[5] In the administrative review covering January 1, 1990 through December 31, 1990, the Department found that the FOMEX program was eliminated by decree published in the *Diario Official* on December 30, 1989. Additionally, the Department found that effective January 1, 1990, the Mexican Treasury Department transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.A. (''Bancomext'') upon the elimination of the FOMEX loan program. The Department found that the Bancomext program operates much like its predecessor, FOMEX, and provided countervailable export subsidies. In the same review, the Department found that the PITEX program (the Program for Temporary Importation of Products used in the Production of Exports) provided a countervailable export subsidy. For the first time, the Department issued company-specific subsidy rates. (*See* 57 FR 562 (January 7, 1992) and 56 FR 48163 (September 24, 1991).) In the administrative review covering the period January 1, 1993 through December 31, 1993, the Department stated that FONEI, which provided long-term loans at below-market rates, was a GOM trust administered by the Banco de Mexico until its dissolution on December 31, 1989. (*See* 60 FR 39360 (August 2, 1995) and 60 FR 53165 (October 12, 1995).)

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate from Columbian Home Products, LLC (''CHP''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On March 3, 1999, the Department received a complete substantive response from CHP, within the deadline specified in section 351.218(d)(3)(i). CHP claimed interested party status under section 19 U.S.C 1677(9)(C) as the sole domestic manufacturer of porcelain-on-steel cooking ware. CHP asserts that it participated in the original countervailing investigation.

The Department received substantive responses from respondent interested parties, Cinsa, Esmaltaciones de Norte America, S.A. de C.V. (ENASA), and from the Government of Mexico (''GOM'') (collectively ''Respondents''), within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Cinsa claimed interested party status as a foreign manufacturer and exporter of light-gauge POS cook ware from Mexico. ENASA claimed interested party status as a foreign manufacturer and exporter of heavy-gauge POS cooking ware from Mexico. The GOM claimed interested party status within the meaning of 19 U.S.C. 1677(9)(B). Cinsa maintains that it was a respondent in the original investigation and has participated in all of the subsequent administrative reviews. ENASA maintains that it was incorporated in 1993, and began its shipments of POS cooking ware to the United States in 1994. ENASA has been a participant in the two most recent administrative reviews.[6]

The Department received rebuttal comments from CHP and Respondents on March 12, 1999.[7] Because we received complete substantive responses from CHP, the GOM, and respondent foreign producers accounting for significantly more than 50 percent of the value of imports over the most recent five years, the Department is conducting a full sunset review of this order.

The Department determined that the sunset review of the countervailing duty order on POS cooking ware from Mexico is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 28, 1999 the Department extended the time limit for completion of the final results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act (*see* 64 FR 28983).

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[1] *See Final Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware from Mexico, Mexico*, 51 FR 36447 (October 10, 1986).

[2] TRES subsequently became Acero Porcelanizada, S.A. (''APSA'').

[3] The duty deposit rate attributable to FOMEX was reduced to 1.62 percent *ad valorem*.

[4] *See Porcelain-on-Steel Cooking Ware from Mexico Countervailing Duty Order;* 51 FR 44827 (December 12, 1986).

[5] *See Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 54 FR 13093 (March 30, 1989), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 55 FR 6666 (February 26, 1990), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 56 FR 2064 (June 6, 1991), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 57 FR 562 (January 7, 1992), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 60 FR 53165 (October 12. 1995), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 60 FR 62391 (December 6, 1995), and *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 61 FR 10726 (March 15, 1996). Twenty-two programs were made available to manufacturers/producers/exporters of POS cooking ware from Mexico since the countervailing duty order was placed in effect. See the POS cooking ware from Mexico case information on the Department's web site, *http://www.ita.doc.gov/import__*admin/records/sunset/feb99.

[6] Cinsa and ENASA note that they are sister companies, each 100 percent owned subsidiaries of ISLO, S.A. de C.V., which in turn is a wholly owned subsidiary of Grupo Industrial Saltillo, S.A. de C.V. (''GIS'').

[7] On March 5, 1999, the Department received a request from CHP for an extension of deadline for filing rebuttal comments in this sunset review. As a result, the Department granted a five day extension for all participants eligible to file rebuttal comments. The deadline for filing rebuttals to the substantive comments became March 12, 1999, instead of the original deadline date of March 8, 1999.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's determination concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Parties' Comments

In its substantive response, CHP argues that the history of this proceeding indicates that Mexican producers and exporters of the subject merchandise would likely continue to receive countervailable subsidies from the Mexican Government if the order were revoked. CHP argues that the FOMEX program, which was found to confer a countervailable subsidy and was found to have been terminated, was essentially replaced by the Bancomext program. Further, the Bancomext program was found to confer a countervailable subsidy. Accordingly, CHP argues that the Department should determine that the continued existence of the FOMEX program, which was essentially replaced by the Bancomext program, is a strong indication that Mexican producers would likely continue to receive countervailable subsidies were the order revoked.

With respect to the FONEI program, which CHP admits was found terminated in December, 1989, CHP argues that the fact that the program provided countervailable subsidies from the original investigation through the seventh administrative review indicates that the program could be reinstated and lead to future subsidization. Additionally, CHP argues that the Department has never made a finding that the program was not likely to be reinstated.

Finally, CHP argues that the PITEX program was found in the fourth administrative review to confer a countervailable subsidy. Because the program has not been discontinued, CHP asserts that the Department should determine that were the order revoked, this program would likely lead to continuation or recurrence of a countervailable subsidy.

In their substantive responses, Respondents argue that revocation of the order will have no impact on the U.S. market or domestic interested parties because no net countervailable subsidy has been conferred on the subject merchandise since 1993 and because the countervailing duty deposit rate has been zero since October 1995. Respondents argue that the GOM terminated one of the two programs found in the original investigation to confer countervailable benefits (FOMEX export and pre-export loans) and that the GOM now provides loans to Mexican companies (Bancomext loans and FONEI loans) consistent with commercial considerations, thereby eliminating countervailable benefits. Therefore, Respondents argue there is no likelihood that Mexican producers of POS cooking ware could be able to obtain countervailable benefits were the order revoked.

The GOM argues that because it no longer provides export loans or long-term loans that are inconsistent with commercial considerations—in compliance with its obligations pursuant to the Mexico-United States Understanding Regarding Subsidies and Countervailing Duties (the ''Understanding'')—a subsidy rate from a period before the agreement took effect does not provide a basis for a determination of likelihood of continuation or recurrence of a countervailable subsidy. Finally, the GOM argues that, had this investigation been conducted under the current statute, a final country-wide subsidy rate of 1.97 percent would be found *de minimis* and, as a result, the Department would issue a negative final countervailing duty determination.

In its rebuttal comments CHP argues that although the FOMEX and FONEI programs have changed since the time of the original investigation, these changes do not provide a sufficient basis for finding that the programs will not be used in the future to provide subsidies to Mexican POS cooking ware manufacturers and exporters. Specifically, CHP argues that, as admitted by respondents, the FOMEX program has not been permanently terminated, but instead it continues to exist in a slightly altered form as the Bancomext program. CHP asserts, therefore, that it would be simple for the GOM to use this program to provide subsidies to Mexican exporters of POS cooking ware.

CHP further argues that respondents provided no evidence to suggest that changes in the FONEI program are either binding or permanent. CHP argues that Mexico's elimination of the preferential element of FONEI loans represents an exercise of administrative discretion which could be reversed at any time. In conclusion, CHP argues, therefore, that the Department should find that FONEI is likely to be reinstated as a subsidy program in the event the order is revoked.

Finally, CHP argues that contrary to respondent's assertions, the 1985 Understanding does not reduce the likelihood of future countervailable subsidization of subject merchandise. Referring to the terms of the Understanding, CHP asserts that the terms of the Understanding do not prohibit the use of domestic subsidies. Further, CHP notes that Mexico continued to provide export subsidies (in the form of PITEX) after the Understanding came into effect. Additionally, CHP argues that the Understanding does not prohibit Mexico from providing export subsidies, rather, it entitles the United States to refuse to afford merchandise from Mexico an injury test in any pending or future countervailing duty determination. In this connection, CHP notes that as a WTO member country, Mexico is entitled to an injury test regardless of the Understanding.

In conclusion, CHP argues that any recent decline in usage of the programs found countervailable over the life of the order is not indicative of what is likely to occur if the order is revoked. Rather, as is clear from the terms of the Understanding, the Mexican Government continues to be permitted to confer subsidies upon its manufacturers and exporters. CHP argues that, accordingly, the Department should determine that revocation of the order would likely lead to continuation

or recurrence of a countervailable subsidy.

In its rebuttal comments the GOM asserts that the arguments presented by CHP do not provide sufficient evidence or reasoning to demonstrate that, given the producer-exporters commercial history and current situation, there is a ''need'' to continue imposition of the order. Referring to Article 21.1 of the Subsidies Agreement, the GOM asserts that Commerce is required to demonstrate that there is a ''need'' to continue the order and that such a determination must be demonstrable on the basis of evidence. Further, the GOM asserts that the arguments presented by CHP do not provide sufficient evidence or reasoning to demonstrate that, if the order is revoked, it is ''likely'' that exporters would continue to benefit from subsidization at significant margins.

The GOM argues that contrary to CHP's assumption that FOMEX and Bancomext are the same, FOMEX was terminated over ten years ago. Additionally, although the FOMEX funds were taken in by Bancomext, Bancomext is an entirely separate entity from FOMEX. Furthermore, the GOM asserts that the only company in this case that benefitted from any Bancomext loan, no longer exists. The GOM argues, therefore, that CHP's assertion that Mexican producers would likely continue to benefit from subsidies is a presumption unsupported by evidence or reasons.

Similarly, with respect to the FONEI domestic loan program which was terminated in 1989, the GOM argues that CHP's assertion that there is an indication that the program could be reinstated and provide future subsidization because the program continued to have a diminishing countervailable benefit (down to 0.01 percent in 1993) until the 7th review, does not provide any evidence or reason as to why the GOM would be interested in reinstating such a program. Further, the GOM argues that CHP does not provide any evidence as to how the program could be considered a prohibited or actionable subsidy as established in articles 3, 5, or 6.1 of the Subsidies Agreement.

With respect to the PITEX program, the GOM first notes that the program was not considered in the context of the investigation and therefore has never been determined to cause injury to the U.S. industry, as required by articles 15.5, 15.9, and 21.1 of the Subsidies Agreement. Additionally, the GOM asserts that PITEX was only used by a single company that no longer exists. As such, the GOM argues that there is no reason to presume that exporters will continue to benefit from a program that they have never used and, if such a presumption is made, it must be demonstrated by the Department.

The GOM also argues that the producers and exporters affected by this order have changed over the life of the order. Specifically, of the two companies investigated in the original investigation—Cinsa and TRES (later know as APSA)—APSA no longer exists. Therefore, the GOM argues that it would be inappropriate for the Department to consider the effect of the subsidy margins for APSA in the context of an order-wide review. Rather, the Department should, analogous to its practice of calculating separate subsidy margins in an original investigation or review, determine likelihood specific to each producer.

The GOM expresses its belief that CHP's assumptions relied on polices identified in the Sunset Policy Bulletin, policies which the GOM believes may be inconsistent with the WTO and the Subsidies Agreement. The GOM asserts that the policies, and general assumptions contained therein, appear to operate to effectively require the continued imposition of countervailing duties and place the burden on respondents to prove the assumptions wrong. The GOM argues that, contrary to the policies, the Department bears the burden of demonstrating, with evidence, the issues regarding ''necessity'' and ''likelihood.''

In their rebuttal comments, Cinsa and ENASA (''respondent companies'') argue that CHP's assertions are not correct and the information before the Department establishes that if the order were revoked, subsidization would not recur. Respondent companies argue that CHP's assertions ignore several facts relevant to the Department's determination. First, CHP, although acknowledging that the country-wide rate has been *de minimis* since 1993, fails to give effect to the Department's finding of zero subsidization. Further, CHP fails to give effect to the Department's determination that Cinsa (the respondent which presently accounts for the vast majority of Mexican exports of POS cooking ware to the United States) has had company-specific countervailing duty rates of *de minimis* since 1989, a period of ten years.

Similar to the GOM, respondent companies argue that TRES, later known as APSA—the company that received most of the countervailable subsidies before becoming a zero rate company in 1993—no longer exists and, as such, cannot possibly obtain future countervailable subsidies. Further, respondent companies argue that it is inappropriate to assert that subsidization would recur if the order were revoked based largely upon the historical receipt of net countervailable subsidies by a respondent that no longer exists. Rather, the Department's determination of likelihood should be based upon the experience of the companies that presently exist and have the potential to produce and export subject merchandise to the United States.

Respondent companies also argue that the Understanding (which has been fully implemented) and other multilateral agreements to which both Mexico and the United States are parties, have been responsible for the termination of export subsidies and the elimination of the preferential elements from loan programs. Therefore, the magnitude of subsidization that may have existed prior to Mexico's undertaking of its current international obligations to eliminate improper subsidization does not provide a rational basis for determining the magnitude of subsidization that would likely prevail at this point in time if the order were revoked.

Respondent parties argue that CHP is incorrect in its attempt to have the Department assign the net subsidy rate from FOMEX to Bancomext. Rather, they argue that the Department should confirm its previous findings that the FOMEX program was terminated and then should separately determine whether any subsidization under the Bancomext program would recur if the order were revoked. With respect to Bancomext, Respondent parties argue that the only time the Department imposed countervailing duties attributable to Bancomext was in the 1990 administrative review and, even there, the duties were with regard to TRES/APSA, a company that no longer exists. Further, Respondent parties argue that given that in the most recently completed administrative reviews the Department determined that the Bancomext program provided zero or *de minimis* benefits, the likely net countervailable subsidy rate that would prevail if the order were revoked would continue to be zero.

With respect to the FONEI program, Respondent parties argue that CHP's position is untenable. First, Respondent parties note that, in the 1993 review, the Department determined that the net benefit attributable to this previously revoked, long-term loan program was a *de minimis* 0.01 percent. Further, even if the ten-year loan (the maximum term under the program) which provided the

benefit in the original investigation has been taken out in 1985, the benefit stream would have terminated in 1995. Even if a 10-year loan had been taken out in the final year of the program (1989), the benefit stream would terminate in 1999. Therefore, Respondent parties argue that no possible benefit stream from a FONEI loan that could exist beyond the date of revocation.

Lastly, with respect to the PITEX program, Respondent companies argue that the information before the Department establishes that if the order were revoked there would be no likely net countervailable subsidy to existing POS cooking ware manufacturers and exporters. Again, Respondent parties argue that only TRES/APSA ever received a net countervailable subsidy from PITEX and that the Department has found PITEX not used by any other company examined by the Department. Further, Respondent companies argue that PITEX is countervailable only to the extent that import duties are refunded or not collected for imported machinery or spare parts used in the production of export merchandise and that, in the 1989 review, the Department found that PITEX benefits were not countervailable to the extent that they are attributable to products that were physically incorporated into re-exported merchandise. Additionally, Respondent parties refer to the Department's Sunset Policy Bulletin and argue that the Department recognizes that it is not appropriate to attribute future usage of a program to companies that have never been found to have used that program. In conclusion, Respondent parties argue that because the Department has never found that Cinsa or ENASA have used countervailable elements of the PITEX program, it would be contrary to stated Departmental policy to attribute a net countervailable subsidy for PITEX to existing POS cooking ware companies.

Department's Preliminary Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act (''URAA''), specifically the Statement of Administrative Act (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that the determinations of likelihood will be made on an order-wide basis (see section III.A.2. of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the Sunset Policy Bulletin).

The Sunset Policy Bulletin, at section III.A.3.a, states that, consistent with the SAA at 888, continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies absent significant evidence to the contrary. However, the Sunset Policy Bulletin also provides that, where a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked. (*See* Sunset Policy Bulletin at section III.A.5.)

As noted above, in the final affirmative countervailing duty determination the Department determined that Mexican producers/exporters of the subject merchandise were benefitting from countervailable subsidies under the FOMEX and FONEI programs. In subsequent administrative reviews, the Department found that the FOMEX and FONEI programs were terminated in 1989. CHP argues that the FOMEX program continues to exist by virtue of the fact that remaining funds were transferred to the still existent Bancomext program. However, as the Department determined in the 1990 administrative review, the FOMEX program was officially eliminated by decree in December, 1989. Additionally, the Department confirmed this determination in the final results of the 1993 administrative review when it explained that the FOMEX program was terminated on December 31, 1989 and effective January 1, 1990, the FOMEX trust was transferred to Bancomext. The Department has, in numerous reviews, investigated Bancomext as a separate program. Therefore, given that the FOMEX program was terminated by official decree, we preliminarily determine that the FOMEX program has been eliminated.

With respect to the FONEI program, we preliminarily determine that the program has been eliminated without residual benefit. In the 1993 administrative review, the Department stated that FONEI was a GOM trust administered by the Banco de Mexico until its dissolution on December 31, 1989. CHP does not argue that the program still exists. Rather, they argue that the program could be easily reinstated. We are not persuaded by mere assertions, however. Rather, based on the Department's prior findings with respect to FONEI and absent evidence to the contrary, we preliminarily determine that the FONEI program has been eliminated and is not likely to be reinstated. Further, we agree with respondents that any potential remaining countervailable benefit from 10-year, long-term loans granted prior to the 1989 termination of the FONEI program would not continue beyond 1999.

With respect to the PITEX program, we note that none of the parties argued that the program has been terminated. Rather, CHP argues that we should find that countervailable subsidies are likely to continue or recur were the order revoked based on a finding in the 1990 administrative review that one company, APSA, used the program for temporary imports of machinery and spare parts that were not physically incorporated into exported products. The Respondents argue that APSA is the only company in this proceeding ever found to have received a countervailable subsidy under this program, APSA no longer exists, and other companies have a long track record of not using this program. Therefore, PITEX should not be found likely to provide a countervailable subsidy.

We preliminarily determine that there is a long track record of non-use of the PITEX program by companies that are currently, and are likely to be, producing and exporting POS cooking ware to the United States. In the administrative review of the antidumping duty order on POS cooking ware from Mexico covering the period December 1, 1996 through November 31, 1997, the Department found that APSA had been sold in 1997 and that Cinsa had incorporated some of APSA's production equipment into its facility (*see* Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 26934 (May 18, 1999)). Therefore, we agree that APSA no longer exists. As to whether companies other than APSA are likely to receive a countervailable subsidy from the PITEX program, we agree with respondents that, where a

company has a long track record of not using a program, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. (*See* section III.A.3.b of the Sunset Policy Bulletin.) We preliminarily determine, therefore, that there is no likelihood of a countervailable subsidy from the PITEX program were the order revoked.

With respect to the Bancomext program, CHP argues that Bancomext should be considered a replacement for FOMEX and, therefore, CHP does not independently address Bancomext. As noted above, the Department determined that the Bancomext program was separate from the FOMEX program. Further, Bancomext has been found to provide countervailable subsidies to the extent that loans are provided at preferential rates. None of the parties have argued that the Bancomext program has been terminated. Rather, respondents argue that, as a result of the 1985 Understanding, the GOM altered its practice and no longer provides loans on terms inconsistent with commercial considerations. The Department has reviewed the Bancomext program during reviews covering 1990, 1993, and 1994. In each of these reviews, the Department found countervailable subsidies were provided by the Bancomext program, albeit at *de minimis* rates. Therefore, we do not agree with respondents that the Bancomext no longer provides countervailable subsidies. However, we do agree, based on a history of *de minimis* findings, that there is no evidence to suggest that the Bancomext program is likely to provide above *de minimis* countervailable subsidies, if any, were the order revoked. Therefore, we preliminarily determine that the Bancomext program is not likely to confer a countervailable subsidy were the order revoked.

On the basis of the above analysis regarding the termination, non-use, and *de minimis* subsidies, we preliminarily determine that revocation of the countervailing duty order on POS cooking ware from Mexico is not likely to result in continuation or recurrence of a countervailable subsidy.

Net Countervailable Subsidy

Parties' Comments

In its substantive and rebuttal comments, CHP argues that in accordance with the Department's policy, the Department should report to the Commission a net countervailable subsidy of 3.84 percent as the subsidy likely to prevail if the order were revoked. CHP argues that the Department should add to the 1.97 percent subsidy from the original investigation (attributable to FOMEX and FONEI) the 1.87 percent subsidy rate found in the 1990 administrative review attributable to PITEX.

In their substantive and rebuttal comments, the respondents argue that the zero or *de minimis* rates from the most recent administrative reviews are the rates likely to prevail if the order were revoked.

Department's Preliminary Determination

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the order revoked, there is no net countervailable subsidy to report to the Commission.

Nature of the Subsidy

Parties' Comments

Neither party specifically addressed this issue. As noted above, however, the GOM did argue that the Department must be able to demonstrate, with evidence, that any subsidy found likely to continue or recur if the order were revoked is a subsidy inconsistent with articles 3, 5, or 6 or the Subsidies Agreement.

Department's Position

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the order revoked, there is no nature of the subsidy to report to the Commission.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would not be likely lead to continuation or recurrence of a countervailable subsidy. As a result of this determination, the Department, pursuant to section 751(d)(2) of the Act, preliminarily intends to revoke the order on POS cooking ware from Mexico. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation would be effective January 1, 2000.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22197 Filed 8–25–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Preliminary Results of Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of Sunset Review: porcelain-on-steel cooking ware from Mexico.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of

the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Scope

The merchandise subject to this antidumping duty order is porcelain-on-steel (''POS'') cooking ware from Mexico, which includes tea kettles, that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7323.94.00. Kitchenware currently entering under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive.

History of the Order

On October 10, 1986, the Department issued a final determination of sales at less than fair value on POS cooking ware from Mexico.[1] On December 2, 1986, the Department's antidumping duty order on the subject merchandise was published in the **Federal Register** (51 FR 43415).

Since the issuance of the order, Department has conducted several administrative reviews of the order on POS cooking ware from Mexico.[2] The order remains in effect for all producers and exporters of the subject merchandise. In the amended final results of the eleventh administrative review of this antidumping duty order, the Department found that antidumping duties were being absorbed by Cinsa and by ENASA.[3]

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping order on POS cooking ware from Mexico, pursuant to section 751(c). On February 16, 1999 we received a Notice of Intent to Participate on behalf of Columbian Home Products, LLC (''CHP''), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. CHP claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of POS cooking ware. CHP asserts that it is the only domestic producer of POS cooking ware.

We received complete substantive responses to the notice of initiation on March 3, 1999, on behalf of CHP, and Cinsa, S.A. de C.V. (''Cinsa'') and Emaltaciones de Norte America, S.A. de C.V. (''ENASA'') (collectively ''respondents''). Cinsa and ENASA claimed interested party status within the meaning of 19 U.S.C. 1677(9)(A) as foreign manufacturers and exporters of POS cooking ware from Mexico. Cinsa contends that it manufactures light-gauge POS cooking ware, while ENASA contends that it manufactures heavy-gauge POS cooking ware. Cinsa asserts that it was a respondent in the original investigation and participant in all completed administrative reviews conducted by the Department. ENASA asserts that it has been a participant in reviews of this order since it began exporting to the United States (8th and 10th administrative review). Cinsa and ENASA further note that they are respondents in the 11th review and 12th review being conducted by the Department at the time of their submission.

In their substantive response, respondents provided information on the value of their exports of the subject merchandise for the calendar years 1994 to 1997, as well as the total value of exports of the subject merchandise to the U.S. Respondents represent significantly more than 50 percent of the value of total exports of the subject merchandise over the past five calendar years preceding the investigation of the sunset reviews. Because domestic and respondent interested parties provided adequate responses to the notice of initiation, the Department is conducting a full sunset review in accordance with section 351.218(e)(2)(i) of the Sunset Regulations.

On May 28, 1999, the Department determined that the sunset review of the antidumping duty order on POS cooking ware from Mexico is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act). As a result of this determination, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Adequacy

In its rebuttal comments, CHP argues that the Department should determine that the foreign producers' response to

[1] *See Porcelain-On-Steel Cooking Ware from Mexico; Final Determination of Sales at less than Fair Value*, 51 FR 36435 (October 10, 1986).

[2] *See Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 21061(May 22, 1990); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 39186 (September 25, 1990); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32095 (June 8, 1993); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 4332 (Aug. 16, 1993), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 59 FR 23694 (May 6, 1994), and *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision Upon Remand*, 63 FR 53643 (October 6, 1998); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 2378 (January 9, 1995), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amendment to Final Results of Antidumping Duty Administrative Review*, 60 FR 7521 (February 8, 1995), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision Upon Remand*, 61 FR 53350 (October 11, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 54616 (October 21, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 25908 (May 12, 1997), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 35153 (June 30, 1997); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 42496 (August 7, 1997), as amended, *Porcelain-on-Steel Cookware From Mexico: Notice of Panel Decision and Amended Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand*, 64 FR 42916 (August 6, 1999); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty New Shipper Administrative Review*, 61 FR 15463 (April 8, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 38373 (July 16, 1998), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amendment to Final Results of Antidumping Duty Administrative Review*, 63 FR 43594 (August 13, 1998); and *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 26934 (May 18, 1999), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review*, 64 FR 29262 (June 1, 1999).

[3] *See Porcelain-on-Steel Cookware From Mexico; Amended Final Results of Antidumping Duty Administrative Review*, 64 FR 29262 (June 1, 1999).

[4] *See POS Cooking Ware from Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews et. al.*, 64 FR 28983 (May 28, 1999).

the notice of initiation was inadequate and, therefore, the Department should conduct an expedited review. CHP asserts that the regulations require respondent interested parties to submit export data for calendar years 1994 through 1998. CHP then argues that since respondents did not submit export data for calendar year 1998 and the data submitted for 1994 through 1997 was not submitted on a calendar year basis, respondents' submission must be viewed as incomplete. In conclusion, CHP asserts that because no other Mexican producers submitted a response to the Notice of Initiation, the Department has not received a complete substantive response from any respondent interested party. As a result, CHP argues that the Department should issue an expedited determination based on facts available and apply an adverse inference against respondents.

In the preamble to the Sunset Regulations the Department explained that it may consider a substantive response that does not contain all of the information required to be complete where a party is unable to report certain required information and provides a reasonable explanation as to why it is unable to provide such information. In their substantive response, respondents explained that they were providing annual (December–November) export statistics corresponding to the administrative reviews conducted by the Department. Further, because the data on sales of subject merchandise during the 12th administrative review had not yet been calculated, respondents explained that data for the most recent year was not yet available. Cinsa explained that its accounting records are maintained on the basis of all light gauge POS products, which includes subject and non-subject merchandise. Therefore, the computerized sales tapes prepared for the Department's administrative reviews enable it to distinguish between subject and non-subject merchandise.

We determine that the respondents provided a reasonable explanation as to why information was not yet available and was reported based on a different time period. We note that our adequacy determinations are intended to determine whether there is sufficient participation of interested parties to warrant a full review. Where, as in this review, respondents have provided information sufficient to enable us to make that determination along with a reasonable explanation for any discrepancies, we do not intend to require respondents to recalculate information which is otherwise available in a slightly altered form. Therefore, we continue to conclude that we received adequate response from respondent interested parties to warrant a full review.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

In its substantive response CHP refers to the Department's Sunset Policy Bulletin and argues that the Department should find that dumping is likely to continue at significant margins if the order is revoked. In support of its assertion that dumping has continued over the life of the order, CHP cites to the final results of administrative reviews that have been completed. CHP asserts that Cinsa's company-specific margin has increased since the order was imposed from 1.63 percent in the first administrative review to 16.91 percent in the tenth review, and most recently to 64.02 percent in the preliminary results of the eleventh review.

With respect to import levels, CHP refers to official import statistics from the Department of Commerce, Bureau of Census to support its assertion that imports from Mexico have declined. Specifically, CHP asserts a 50 percent decrease in imports from 1994 (3.3 million units) to 1998 (1.7 million units).

CHP argues that this evidence is highly probative that dumping would be likely to continue or recur if the order were revoked. In conclusion, CHP argues that the combination of declining import volumes and simultaneously increasing dumping margins demonstrates that Mexican producers are unable to sell significant volumes of POS cooking ware in the United States without dumping.

The respondents argue revocation of the order would have minimal or *de minimis* effects on the POS cookware market in the United States. Respondents assert that the 17.47 percent margin assigned to Cinsa (from the investigation) and the 2.74 percent margin assigned to ENASA (from the 9th review) are substantially lower than the 29.52 percent weighted-average margin assigned to all others in the original investigation. Further, respondents assert that their dumping margins have generally declined from such initiation levels while their exports to the United States and market share of Mexican exports of POS cooking ware have increased significantly. On these bases, respondents argue that they are able to market and sell their merchandise in the United States without high dumping margins.

Additionally, respondents argue that revocation of the order would not result in a sudden increase in their exports because the Mexican domestic market is their primary market. Citing to official United States import statistics, respondents assert that in 1998, the Mexican share of total U.S. imports of POS cooking ware was only 6.66 percent and that imports from Mexico declined by approximately 57 percent from 1994 to 1998. Finally, respondents assert that even though Mexican imports of subject merchandise have declined since 1994, the imports in 1998 are still approximately 85 percent higher than they were in 1985, the year prior to the issuance of the order.

In its rebuttal comments CHP argues that contrary to respondents' assertion, dumping margins have increased during the history of this proceeding. CHP asserts that Cinsa's margin has steadily increased since the third administrative review and, as of the tenth review, is 16.91 percent. Further, CHP argues that ENASA's margin in the tenth review is 61.66 percent. CHP also argues that, if as respondents argue, dumping is not likely to continue or recur, respondents should argue that any margin likely to prevail is zero, not the 12.85 to 23.72 percent range respondents have suggested is the margin likely to prevail if the order were revoked. On the basis of above *de minimis* margins in every

review, margins which have increased to historically high levels in the most recently completed administrative review, CHP argues that the Department should determine that revocation of this order would be likely to lead to a continuation of dumping.

The respondents did not address likelihood in their rebuttal comments.

Department's Preliminary Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the Sunset Policy Bulletin).

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of the continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked.

We agree with CHP that dumping margins above *de minimis* have continued over the life of the order. Further, deposit rates above *de minimis* remain in effect for all exports of POS cooking ware from Mexico. Using statistics provided by CHP and respondents, we find that imports have fluctuated over the order; steadily increasing in both volume and value from 1985 through 1994 and then steadily decreasing through 1998. Imports in 1998, however, remain slightly higher in value than in 1985 and are slightly lower in volume. Therefore, we do not agree with CHP's arguments that we should find likelihood on the basis of import volumes. However, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

Parties' Comments

CHP asserts that, in this case, the Department should follow the guidance of the SAA and the Sunset Policy Bulletin, and provide to the Commission the margins from the original investigation. CHP suggests the Department apply 17.47 percent for Cinsa and 29.52, the ''all others'' rate from the original investigation should apply to all respondents that did not begin shipping until after the order was issued. Additionally, CHP notes that, in the eleventh review, the Department made a preliminary finding of duty absorption.

Respondents note that, according to the Sunset Policy Bulletin the Department normally determines that the weighted-average dumping margins from the original investigation are the margins likely to prevail if the antidumping duty order is revoked. Respondents assert, however, that in this case, consistent with the Sunset Policy Bulletin, the Department should apply a more recently calculated margin because declining dumping margins have been accompanied by steady or increasing imports which indicates that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.

Respondents argue that Cinsa's company-specific margins have always been lower than the weighted-average margin calculated in the original investigation. Further, ENASA's first margin was significantly lower than the weighted-average margin from the original investigation. In addition, respondents argue that overall imports from Mexico and from respondents have increased significantly since the imposition of the order, although having declined since their 1994 peak.

Respondents argue that the weighted-average margin from the original investigation (*i.e.*, the all others rate of 29.52 percent) was calculated on the basis of the margin calculated for Cinsa (17.47 percent) and the substantially higher margin calculated for Troqueles Y Esmaltes, S.A. de C.V. (''TRES''), later known as Aceros Porcelanizados, S.A. de C.V. (''APSA''). Because TRES/APSA no longer exists, respondents argue that use of a weighted-average margin incorporating the TRES/APSA margin does not provide a reasonable indication of the margin likely to prevail for existing manufacturers and exporters. Respondents suggest alternatives for determining the appropriate margins likely to prevail if the order were revoked, all of which include weight averaging margins using the 1997 exports. On this basis, respondents calculate margins ranging from 12.85 percent to 23.72 percent. Finally, respondents acknowledge a preliminary determination of duty absorption in the eleventh administrative review.

In its rebuttal comments CHP argues that respondents' version of the facts is incorrect. In fact, according to CHP, imports have decreased while dumping margins have increased. Under these circumstances, CHP argues that there is no basis in this review to use any margins other than those determined in the original investigation.

In their rebuttal comments, respondents argue that the facts in this case require application of more recently calculated margins. Specifically, respondents assert that official U.S. import statistics demonstrate that imports of POS cooking ware from Mexico increased from $2,853,000 in calendar year 1985, peaking at $10,712,000 in 1994, and then settling to $4,442,000 in 1998. Further, respondents refer to company-specific proprietary data and argue that their exports have increased even more significantly from 1985 to 1997. In conclusion respondents argue that alternatives to the margins from the original investigation would be the simple average of company-specific margins calculated by the Department over the life of the order or the margins from the last completed administrative review.

Department's Preliminary Determination

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. (*See*

section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

Our review of import statistics covering total imports of POS cooking ware from Mexico and company-specific imports demonstrates that import volumes and values have fluctuated over the life of the order. While we agree with respondents that the Department may select a more recently calculated margin when declining (or no) margins are accompanied by steady or increasing imports, we do not agree that the facts of this case support such a determination. Imports from both Cinsa and ENASA have fluctuated over the 1994 through 1997 period. This fluctuation occurred at a time when company-specific calculated margins have been increasing. Therefore, the record does not reflect declining margins accompanied by steady or increasing imports. Because of this, the Department preliminarily finds that the use of a more recently calculated margin in its report to the Commission would be inappropriate.

Additionally, we do not agree with respondents that the all others margin from the original investigation is inappropriate because it includes the margin calculated for a company that is no longer in existence. We would normally determine that the margins calculated in the original investigation best reflect the behavior of producers/exporters without the discipline of the order.

In the final results of the 1996–1997 administrative review of this order, the Department found that antidumping duties have been absorbed by Cinsa on 68.03 percent of its U.S. sales of subject merchandise and by ENASA on 98.52 percent of its U.S. sales of subject merchandise (*see* Porcelain-on-Steel Cookware from Mexico: Amended Final Results of Antidumping Duty Administrative Review, 64 FR 29262 (June 1, 1999). Consistent with the statute and the Sunset Policy Bulletin, the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a sunset review.

Additionally, the Sunset Policy Bulletin refers to the SAA at 885, and the House report at 60, and provides that where the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption. The Department explained that it normally will adjust a company's most recent margin to take into account its findings on duty absorption by increasing the margin by the amount of duty absorption on those sales for which the Department found duty absorption. In the administrative review covering the period December 1, 1996 through November 30, 1997, the Department found dumping margins of 25.42 percent for Cinsa and 65.28 percent for ENASA. The all others rate remained at 29.54 percent. (*See* Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 26934 (May 18, 1999), as amended, Porcelain-on-Steel Cookware from Mexico: Amended Final Results of Antidumping Duty Administrative Review, 64 FR 29262 (June 1, 1999)). Further, as noted above, the Department found that antidumping duties had been absorbed by both Cinsa and ENASA. Therefore, consistent with the Sunset Policy Bulletin, we are adjusting the most recent margin to account for duty absorption. Because the adjusted margins for Cinsa and ENASA are higher than the rates from the original investigation, we will report to the Commission the adjusted rates as indicated below.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
Cinsa, S.A.	42.71
Esmaltaciones de Norte America, S.A. de C.V.	129.40
All Others	29.52

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22200 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology (NIST)

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before September 16, 1999.

ADDRESSES: Please submit nominations to Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004. Nominations may also be submitted via FAX to 301–948–1224.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.nist.gov/director/vcat/vcat.htm.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004; telephone 301–975–4720, fax 301–948–1224; or via email at brian.belanger@nist.gov.

SUPPLEMENTARY INFORMATION:

I. VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the

Federal Advisory Committee Act (5 U.S.C. app.2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 et seq., while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hours, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

II. Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: August 17, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22217 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–30–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, September 14, 1999 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; Update on the Manufacturing Extension Partnership; Chemical Science and Technology Laboratory's Thermophysical Properties Standard Reference Data Dissemination; a laboratory tour of the Materials Science and Engineering Laboratory's Welding R&D Program; Electronic and Electrical Engineering Laboratory's Future Directions in Metrology for the Magnetic Recording Industry and RF and Antenna Measurements; and Physics Laboratory's Short Pulse Lasers and the Laser ''Ruler''.

Discussions scheduled to begin at 8:15 a.m. and to end at 9:15 a.m. on September 14, 1999, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership will be closed.

DATES: The meeting will convene September 14, 1999, at 8:15 a.m. and

will adjourn at 5:30 p.m. on September 14, 1999.

ADDRESSES: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Acting Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 15, 1999, that portions of the meeting of the Visiting Committee on Advanced Technology which involved discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 17, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22218 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.072899D]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the report on the June 1998 Turtle Excluder Device (TED) testing session.

DATES: August 26, 1999.

ADDRESSES: Requests for copies of the 1998 TED testing report may be submitted to the Chief, Harvesting Systems and Engineering Branch, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, 301–713–1401, or Charles A. Oravetz, 727–570–5312.

SUPPLEMENTARY INFORMATION: The Harvesting Systems and Engineering Branch of the National Marine Fisheries Service (NMFS), Mississippi Laboratories, Pascagoula Facility conducted SCUBA diver evaluations and testing of modified TED designs using the small turtle test protocol (Federal Register, Vol. 55, No. 195) in Panama City, Florida, May 29– June 14, 1998. The project objectives were to: (1) test and evaluate candidate Andrews soft TED designs for the exclusion of juvenile sea turtles, (2) develop detailed installation criteria for soft TED designs which pass the efficiency test, (3) examine the consistency of installation with the currently approved Parker soft TED design among different trawl types and sizes, and (4) provide vessel and diver support in conducting a multiple submergence experiment on 2 year old loggerhead sea turtles.

Soft TEDs were prohibited in December 1997 (61 FR 66933) due to difficulties with installing them correctly and observed sea turtle takes during controlled testing and commercial trawling operations. The Parker soft TED, however, was approved for use in the shrimp industry through October 13, 1999 (63 FR 17956, April 13, 1998). The approval was based on information from tests conducted in 1997 which showed the Parker design to be effective in excluding sea turtles in certain net configurations. Its use after October 13, 1999, will be determined based on an evaluation of the 1998 TED testing report made available through this **Federal Register** notice as well as an evaluation of observations made during commercial fishing activities, enforcement data and stranding data.

Authority: 16 U.S.C. 1531–1543 *et seq.*

Dated: August 20, 1999.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22216 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Bleachers and Grandstands

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from Representatives Bill Luther and Jim Ramstad requesting that the Commission develop a safety standard to prevent falls between gaps in bleachers and grandstands. The Commission solicits written comments concerning the petition.

DATES: Comments on the petition should be received in the Office of the Secretary by October 25, 1999.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''Petition CP 99–2, Petition for Development of a Safety Standard for Bleachers and Grandstands.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received a letter from Representatives Bill Luther and Jim Ramstad requesting that the Commission develop a safety standard for bleachers and grandstands. The Commission is docketing the correspondence as a petition under provisions of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* The petitioners note that there have been several recent incidents involving children falling through gaps in bleachers at basketball and hockey arenas. In one such incident a six-year-old boy died. The petitioners ask for a standard that would include minimum spacing requirements for gaps in new bleachers. They also request that the Commission issue guidelines for retrofitting older facilities.

Interested parties may obtain a copy of the petition by writing or calling the

Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, Maryland.

Dated: August 20, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–22094 Filed 8–25–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of June 30, 1999)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of June 30, 1999, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
COST COMPARISONS					
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	384	25-Jun-98	28-May-99.
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25-Jul-97	26-May-99.
ANDREWS	MD	GROUNDS MAINTENANCE	9	17-Dec-98	01-Oct-99.
ANDREWS	MD	HEATING SYSTEMS	22	17-Dec-98	01-Oct-99.
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09-Oct-97	15-Jul-99.
BARKSDALE	LA	PROTECTIVE COATING	13	14-Dec-98	13-Sep-99.
BOLLING	DC	SUPPLY AND TRANSPORTATION	164	01-Dec-98	03-Jan-00.
BUCKLEY	CO	AIRFIELD MANAGEMENT	34	22-Mar-95	18-May-99.
CARSWELL	TX	BASE OPERATING SUPPORT	69	13-Jun-96	10-Aug-99.
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08-May-98	01-Aug-00.
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	401	08-May-98	01-Oct-99.
DOVER	DE	HEATING SYSTEMS	11	07-Jan-99	04-Oct-99.
EDWARDS	CA	BASE OPERATING SUPPORT	460	09-Dec-98	08-Nov-00.
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	136	06-Nov-98	31-Aug-99.
EGLIN	FL	CIVIL ENGINEERING	200	03-Dec-96	21-Jul-98.
EIELSON	AK	HOUSING MANAGEMENT	16	17-Nov-97	18-May-99.
ELMENDORF	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD	16	28-Jul-97	24-Feb-99.
ELMENDORF	AK	BASE SUPPLY	210	26-Mar-99	07-Sep-99.
FAIRCHILD	WA	HEATING SYSTEMS	15	16-Mar-99	31-Oct-99.
GENERAL MITCHELL	WI	BASE OPERATING SUPPORT	77	13-Jun-96	20-Apr-98.
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	77	13-Jun-96	15-Sep-99.
GRISSOM	IN	BASE OPERATING SUPPORT	133	13-Jun-96	01-Oct-99.
HANSCOM AFB	MA	BASE SUPPLY	70	10-Nov-98	27-Aug-99.
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09-Dec-98	25-Sep-99.
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	14	25-Nov-98	11-Sep-99.
HILL AFB	UT	BASE OPERATING SUPPORT	730	30-Sep-98	20-Sep-00.
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	66	12-May-97	16-Aug-99.
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13-Jun-96	15-Jan-00.
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	41	28-Apr-99	09-Mar-01.
HURLBURT COM FL	FL	BASE SUPPLY	43	15-Jul-98	01-Jan-00.
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31-Jul-98	24-Sep-99.
HURLBURT COM FL	FL	ENVIRONMENTAL	13	23-Sep-97	20-Nov-98.
KIRTLAND	NM	BASE COMMUNICATIONS	228	06-Nov-97	04-Jun-99.
KIRTLAND	NM	CIVIL ENGINEERING	360	09-Dec-98	15-Sep-99.
KIRTLAND	NM	ENVIRONMENTAL	32	24-Nov-98	13-Sep-99.
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1587	26-Jan-99	09-Aug-99.
LANGLEY	VA	GENERAL LIBRARY	11	22-Dec-98	21-Jul-99.
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24-Nov-97	11-Jun-99.
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01-Jul-97	25-Nov-98.
LOS ANGELES	CA	SERVICES ACTIVITIES	8	01-Jul-97	02-Sep-99.
MALMSTROM	MT	BASE COMMUNICATIONS	85	06-Oct-97	15-Jul-99.
MALMSTROM	MT	HEATING SYSTEMS	26	24-Nov-97	01-Jul-99.
MARCH	CA	BASE OPERATING SUPPORT	195	13-Jun-96	15-Nov-99.
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28-Apr-98	22-Mar-99.
MCCHORD	WA	GROUNDS MAINTENANCE	9	14-Jun-99	22-Oct-99.
MCCHORD	WA	HEATING SYSTEMS	11	23-Sep-97	30-Mar-99.
MCCHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23-Sep-97	03-Mar-99.
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	83	13-Jun-96	11-Aug-98.
MULTIPLE INSTL		ADMINISTRATIVE SWITCHBOARD	50	19-Jun-97	15-Nov-99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	44	19-Jun-97	15-Nov-99.
CROUGHTON	UK				
FAIRFORD	UK				
LAKENHEATH	UK				
MILDENHALL	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11-Mar-99	11-Nov-99.
GRISSOM	IN				
GENERAL MITCHELL	WI				
MINN/ST PAUL	MN				
NEW ORLEANS NAS	LA				
CARSWELL	TX				
HOMESTEAD	FL				
MARCH	CA				
WESTOVER	MA				
YOUNGSTOWN MUNI	OH				
WILLOW GROVE	PA				
GREATER PITTSBURG	PA				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07-Jan-99	06-Oct-99.
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				
NELLIS	NV				
SHAW	SC				
WHITEMAN	MO				
LAJES	AZORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON	NC				
HOLLOMAN AFB	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25-Mar-98	01-May-99.
BUCKLEY	CO				
F E WARREN	WY				
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG	CA				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24-Sep-98	24-Aug-99.
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03-Dec-97	01-Nov-99.
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	13-Jun-96	10-Aug-99.
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30-Sep-98	31-Jan-00.
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14-May-98	01-Jun-00.
RAMSTEIN	GERMY	MILITARY FAMILY HOUSING MAINTENANCE	142	19-Jun-97	28-Dec-98.
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	17	17-Mar-99	23-Dec-99.
ROBINS	GA	BASE SUPPLY	133	01-Apr-99	30-Jan-00.
ROBINS	GA	EDUCATION SERVICES	57	07-Jan-99	30-Sep-99.
SCOTT	IL	BASE SUPPLY	102	03-Jun-97	28-Aug-98.
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19-Mar-98	16-Aug-99.
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09-Jan-98	05-Aug-98.
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18-Dec-98	30-Sep-99.
SHAW	SC	PROTECTIVE COATING	12	14-Dec-98	01-Jul-99.
TINKER	OK	BASE SUPPLY	150	30-Nov-98	10-Sep-99.
TINKER	OK	CIVIL ENGINEERING	567	15-Apr-97	26-Mar-98.
TINKER	OK	EDUCATION SERVICES	54	16-Nov-98	07-Sep-99.
TINKER	OK	ENVIRONMENTAL	53	24-Nov-98	10-Sep-99.
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15-Jul-98	01-Sep-99.
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08-May-98	15-Jul-99.
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01-Dec-98	15-Feb-00.
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	120	20-May-99	19-May-00.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
USAF ACADEMY	CO	FOOD SERVICES	297	08-May-98	21-Apr-99.
USAF ACADEMY	CO	SERVICES ACTIVITIES	75	08-May-98	24-Sep-99.
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24-Nov-97	15-Jul-99.
WESTOVER	MA	BASE OPERATING SUPPORT	172	13-Jun-96	08-May-98.
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13-Jun-96	28-Sep-98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	15-Aug-97	25-Sep-98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21-Aug-98	02-Jul-99.
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21-Aug-98	17-Jun-99.
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	129	21-Aug-98	01-Jul-99.
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	92	13-Jun-96	14-Sep-98
		DIRECT CONVERSIONS			
ALTUS	OK	MEDICAL STENOGRAPHY	2	17-Nov-97	01-Jul-98.
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17-Feb-99	01-Mar-00.
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04-Aug-98	01-Aug-99.
BARKSDALE	LA	HOSPITAL SERVICES	3	01-Dec-97	15-Jul-99.
BOLLING	DC	DATA PROCESSING	3	07-May-99	28-Jun-99.
BUCKLEY	CO	CIVIL ENGINEERING	55	24-Nov-97	01-Oct-99.
CANNON	NM	PROTECTIVE COATING	2	07-Jan-99	09-Aug-99.
CANNON	NM	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	13	27-Aug-98	01-Aug-99.
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24-Jun-98	11-Oct-99.
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11-Aug-98	11-Oct-99.
DYESS	TX	ADMINISTRATIVE TELEPHONE SWITCHBOARD	9	12-Nov-98	30-Oct-99.
ELLSWORTH	SD	ADMINISTRATIVE TELEPHONE SWITCHBOARD	10	10-Jul-98	01-Jul-99.
ELLSWORTH	SD	ENVIRONMENTAL	7	05-Nov-98	23-Dec-98.
ELLSWORTH	SD	GENERAL LIBRARY	7	16-Jul-98	01-Jul-99.
F E WARREN	WY	BASE COMMUNICATIONS	93	30-Oct-97	15-Aug-99.
GRAND FORKS	ND	MISSILE STORAGE & MAINTENANCE	5	17-May-99	13-Oct-00.
KIRTLAND	NM	EDUCATION SERVICES	12	26-Oct-98	15-Jul-99.
KIRTLAND	NM	GENERAL LIBRARY	4	12-Jan-99	28-Sep-99.
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12-Jan-99	25-Sep-99.
LANGLEY	VA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	18	05-Feb-98	01-Apr-99.
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23-Mar-99	01-Aug-00.
LANGLEY	VA	GROUNDS MAINTENANCE	9	04-May-99	15-Jul-99.
LANGLEY	VA	TRANSIENT AIRCRAFT MAINTENANCE	21	27-Aug-98	15-Aug-99.
LOS ANGELES	CA	PACKING AND CRATING	4	01-Jul-97	12-Mar-99.
MAXWELL	AL	EDUCATION SERVICES	35	31-Jul-98	01-Jul-99.
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14-May-99	05-Feb-00.
MINOT	ND	ADMINISTRATIVE SWITCHBOARD	6	07-Jan-99	23-Aug-99.
MINOT	ND	GROUNDS MAINTENANCE	9	18-May-99	19-Dec-99.
MT HOME	ID	TRANSIENT AIRCRAFT MAINTENANCE	7	27-Aug-98	09-Oct-99.
MULTIPLE INSTLNS		LINEN	11	17-Jun-99	05-Nov-99.
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		RADAR	106	12-Nov-98	16-Apr-99.
CANNON	NM				
SEYMOUR JOHNSON	NC				
SHAW	SC				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22-Dec-98	30-Aug-99.
NELLIS	NV	GENERAL LIBRARY	9	16-Jul-98	02-Apr-99.
NELLIS	NV	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	18	27-Aug-98	30-Jul-99.
OFFUTT	NE	COMPUTER OPERATIONS	76	17-Feb-99	01-Mar-00.
OFFUTT	NE	DATA AUTOMATION	67	27-Aug-98	01-Aug-99.
OFFUTT	NE	SOFTWARE PROGRAMMING	3	12-Nov-98	26-Apr-99.
PATRICK	FL	BASE WEATHER OBSERVING	5	17-Mar-98	01-Sep-99.
PATRICK	FL	RANGE MAINTENANCE	32	19-May-98	15-Jul-99.
PATRICK	FL	RANGE MAINTENANCE	31	19-May-98	15-Jul-99.
POPE	NC	FURNISHINGS MANAGEMENT	1	07-Oct-98	26-Jul-99.
PORTLAND	OR	ADMINISTRATIVE SWITCHBOARD	2	22-Dec-98	20-Jul-99.
RANDOLPH	TX	FLYING TRAINING	26	01-Jun-98	21-May-99.
RANDOLPH	TX	FLYING TRAINING	45	20-Jan-98	03-Aug-98.
RANDOLPH	TX	INFORMATION MANAGEMENT	26	12-May-98	15-Jan-99.
SCOTT	IL	FURNISHINGS MANAGEMENT	3	08-Jul-98	27-Jul-99.
SCOTT	IL	MISCELANEOUS ACTIVITIES	2	18-Mar-99	13-Jan-00.
SELFRIDGE	MI	BASE OPERATIONS	6	04-Jun-98	30-Apr-99.
SELFRIDGE	MI	COMMUNICATION FUNCTIONS	3	17-Aug-98	30-Apr-99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
SELFRIDGE	MI	FUELS MANAGEMENT	8	01-Jun-98	27-Apr-99.
SELFRIDGE	MI	TRANSIENT AIRCRAFT MAINTENANCE	8	04-Jun-98	28-Apr-99.
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12-Nov-97	02-Jul-99.
SHAW	SC	COMMUNICATION FUNCTIONS	3	18-May-99	09-May-00.
SHAW	SC	LIBRARY	7	27-Aug-98	15-Jul-99.
SHAW	SC	TRANSIENT AIRCRAFT MAINTENANCE	11	28-Aug-98	15-Jul-99.
TINKER	OK	GRAPHIC ARTS	13	14-Jan-99	09-Jul-99.
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20-Apr-98	16-Dec-98.
TRAVIS	CA	HEATING SYSTEMS	5	20-Apr-98	01-Jul-99.
USAF ACADEMY	CO	AIRFIELD OPERATIONS AND WEATHER	9	17-Apr-98	12-Apr-99.
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	14-Apr-99	01-Nov-99.
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	9	22-Dec-98	01-Sep-99.
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08-Dec-98	27-Sep-99.
WHITEMAN	MO	HOSPITAL SERVICES	2	17-Apr-98	17-Nov-98.
WHITEMAN	MO	PROTECTIVE COATING	8	06-Apr-99	22-Nov-99.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–22170 Filed 8–25–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Team 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 September 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 purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Team 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.

Dated: August 20, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of the Eisenhower Regional Consortia Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,562. Burden Hours: 781.

Abstract: The Evaluation of the Eisenhower Regional Consortia Program is designed to determine the quality and effectiveness of technical assistance and professional development activities that each of the 10 Consortia provide to educators in their respective regions. The evaluation is mandated by Congress and is needed to provide information on the program in time for the reauthorization of the program. In addition, the evaluation is designed to provide information to measure the program's Government Performance and Results Act (GPRA) performance indicators. Respondents to the surveys being submitted for clearance include State Education Agency staff and other state-level educators, as well as local educators who have received Consortia services.

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 OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359. 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. 99–22109 Filed 8–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Department of Energy's Waste Management Program: Storage of High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) has decided to store immobilized high-level radioactive waste (HLW), at three DOE-owned sites (the Hanford Site in the State of Washington, the Idaho National Engineering and Environmental Laboratory, and the Savannah River Site in South Carolina) and one DOE-managed site (the West Valley Demonstration Project in New

York, a project that is managed by DOE under the West Valley Demonstration Project Act, at a site owned by the State of New York). Immobilized HLW is a final waste form that will remain in storage until accepted for disposal at a geologic repository. This decision is based on the *Final Waste Management Programmatic Environmental Impact Statement* (WM PEIS).

FOR FURTHER INFORMATION CONTACT: Copies of the WM PEIS and this Record of Decision (ROD) are available in DOE public reading rooms and selected libraries located across the United States. A list of the public reading rooms at which the WM PEIS and this ROD are available can also be accessed on the DOE Office of Environmental Management's World Wide Web site at http://www.em.doe.gov/em30/. To request copies of the WM PEIS, this ROD, or a list of the reading rooms and public libraries, please write or call: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information on the WM PEIS or this ROD, please write or call: Ms. Karen Guevara, WM PEIS Program Manager, Office of Planning and Analysis (EM–35), U.S. Department of Energy, Office of Environmental Management, 19901 Germantown Road, Germantown, MD 20874, telephone: 301–903–4981.

For general information on the DOE National Environmental Policy Act (NEPA) process, please write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, Office of Environment, Safety, and Health, 1000 Independence Avenue, SW, Washington, DC 20585–0119, telephone: 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The *Waste Management Programmatic Environmental Impact Statement* (WM PEIS), DOE/EIS–0200F, issued in May 1997, studied the potential nation-wide impacts of managing four types of radioactive waste (low-level waste, mixed low-level waste, transuranic waste, high-level waste (HLW)) and hazardous waste generated by defense and research activities at 54 sites around the United States. Two Records of Decision (RODs) have been issued, based in part on the analyses in the WM PEIS. These are the transuranic waste treatment and storage ROD (63 FR 3629, January 23, 1998) and the non-wastewater hazardous waste treatment ROD (63 FR 41810, August 5, 1998). The ROD for low-level and mixed low-level waste treatment and disposal is expected to be issued shortly.

The WM PEIS analyzes the potential environmental impacts of broad alternatives for DOE's waste management program, and was designed to provide part of the basis for DOE to decide upon a programmatic configuration of sites for waste management activities. In addition, DOE will perform site-wide or project-specific NEPA reviews, as needed, to more specifically analyze site-specific waste management activities, consistent with the selected programmatic approach. Those reviews provide more focused analysis, including specific storage facility capacities and design parameters. DOE will not decide the specific location of any new facilities at sites selected to store HLW, or specific facility capacities and designs, until the completion of these follow-on NEPA reviews.

This ROD applies only to the storage of immobilized HLW as analyzed in the WM PEIS. DOE prepared this ROD in accordance with NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

High-Level Waste Storage

HLW is the highly radioactive waste resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste that contains fission products in sufficient concentrations, and other highly radioactive material that is determined, consistent with existing law, to require permanent isolation (DOE Order 435.1, *Radioactive Waste Management*, July 1999). In Chapter 9 of the WM PEIS, DOE analyzed alternatives for the storage of HLW, immobilized to a final form, that has been or will be generated at three DOE-owned sites: the Hanford Site in Washington, the Idaho National Environmental Engineering Laboratory (INEEL), and the Savannah River Site (SRS) in South Carolina, as well as at the West Valley Demonstration Project (WVDP) in New York. The State of New York retains title to the WVDP site and the stored HLW, but the waste has been treated by DOE pursuant to the West Valley Demonstration Project Act. Discussion and agreement with the State of New York would be necessary if DOE were to move the HLW canisters to another site.

For all four sites, DOE needs to decide where to store the immobilized HLW until its acceptance for disposal at a geologic repository managed by DOE's Office of Civilian Radioactive Waste Management. The Department is preparing an EIS on a proposal to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain in Nevada for the disposal of spent nuclear fuel and high-level radioactive waste. The Department plans to distribute the draft Yucca Mountain EIS in August of 1999 for public comment, and issue the Final EIS in the Fall of 2000. If Yucca Mountain were eventually approved as the site of the nation's first geologic repository, DOE intends to dispose high-level radioactive waste there. For the HLW at Hanford, WVDP, and SRS, DOE has already selected borosilicate glass poured into stainless steel canisters as the final waste form. No decision on a final immobilized waste form has yet been made for the HLW at INEEL but DOE is currently preparing the *Idaho High-Level Waste and Facilities Disposition at the INEEL EIS* (DOE/EIS–02870) which will evaluate the environmental impacts associated with alternative strategies for treatment, storage, and disposal (including the waste form) of high-level and associated radioactive wastes at the site, including offsite treatment options.

Alternatives Considered for Storage of Immobilized High-Level Waste

In the WM PEIS, the term ''alternative'' generally refers to a nationwide configuration of sites for treating, storing, or disposing of a waste type. In the case of HLW, however, the analysis did not include the impacts of storing non-immobilized HLW, treating HLW, or disposing of HLW. The following summarizes the alternatives DOE analyzed for immobilized HLW storage.

No Action Alternative. A no action or ''status quo'' alternative may not comply with applicable laws and regulations; however, analysis of such an alternative is required under NEPA regulations, and provides an environmental baseline against which the impacts of other alternatives can be compared. Selection of the No Action Alternative, in this case, would involve using only currently existing or approved HLW storage facilities at DOE sites. Immobilized HLW canisters would be stored at Hanford, SRS, and WVDP until transfer to a geologic repository managed by DOE's Office of Civilian Radioactive Waste Management. HLW at INEEL would be stored as a solidified calcine material (a dry noncorrosive

granular solid) or as liquids, until its final disposition is determined. Because sufficient storage capacity for the projected number of HLW canisters is not already existing or approved at Hanford and SRS, immobilization activities would have to be interrupted or delayed, based on the rate at which a repository could accept the immobilized HLW.

Decentralized Alternative. Selection of this alternative would result in storing HLW, immobilized to a final form, where it was generated or will be generated in the future. The activities that differentiate the Decentralized Alternative from the No Action Alternative would be the siting, construction and operation of new storage facilities or the modification of existing storage facilities at some sites. Hanford, SRS, and WVDP would store immobilized HLW canisters, and INEEL would store HLW in a final immobilized form, yet to be determined, until transfer to a geologic repository. This was designated as the preferred alternative in the WM PEIS.

Regionalized Alternatives. Two alternatives were considered for regionalized storage of immobilized HLW. Under Regionalized Alternative 1, immobilized HLW canisters would be stored at Hanford and SRS, immobilized HLW canisters from WVDP would be transported to SRS, and HLW at INEEL would be stored there after immobilization until the HLW is accepted at a geologic repository. Under Regionalized Alternative 2, HLW canisters would be stored at Hanford and SRS, HLW canisters from WVDP would be transported to Hanford, and immobilized INEEL HLW would be stored there until transfer to a geologic repository.

Centralized Alternative. Immobilized HLW from INEEL, and HLW canisters from WVDP and SRS would be transported to Hanford where all of the HLW would be stored with Hanford HLW canisters until transfer to a geologic repository.

Environmentally Preferable Alternative

Table 9.16–1 in the Final WM PEIS summarizes the key impacts that may be associated with storage of immobilized HLW. This table quantifies potential worker health risks, transportation risks, and costs for the various HLW alternatives analyzed in the WM PEIS. Chapter 9 details additional HLW impact areas analyzed in the WM PEIS, including cultural resource and environmental justice concerns. All of these impacts were considered in identifying environmentally preferable alternatives and in making this waste storage decision.

The potential health and environmental impacts for all immobilized HLW storage alternatives are generally low. Differences among the alternatives are small, but the No Action, Decentralized (the preferred option), and Regionalized 1 Alternatives have 1–2 fewer estimated potential fatalities, over twenty years, than the Regionalized 2 and Centralized Alternatives (total fatalities are estimated to range from 8 to 10 among each of the five alternatives.) Under the No Action Alternative, however, immobilization of large quantities of HLW to a stable, durable form would be delayed or interrupted, posing an environmentally undesirable condition. Environmental impacts of the Decentralized and Regionalized 1 Alternatives are essentially comparable; however, the need for additional construction of a larger facility under the Regionalized 1 Alternative makes the Decentralized Alternative marginally more environmentally preferable. Additionally, under the Decentralized Alternative, immobilized HLW would need to be loaded and unloaded for transportation purposes less often, compared to the other action alternatives, thereby reducing worker radiological exposure. None of the alternatives would pose environmental justice concerns.

Decision: Storage of High-Level Waste

The Department has selected the Decentralized Alternative, to store immobilized HLW in a final form at the site of generation—Hanford, INEEL, SRS, or WVDP—until transfer to a geologic repository.

This decision is the same as the WM PEIS preferred alternative. The decision allows use of existing immobilized HLW storage capacity at SRS and WVDP, and use of the previously decided, almost complete Canister Storage Building at Hanford, which will provide partial storage for its immobilized HLW. This approach also reduces environmental impacts that would result from constructing larger storage facilities that would be needed under the Regionalized and Centralized Alternatives.

Although transportation-related fatalities are essentially the same for all the alternatives, the Decentralized Alternative results in reduced immobilized HLW loading and unloading operations for transportation purposes, as compared to the other action alternatives. Additionally, transportation-related administrative considerations involving the need for notification and emergency preparedness training, and public concerns in transportation corridor states, weighed in favor of the Decentralized Alternative when compared to the Regionalized and Centralized Alternatives.

DOE also considered uncertainties about the timing of accepting HLW at a geologic repository. Stakeholders and local governments have expressed concerns that sites may store immobilized HLW for much longer periods than the Department's plans currently indicate. The Department's selection of the Decentralized Alternative apportions the amount of such HLW to be stored according to the quantity of HLW generated at each site.

Mitigation

Although a mitigation action plan is not required because no non-routine mitigation commitments are being made, Chapter 12 of the WM PEIS describes measures that DOE takes in order to minimize the impacts of its waste management activities. Mitigation measures are an integral part of the Department's operations, so as to avoid, reduce, or eliminate potentially adverse environmental impacts. Some of the more important routine mitigation measures that DOE will continue to use in its management of radioactive waste are:

- Modifying engineering facility designs to reduce or eliminate risk or impacts;
- Implementing strict and mandatory safety programs for all facility workers;
- Using safety analyses to establish safety limits within which facilities can operate, while limiting risks and adequately protecting the environment; and
- Reviewing and modifying, as appropriate, existing emergency action plans at DOE sites to ensure appropriate response to accidents or other emergencies.

Site-specific, non-routine mitigation measures may also be identified and implemented in the course of further decision-making under site-specific NEPA reviews.

Issued in Washington, DC this 12th day of August, 1999.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 99–22149 Filed 8–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies; Notice of Solicitation for Financial Assistance Applications for Cooperative Research and Development for Low-Emission Gas Turbines

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance. The purpose of this research is to advance the state of development of one or more durable and cost-effective low-emission technologies for integration into Advanced Industrial Gas Turbine Systems used in power generation service. In order to reach this goal, development, subsystem testing, and demonstration of optimized and fully integrated components comprising low-emission technologies must be performed.

DATES: The solicitation document will be available on or about September 1, 1999. Applications are due on or about October 12, 1999. Awards are anticipated by December 31, 1999.

ADDRESSES: The solicitation will be available on the internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acq.htm* under the heading ''Current Solicitations'', Solicitation No. DE–SC02–99CH11000. Completed applications referencing Solicitation No. DE–SC02–99CH11000 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, ATTN: Terry L. Vlasich, Acquisition and Assistance Group.

FOR FURTHER INFORMATION CONTACT: Terry L. Vlasich at 630/252–0954, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at 630/252–5045, or by electronic mail at *terry.vlasich@ch.doe.gov*.

SUPPLEMENTARY INFORMATION: The fully-developed, demonstrated low-emission system would accomplish the following objectives:

1. A technical potential of controlling NO_X in the exhaust to a level of less than 5 parts-per-million (ppm) by volume when firing with natural gas while simultaneously obtaining acceptable levels of carbon monoxide and unburned hydrocarbons.

2. Consideration for transitioning the technology to back-up fuels as well as alternative biomass-derived fuels, while achieving a substantial reduction in NO_X emissions for these fuels.

3. Durable for at least 8000 hours while otherwise maintaining reliability, availability, and maintainability of the Advanced Industrial Gas Turbine and its component subsystems.

4. A target cost add-on of no more than 10% of the cost of the base turbine.

The Scope of Work for this solicitation includes 5 Task areas described below as Tasks 1, 2, 3, 4 and 5. Tasks 1 and 2 may be performed with respect to any gas turbine, including microturbines. However, work under all tasks must have applicability to an Advanced Industrial Gas Turbine, and Tasks 3, 4 and 5 must be performed on an Advanced Industrial Gas Turbine. All work proposed under an application must be scheduled for completion within the three-year life expectancy of this program. Regardless of the task or tasks to be undertaken, the applicant will integrate an analytical system commensurate with the accuracy, precision, and sensitivity necessary for determining and controlling the ultra-low contents of pollutants expected from this work. Such analytical system may exceed the requirements of any prevailing emissions statute(s).

Task 1—The starting point of this task shall be, as a minimum, a low-emission concept with prior experimental evidence of its potential for meeting the solicitation objectives. The participant will identify the form, function, and fit of all components necessary to execute the proposed low-emission concept. The participant will also develop preliminary designs for the components. First article components will be constructed and tested at a scale suitable to confirm the design parameters that were used and to give qualitative and quantitative indications that the components will perform as planned.

Task 2—The participant will complete detailed designs of the selected low-emission system components. These designs will include the investigations of all process and economic parameters for integrating the selected components into an overall optimized low-emission system. The components will be manufactured and the low-emission system assembled. Development and testing will be done to verify the overall approach, to provide operating and control parameters, and to provide full-scale definition such as allowable turbine operating ranges, sensitivity to fuel variability, and other factors affecting the performance of the low-emission system.

Task 3—The design of an Advanced Industrial Gas Turbine will be adapted in parallel to the low-emission system development to assure compatibility, optimum fit, and functionality. The work will include the development of a control system that is integrated with the overall operation of the turbine system. The work under this task will integrate hardware, controls, and operating procedures for startup, steady operation over turbines usual power range (for example 50% to 100% of rated output), planned changes (such as anticipated shutdown or transitions of operating load) and unexpected changes in power output (such as lost load).

Task 4—The applicant shall design and fabricate a full-scale, low-emission combustion system that incorporates the scientific and engineering principles and the components necessary for the deployment of the applicant's concept. The low-emission system shall exhibit the form, function, and fit compatible with the modified turbine developed either under Task 3 or elsewhere. The applicant shall prove either by external testing or by demonstration on an actual turbine the ability of the combustion system to achieve less than 5 ppm for the combined total of the oxides of nitrogen. Such testing shall include those sensors and controllers needed to maintain this emission standard over the design operating range of the turbine. Test results shall include relationships among NO_X, combustor outlet temperature, and other relevant parameters, and the simultaneously measured values of carbon monoxide and unburned hydrocarbons. The proof testing shall be based on natural gas fuel. However, it is recognized than the market requires dual fuel capabilities. Such dual fuel capabilities may be considered in the design.

The completion of Task 4 would result in the installation of the low-emission system on an Advanced Industrial Gas Turbine and would qualify the combined low-emission system and gas turbine for shipment, installation, and demonstration in the field under Task 5.

Task 5—The completion of Task 5 would result in the demonstration of a low-emission Advanced Industrial Gas Turbine for 8000 hours. At a minimum, the demonstration shall comprise 4000 hours of operation with natural gas fuel at a host site that is compatible with an operating rate of at least 4000 hours per annum. The starting maturation level of this task shall be equivalent to the combined low-emission system and gas

turbine qualified either by the completion of Task 4 or elsewhere.

The applicant shall complete a coordinated plan for the demonstration that incorporates the perspectives of all relevant parties, including the host site. The plan will also assign responsibilities on all matters necessary to execute the demonstration plan, such as business arrangements, balance of plant equipment, site construction, site integration, periodic inspections of hardware, visitations of third parties, data acquisition, and obtainment of environmental, construction, operating, and other permits.

The demonstration shall be representative of significant market segments of the distributed power generation industry. As a result, the successful demonstration at the host site will be expected to exemplify the resolution of the typical barriers (such as technical, environmental, industry acceptance, and control issues related to an interconnection to the existing local utility transmission and distribution grid) that impede the widespread adoption of distributed generation. In this regard, all hours of operation accumulated under the demonstration shall be gained while generating electric power.

Additionally, all such hours of operation shall be accumulated while the host site is interconnected to the existing local utility transmission and distribution grid that exists for the routine transmission and distribution of electric power. Accordingly, the balance of plant equipment shall be sufficient to generate and condition such electric power, and all hardware shall be provided for interconnection, transmission, and distribution on the local utility grid. (The sole use of isolation switches shall not be sufficient to meet this requirement.)

DOE expects to award three to six cooperative agreements under this solicitation. It is estimated that individual awards will range in value between approximately $800,000.00 and $1,600,000.00 of DOE funding and will require awardee Cost Sharing.

A minimum non-federal cost sharing commitment of 30% of the cost for Task 1 and 2, 45% of Task 3 and 4, and 60% of Task 5 is required. Any non-profit or for-profit organization or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. DOE National Laboratory participation as a subcontractor is limited to no more than 30% of the cost of any individual task to be performed.

As applicants may apply under one or more of the five tasks within the solicitation Scope of Work there is a wide range in the number of potential awards and award values.

Estimated DOE funding is $5 million over the three-year period. DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted in response to this solicitation. All awards are subject to the availability of funds.

Issued in Argonne, Illinois on August 20, 1999.

James R. Bieschke,

Director, Acquisition and Assistance Group, Contracting Officer.

[FR Doc. 99–22173 Filed 8–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1971–002]

California Independent System Operator Corporation; Notice of Filing

August 20, 1999.

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to its compliance filing in the above-referenced docket which included a number of revisions to the ISO Tariff. The ISO states that this filing was submitted in response to certain protests of its initial compliance filing, submitted on July 2, 1999, and in response to the Commission's July 26, 1999 Order, 88 FERC ¶ 61,096 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the offical service list 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's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 9, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22139 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–203–007]

CNG Transmission Corporation; Notice of Site Visit

August 20, 1999.

On August 31, 1999, the Office of Pipeline Regulation staff will conduct a site visit of proposed and constructed facilities with representatives of CNG Transmission Corporation, of the Tiogo Expansion Project in Tioga County, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, plaease contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22142 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4016–000]

Mobil Energy Services Co., L.L.C.; Notice of Filing

August 20, 1999.

Take notice that on August 6, 1999, the above-mentioned power marketer/or public utility tendered for filing quarterly reports with the Commission in above referenced proceedings for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.fec.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before

August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22140 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–16–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 13, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Third Revised Sheet No. 85. PG&E GT–NW requests that the above-referenced tariff sheets become effective September 13, 1999.

PG&E GT–NW asserts that the purpose of this filing is to update its Tariff to reflect that PG&E GT–NW will share certain facilities in San Antonio, Texas, with a marketing affiliate.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

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. 99–22145 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–15–001]

PG&E Gas Transmission-Northwest; Notice of Filing

August 20, 1999.

Take notice that PG&E Gas Transmission-Northwest (PG&E–NW) filed revised standards of conduct on August 13, 1999 in response to the Commission's July 16, 1999 order. 88 FERC ¶ 61,086 (1999). PG&E–NW states that it is revising its Standard E to state that Standard E's restrictions will apply to all employees, not just operating employees. 18 CFR 161.3(e).

Any person desiring to be heard or to protest the 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 or 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211 or 385.214. All such motions to intervene or protests should be filed on or before September 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 99–22144 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4067–000]

Puget Sound Energy, Inc., Notice of Filing

August 20, 1999.

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with McMinnville Water & Light (McMinnville).

A copy of the filing was served upon McMinnville.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22141 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 17, 1999, Questar Pipeline Company, pursuant to 154.402(c) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1999, the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1

Eleventh Revised Sheet No. 5

Tenth Revised Sheet No. 5A
Eighth Revised Sheet No. 6
Seventh Revised Sheet No. 6A

Original Volume No. 3

Twenty-Second Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates the annual charge adjustment (ACA) unit rate of $0.00217 per Dth. In addition, the redundant restatement of the ACA unit rate has been eliminated from the footnotes in Questar's Statement of Rates.

Copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission to 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 also 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. 99–22137 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–143–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 17, 1999, TransColorado Gas Transmission Company, pursuant to 154.402(c) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1999, Fourth Revised Sheet No. 20 to Original Volume No. 1 of TransColorado's FERC Gas Tariff:

TransColorado states that this filing incorporates into its transportation rates the annual charge adjustment unit rate of $0.00217 per Dth.

Copies of this filing were served upon TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Regulation Commission.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed in accordance with Section 154.210 of the Commission's Regulations. 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 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. 99–22138 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–602–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

August 20, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston,Texas 77251, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for an order permitting and approving the partial abandonment and conversion of service to enable Transco to abandon and convert a portion of its Rate Schedule WSS firm storage service, currently rendered under Part 157 of the regulations and its individually certificated authorization in Docket No. CP74–33, to service under Transco's blanket certificate and Part 284 of the Commission's regulations, all as more full set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Gisela B. Cherches, Senior Attorney, Transcontinental Gas Pipe Line Corporation, Post Office Box 1396, Houston, Texas 77251, (713) 215–2000.

Transco states that PECO Energy Company (PECO) desires to abandon 43,382 dt/d of withdrawal capacity and 3, 687, 492 dt of total storage capacity effective October 1, 1999, which is currently provided to PECO under Rate Schedule WSS, and to convert such service to Rate Schedule WSS—Open Access storage service. Upon authorization of abandonment of this portion of Rate Schedule WSS service, it will be converted and Transco will provide Part 284 service under Rate Schedule WSS—Open Access to PECO for the entire amount of capacity.

Tranco also requests, to the extent necessary, a waiver of Section 49 of the General Terms and Conditions of its tariff, which requires Transco to announce any firm capacity which becomes available and to hold an open season for such capacity.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes

that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22143 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–741–000]

Williams Field Services Group, Inc. v. El Paso Natural Gas Company; Notice of Compliant

August 20, 1999.

Take notice that on August 18, 1999, Williams Field Services Group, Inc. (Williams), tendered for filing a complaint against El Paso Natural Gas Company (El Paso), that alleging the El Paso has misfunctionalized certain gathering facilities among its transmission assets and rates. Specifically, Williams states that the Blanco compressor, located in northwestern New Mexico, supports nonjurisdictional gathering and processing operations and should be removed from El Paso's transmission assets and rates, including fuel rates. Williams also states that El Paso should be directed to remove from transmission rates all costs of the Chaco compressor, which is owned and operated by El Paso's affiliate, EL Paso Field Services Company. Finally, given the overlap of issues, Williams requests that the Commission consolidate its complaint with El Paso's rate case in Docket No. RP95–363–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed on or before September 7, 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 in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall be due on or before September 7, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22136 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–212–000, *et al.***]**

Sithe Maryland Holdings, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

August 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Sithe Maryland Holdings, LLC

[Docket No. EG99–212–000]

Take notice that on August 11, 1999, Sithe Maryland Holdings, LLC, c/o Sithe Energies, Inc., 450 Lexington Avenue, 37th Floor, New York, NY 10017 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sithe Maryland Holdings, LLC, an indirect subsidiary of Sithe Energies, Inc., is acquiring a hydroelectric facility located adjacent to Deep Creek Lake in Garrett County, Maryland, with a capacity of approximately 18 MW.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Sierra Pacific Power Company

[Docket No. EL99–85–000]

Take notice that on August 13, 1999, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 210 of the Federal Power Act, an Application requesting that the Commission issue an order directing the interconnection of Sierra's facilities with those of Oxbow Geothermal Corporation (Oxbow). Sierra asserts that such an interconnection (referred to as the Frenchman's Tap) will provide system support that will result in a 30 MW increase in Sierra's import capacity and will at the same time also improve the reliability of Oxbow's transmission facilities. Sierra is willing to pay all of the actual costs incurred by Oxbow as a consequence of the Frenchman's Tap project.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cambridge Electric Light Company

[Docket Nos. ER98–1522–003, EC98–50–001 and EC98–50–002]

Take notice that on August 16, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing its compliance refund report pursuant to the Commission's order issued July 1, 1999.

Copies of the tendered filing have been served by Cambridge upon the Town of Belmont, Massachusetts, and the Massachusetts Department of Telecommunications and Energy.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cabrillo Power I LLC

[Docket No. ER99–4112–000]

Take notice that August 16, 1999, Cabrillo Power I LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket Nos. OA96–153–005 and ER96–2401–003]

Take notice that on August 16, 1999, Arizona Public Service Company (APS) tendered for filing a Compliance Refund Report for refunds made in accordance with the Commission's letter of approval dated June 17, 1999 in Consolidated Docket Nos. OA96–153–000 and ER96–2401–000.

Copies of this filing have been served on the Service List and the Arizona Corporation Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Westbrook Power LLC

[Docket No. EG99–208–000]

Take notice that on August 16, 1999, Westbrook Power LLC (Westbrook) filed a Notice of Withdrawal of its Application For Determination of Exempt Wholesale Generator Status that was filed in the above-referenced proceeding on July 30, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Kevin Burke, Carol Monti Barris, James J. O'Brien, Jr., Hyman Schoenblum, Robert P. Stelben, Peter A. Irwin, Eugene R. McGrath, and Michael Del Giudice

[Docket Nos. ID–3398–000, ID–3399–000, ID–3400–000, ID–3401–000, ID–3402–000, ID–3403–000, ID–3404–000, and ID–2345–003]

Take notice that on August 9, 1999, Consolidated Edison Company of New York, Inc., tendered for filing informational reports of interlocking positions of above-referenced appointed officers of Orang and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. East Texas Electric Cooperative, Inc.

[Docket No. ES99–59–000]

Take notice that on August 13, 1999, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing an application under Section 204 of the Federal Power Act seeking authorization to enter into a loan agreement with the National Rural Utilities Cooperative Finance Corporation under which ETEC would assume up to $6 million in long-term debt.

ETEC also requested exemption from compliance with the Commission's competitive bidding or negotiated placement requirements at 18 CFR 34.2.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER99–3426–000]

Take notice that on July 12, 1999, San Diego Gas & Electric Company, tendered for filing corrections to its June 30, 1999, filling in the above-referenced docket.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4056–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (APC).

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4057–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER99–4058–000]

Take notice that PacifiCorp on August 12, 1999, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Non-Firm Point-To-Point Transmission Service Agreement with Western Area Power Administration-Rocky Mountain Region (Western) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4060–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc., (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4059–000]

Take notice that on August 12, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 32 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of August 11, 1999, to Coral Power, L.L.C. and Aquila Energy Marketing Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company

[Docket No. ER99–4061–000]

Take notice that on August 12, 1999, Ameren Services Company (ASC) as agent for Union Electric Company (UE), tendered for filing notice that effective as of July 12, 1999, Rate Schedule FERC No. 170, dated June 20, 1996, (Docket No. ER96–2299–000) filed with the Federal Energy Regulatory Commission by Union Electric Company is canceled.

Notice of the proposed cancellation has been served upon the following Duke Power Company.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Montaup Electric Company

[Docket No. ER99–4063–000]

Take notice that on August 12, 1999, Montaup Electric Company (Montaup), tendered for filing executed service agreements under Montaup's market-based sales tariff, FERC Electric Tariff, Original Volume No. 8, between Montaup and Great Bay Corporation, New Energy Ventures, Inc., and Reliant Energy Services, Inc.

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of the date of the filing.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER99–4064–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Mason County Public Utility District No. 3 (Mason County).

A copy of the filing was served upon Mason County.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Elwood Energy LLC

[Docket No. ER99–4062–000]

Take notice that on August 12, 1999, Elwood Energy LLC (Elwood), tendered for filing an agreement for the sale of electric energy and capacity by Elwood to Commonwealth Edison Company, dated March 24, 1999.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22133 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3021–048]

Allegheny Hydro No. 8 and 9 Limited Partnership and Connecticut National Bank; Notice of Availability of Final Environmental Assessment

August 20, 1999.

A final environmental assessment (EA) is available for public review. The final EA analyzes the environmental impacts of installing 15-inch flashboards on the top of Lock and Dam 9, part of the Allegheny River Lock and Dam 8 and 9 Hydroelectric Project No. 3021–048. The Commission is requiring flashboards, from about May 1 through October 31 each year, to rectify project-induced lower water levels in the Lock 9 pool. The final EA contains Commissions staff's analysis that 15-inch flashboards are needed and installation would not constitute a major federal action significantly affecting the quality of the human environment. The Allegheny River Lock and Dam 8 and 9 Project is on the Allegheny River near the City of Kittanning, in Armstrong County, Pennsylvania.

The final EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the final EA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The final EA may be viewed on the web at www.ferc.fed.us/online/rims/htm. Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22148 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.: 11563–002.*

c. *Dated filed:* May 3, 1994.

d. *Applicant:* Utica Power Authority.

e. *Names of Project:* Utica Project.

f. *Location:* On the North Fork Stanislaus River and Silver Creek in Alpine and Toulumne Counties, California. The project is on lands of the Stanislaus National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, PO Box 430, San Andreas, CA 95249, (209) 754–4230.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202)–219–2843.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The project consists of the following existing facilities: (1) Lake Alpine, with a surface area of 172 acres and a gross storage capacity of 4,115 acre-feet at a normal maximum water surface elevation of 7,302 feet created by; (2) the 49-foot-high and 400.5-foot-long masonry/rock filled gunite faced Alpine main dam, the 11-foot-high, 33-foot-long masonry/rock filled gunite faced Alpine dam No. 2, the 11-foot-high, 166-gfoot-long masonry/rock filled gunite faced Alpine dam No. 3, the 11-foot-high, 97.4-foot-long masonry/rock gunite faced Alpine dam No. 4, and a 12-foot-high, 140-foot-long earth filled section; (3) Union Reservoir, with a surface area of 218 acres and a gross storage capacity of 3,130 acre-feet at normal maximum water surface elevation of 6,850.2 feet created by; (4) the 33-foot-high, 1,142-foot-long rock filled Union main dam and seven auxiliary small rock filled dams; (5) Utica Reservoir, with a surface area of 233.5 acres and a gross storage capacity of 2,350 acre-feet at a normal maximum water surface elevation of 6,819.6 feet created by; (6) the 44-foot-high, 373-foot-long rock filled concrete faced Utica main dam and four auxiliary small rock filled dams; and (7) other appurtenances. There are no hydroelectric generation facilities at the project.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission with 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service listed prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22134 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 20, 1999.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11730–000.

c. *Date Filed:* April 21, 1999.

d. *Applicant:* Black River Limited Partnership.

e. *Name of Project:* Alverno Hydroelectric Project.

f. *Location:* On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank O. Christie, President, Franklin Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1961.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address *john.costello@ferc.fed.us* or telephone at (202) 219–2914.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of a 360-foot-long earth filled dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine-generator sets.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE., Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22135 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2019–017.

c. *Date filed:* May 3, 1994.

d. *Applicant:* Utica Power Authority.

e. *Name of Project:* Utica Project.

f. *Location:* On Mill and Angels Creeks in Calaveras, California. The project is partially on lands of the Stanislaus National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, P.O. Box 430, San Andreas, CA 95249, (209) 754–4230.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202) 219–2843.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing project consists of: (1) The Mill Creek Tap which delivers water from the Collierville Tunnel (part of Project No. 2409, licensed to CCWD) to the Upper Utica Conduit; (2) the 0.7-mile-long Upper Utica Conduit (an open channel); (3) the 58.5-foot-high and 389-foot-long concrete arch and gravity Hunters dam; (4) Hunters Reservoir with a surface area of 19 acres and a gross storage capacity of 253 acre-feet; (5) the 13.41 mile-long Lower Utica Conduit (a metal-line wooden box flume and natural earth, and gunite canal sections); (6) the 2.8-acre surface area and 56.9-acre-foot gross storage capacity Murphys Forebay impounded by a 27-foot-high, 415-foot-long earthfill South dam and a 67-foot-high, 316-foot-long earthfill West dam; (7) the 24-inch to 48-inch and 4,048-foot-long shop welded steel Murphys Penstock; (8) the 33-foot-wide by 36-foot-long concrete Murphys Powerhouse, housing a semi-enclosed vertical impulse turbine-generator unit with an installed capacity of 4 MW; (9) Murphys Afterbay, with a surface area of 2.7 acres and a gross storage capacity of 31.3 acre-feet impounded by a 42-foot-high, 340-foot-long earthfill dam topped by a concrete parapet wall; (10) an access road network used to provide maintenance to the conduits; and (11) other appurtenances. The average annual generation of the project is 27 GWH.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22146 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2699–001.

c. *Date filed:* December 21, 1993.

d. *Applicant:* Utica Power Authority.

e. *Name of Project:* Angels Project.

f. *Location:* On Angels Creek in Calaveras County California. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, P.O. Box 430, San Andreas, CA 95249, (209) 754–4230.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202) 219–2843.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing project consists of: (1) the 5.6-foot-high, 64-foot-long, gunite faced, rock-wall and concrete buttress Angels Diversion dam; (2) the Upper Angels Canal, about 2.5 miles long, to Ross Reservoir; (3) the 100-acre gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (4) the Lower Angels Canal, about 3.3 miles long; (5) the Angels Forebay with a gross storage capacity of 2 acre-feet; (6) the 8,624-foot-long Angels Penstock; (7) a powerhouse with an installed capacity of 1,400 kW; and (8) other appurtenances. The average annual generation of the project is 7 GWh.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The applicant may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22147 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00274; FRL–6089–1]

Voluntary Children's Health Chemical Testing Program, Initiation of a Stakeholder Involvement Process; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold three public meetings to involve stakeholders in the design and development of a voluntary program to test commercial chemicals to which children may have a high likelihood of exposure. The purpose of the voluntary testing program is to obtain toxicity data needed to assess the risk of childhood exposure to commercial chemicals. At the kickoff meeting, stakeholders will have an opportunity to give their reactions, either as individuals or as representatives of organizations, to EPA's preliminary thoughts on criteria and considerations that could be used to select chemicals for testing and the test battery. Stakeholders will also have an opportunity to provide their views on new or alternative approaches that might be used in this program. EPA is also interested in obtaining stakeholder input on the key design features of a voluntary testing program that could be used to gather the needed test data. Two subsequent meetings of the Stakeholder Involvement Process will be organized around sets of invited participants which will separately discuss with EPA the different issues related to the voluntary testing program. The two subsequent meetings will also be public meetings and there will be an opportunity for public comment at the conclusion of each discussion between the invited participants and EPA. The information which is developed in the course of this process in the interest of developing a voluntary testing program may also be considered in the development of a possible test rule under section 4 of the Toxic Substances Control Act (TSCA).

DATES: The kickoff meeting of the Stakeholder Involvement Process will be held from 9 a.m. to 5 p.m. on September 22, 1999, and from 9 a.m. to 12 noon on September 23, 1999. This public meeting will be followed by two subsequent meetings currently scheduled for November 30–December 1, 1999, and January 19–20, 2000. These will be the dates unless a **Federal Register** document is published changing the dates or canceling the

meetings. The dates will also be confirmed on the website at http://www.epa.gov/chemrtk/childhlt.htm.

Those who have pre-registered to attend the kickoff meeting, may also pre-register to present oral comments at the meeting by September 10, 1999.

Comments, identified by docket control number OPPTS–00274, must be received on or before September 21, 1999.

ADDRESSES: The kickoff meeting will be held at the Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC.

To pre-register to attend the kickoff meeting or to present oral comments at the meeting, contact the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine Augustyniak, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–3949; e-mail address: augustyniak.christine@epa.gov.

For technical information or to pre-register to attend or to present oral comments at the kickoff meeting contact: Ward Penberthy, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–0508; e-mail address: chemrtk@epamail.epa.gov. Electronic messages should reference the Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process as their subject. When pre-registering to present oral comments, please indicate the public comment session to which your comments are most relevant (see tentative agenda for the kickoff meeting provided on the website at http://www.epa.gov/chemrtk/childhlt.htm under ''Meeting Information'').

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA section 4, individuals or groups concerned with chemical testing and children's health, animal welfare groups, or other members of the general public . Since various individuals or groups may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding this action, please consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the ''Background Information Document'' (Ref. A), additional information about the stakeholder meetings, as well as obtain an electronic copy of this document, you may go directly to the website at http://www.epa.gov/chemrtk/childhlt.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00274. The official record consists of the documents specifically referenced in this action, as well as the documents listed as references in the ''Background Information Document'' (Ref. A). The official record also consists of 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 TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom do I Submit Written Comments on this Notice?

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 OPPTS–00274 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Officer (7407), Office of Pollution Prevention and Toxics (OPPTS), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in Unit I.C.1. of this document. Do 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. Comments and data will also be accepted on standard disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00274. Electronic comments may also be filed online at many Federal Depository Libraries.

D. 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. Please note that, in the absence of steps by EPA leading to disclosure, none of the information marked ''CBI'' will be available for consideration in the Stakeholder Involvement Process; commenters may want to consider this point in developing their submissions. 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 listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. How Can I Request an Opportunity to Present Oral Comments to the Agency at the Kickoff Meeting of the Stakeholder Involvement Process?

Those who have pre-registered to attend the kickoff meeting, may also pre-register to present oral comments at the meeting by contacting the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section by September 10, 1999. Although this meeting is open to the public, there may be time limitations which will restrict the number of oral presentations which can be accommodated. Therefore, EPA strongly encourages those who wish to present oral comments to contact EPA and register in advance. Other presentations of oral comments will be accommodated as time allows. When you pre-register to present oral comments, you must identify the name of the individual who will make the presentation, the organization (if any) the individual represents, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and the public comment session to which the comments are most relevant. The topics to be covered in the four public comment sessions to be held during the kickoff meeting are listed in the tentative agenda provided on the website at http://www.epa.gov/chemrtk/childhlt.htm under ''Meeting Information.'' There is no limit on the length of written comments, but oral comments will be limited to 5 minutes. We encourage presenters to coordinate their oral comments with others as appropriate. When pre-registering, please inform the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section of your plans to coordinate presentations. You are requested to provide at least 35 written copies of your oral statement by the date of the meeting. It is encouraged that you bring copies sufficient for the number of people who plan to attend the kickoff meeting; this number will be available on the website at http://www.epa.gov/chemrtk/childhlt.htm under ''Meeting Information'' several days before the meeting date. These written statements will become a part of the public version of the official record.

F. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on the general approach presented in the ''Background Information Document'' cited in Unit I.B. and discussed in Unit II. of this notice. EPA also invites your views new approaches that have not been considered, the potential benefits or impacts of these various approaches (including possible unintended or unidentified benefits or impacts), and any other data or information that you would like the Agency to consider in the development of a voluntary testing program via the stakeholder process. 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 specific technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate. If you estimate potential benefits or burden reductions (e.g., attributable to a voluntary program), explain how you arrived at the estimate.
5. Provide specific examples to illustrate the key points which underlie your views regarding benefits and impacts.
6. Offer alternative ways to improve the voluntary testing program.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice (OPPTS–00274), along with the name, date, and **Federal Register** citation.

G. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

EPA encourages interested parties to submit comments on chemical testing which are relevant to children's health and any aspect of this notice. Commenters are encouraged to identify other criteria for identifying children's exposure to commercial chemicals, such as bioavailability, and additional relevant data sources, especially as they relate to use in consumer products. Comments on the test battery previously submitted to EPA's Scientific Advisory Panel (SAP) need not be resubmitted.

II. Background Information Document

EPA has prepared a document entitled ''Background Information on the Children's Health Chemical Testing Program'' (Ref. A), which is referred to in this notice as the ''Background Information Document.'' The ''Background Information Document'' describes the history of this program, EPA's preliminary thoughts on criteria and considerations that could be used to select chemicals for testing and the test battery, and how the test data would be used. The ''Background Informaton Document'' and a list of its references are provided on the website at http://www.epa.gov/chemrtk/childhlt.htm. A paper copy of the ''Background Information Document'' and each of its references are available in the public version of the official record, OPPTS–00274, which is located at the address provided in Unit I.B.2. of this notice.

III. Voluntary Testing Program

Although EPA has the authority to require manufacturers and processors to conduct toxicity testing of chemicals for which certain findings have been made under section 4 of TSCA, before proposing such a section 4 test rule, EPA wants to first provide the opportunity for stakeholders including manufacturers, processors, and a wide variety of interested parties to participate in the development of a testing program which involves conducting such testing voluntarily. EPA believes that the involvement of industry and other stakeholders in the early stages of the development of this testing program can promote cooperation, expedite the testing process, and benefit everyone concerned. On May 24, 1999, EPA took an initial step toward developing a voluntary testing program by meeting with representatives from a range of organizations with an interest in children's health issues and toxicity testing. This group discussed the use and possible operating features of a stakeholder involvement process to develop a voluntary chemical testing program and the issues that might be appropriate for consideration. In light of these discussions, EPA has determined that stakeholder meetings might be helpful on such topics as the criteria and data sources for chemical selection, the test battery, and the design of the voluntary testing program. The meeting also produced a list of organizations which may have an interest in a stakeholder involvement process.

Since the May 1999 meeting, EPA has secured a professional facilitator to help convene and manage a stakeholder

involvement process. The facilitator has prepared a document entitled ''Preliminary Findings and Recommendations: Voluntary Children's Health Testing Program Stakeholder Involvement Process'' (Ref. B) to better define the approach that will be taken to initiate discussion. The document is available on the website at http://www.epa.gov/chemrtk/childhlt.htm.

IV. Stakeholder Involvement Process

EPA has considered a number of sources of chemicals to which children may be exposed, but realizes that the wide range of parties interested in children's health is a resource which should be fully utilized to identify candidate chemicals for this testing program. Using a stakeholder involvement process, EPA intends to bring together and obtain input from knowledgeable individuals who represent parties that would be affected by any forthcoming testing program, i.e. stakeholders. These stakeholders would include child health advocates, pediatricians, chemical manufacturers and processors, trade associations, Federal agencies, State health departments, and animal welfare advocates. The stakeholders will have an equal opportunity to present their viewpoints at the kickoff meeting of the Stakeholder Involvement Process.

Due to possible time limitations, those wishing to present oral comments at the kickoff meeting are advised to pre-register with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section and follow the instructions in Unit I.E. of this document. Oral comments will be limited to 5 minutes and copies of your statement must be provided as explained in Unit I.E. of this document. We encourage presenters to coordinate their oral comments with others as appropriate. When pre-registering, please inform the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section of your plans to coordinate presentations. To enable as many interested parties as possible to contribute their ideas and provide opinions, EPA plans to have the professional facilitator lead the meeting.

Persons wishing to file written comments should follow the instructions in Unit I.C., D., and F. of this document. There is no limit on the length of written comments and all interested parties are permitted to file written comments before the kickoff meeting. These written comments, along with copies of oral statements and a summary of the oral discussion at the meeting, will become a part of the public version of the official record and will be considered by EPA during the development of the voluntary testing program.

If you wish to observe the meeting but not present oral comments, you are advised to pre-register for the meeting due to possible space limitations. To pre-register you must identify yourself and your organization as described in the ''FOR FURTHER INFORMATION CONTACT'' section. Seating of others at the kickoff meeting will be on a first-come basis after those who have registered in advance of the meeting have been accommodated.

In the two subsequent meetings, EPA believes it will be necessary to limit the number of active participants to some extent in order to achieve a meaningful dialogue with stakeholders. Therefore, EPA proposes to structure each of the two subsequent meetings as three roundtable discussions with roughly two dozen invited participants at each discussion. EPA will identify and invite a balanced group of individuals and organizations who are believed to represent the interests of the various groups of stakeholders and whom it believes will have information useful to each discussion. Each of the roundtable discussions will address one of the three issue areas listed in Unit V.A. of this document. Depending on the issues to be discussed, the invited participants at each roundtable discussion may not be the same individuals. At the conclusion of each discussion between the invited participants and EPA, there will be an opportunity for public comment. EPA wants to emphasize that the two subsequent meetings, like the kickoff meeting, will be public meetings and all interested parties are encouraged to attend. Those not specifically invited to participate in the roundtable discussions will be given the opportunity to observe the proceedings to the extent space allows and to present information and opinions during solicitations of comments at the end of each discussion.

EPA is not asking participants in the Stakeholder Involvement Process to reach agreement or provide any collective recommendations on the subjects under discussion or on a detailed design of a voluntary testing program. EPA's intent is to obtain information and the individual perspective of the participants based on their unique experiences and background. Accordingly, EPA does not intend at this time to organize this Stakeholder Involvement Process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C App.

V. Stakeholder Meetings

A. Kickoff Meeting

EPA will convene the kickoff meeting of the Stakeholder Involvement Process on September 22 and 23, 1999, at the location listed in the ''ADDRESSES'' section. At this meeting, EPA intends to orient the stakeholders to the background and future plans and goals for this project. In so doing, EPA will inform the stakeholders of the Agency's initial efforts to identify the chemicals to which children and prospective parents may be highly exposed and the testing needed to assess the risk of that exposure. Much of this information is contained in the ''Background Information Document'' (Ref. A) discussed in Unit II. of this notice. EPA will then take comment on EPA's initial efforts and also on the following main issues which EPA believes are of special interest to stakeholders:

1. What criteria, considerations, and data sources should be used to identify chemicals for which there is a concern for high potential exposure to children or prospective parents? (What additional criteria and data sources should be considered? What data sources should not be considered?)

2. Are there any beneficial modifications which could be made to the test battery (i.e., the battery presented to the FIFRA SAP in May 1999)?

3. What should be the key design features of this voluntary testing program?

Comments will be presented first by those who have registered in advance as described in the ''FOR FURTHER INFORMATION CONTACT'' section and Unit I.E. of this document and then by others as time allows.

The tentative agenda for the kickoff meeting of the Stakeholder Involvement Process can be found on the website at http://www.epa.gov/chemrtk/childhlt.htm under ''Meeting Information.''

B. Subsequent Meetings

At this time, EPA intends to hold two subsequent meetings as part of the Stakeholder Involvement Process. At these meetings, invited participants will have roundtable discussions with EPA on the main issues listed in Unit V.A. of this document. At the first of these meetings, EPA will also propose an outline of a chemical testing program which EPA will develop based on the comments presented at the kickoff meeting and written comments submitted according to the instructions in Unit I.C., D., and F. of this document. This outline of a chemical testing

program will serve as a ''strawman'' proposal, which EPA will make available prior to the second meeting. EPA expects the ''strawman'' proposal and proposals submitted by other groups to be a major subject of comment at the roundtable discussions at both of the subsequent meetings. At the end of each roundtable discussion, comments will also be solicited from other stakeholders attending the meeting as described in Unit IV. of this document.

The tentative dates for the two subsequent meetings are November 30-December 1, 1999 and January 19–20, 2000. These will be the dates unless a **Federal Register** document is published changing the dates or canceling the meetings. The dates will also be confirmed on the website at http://www.epa.gov/chemrtk/childhlt.htm. All meetings will be held in the Washington, DC area and will be open to the public. Summaries of the meetings will be placed in the public record, OPPTS–00274.

VI. Public Record

At this time, the public record version of the official record contains the following:

A. United States Environmental Protection Agency (USEPA). ''Background Information on the Children's Health Chemical Testing Program.'' Prepared by Chemical Information and Testing Branch, Chemical Control Division, Office of Pollution Prevention and Toxics (August 19, 1999).

B. Meridian Institute and The Keystone Center. ''Preliminary Findings and Recommendations: Voluntary Children's Health Testing Program Stakeholder Involvement Process.'' Prepared by Tim Mealey and Paul De Morgan for the USEPA and other interested stakeholders (July 30, 1999).

List of Subjects

Environmental protection, Chemicals, Children, Hazardous substances, Heath and safety.

Dated: August 20, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxics.

[FR Doc. 99–22203 Filed 8-23-99; 4:11 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–880; FRL–6090–1]

Notice of Filing; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of chlorfenapyr in or on various food commodities.

DATES: Comments, identified by the docket control number PF–880, must be received on or before September 27, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION (CBI).'' No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Insecticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6502; e-mail: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of chlorfenapyr in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–880] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF-880) and appropriate petition number. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the

availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid

PP 6E4683

EPA has received a pesticide petition (6E4683) from American Cyanamid, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180 by establishing a tolerance for residues of chlorfenapyr [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile] in or on the raw agricultural commodity (RAC) imported citrus at 0.5 ppm. As citrus processed commodities fed to food animals may be transferred to milk and edible tissues, tolerances are also proposed for the following ruminant food items, milk at 0.01 parts per million (ppm); milk fat at 0.15 ppm; meat at 0.01 ppm; and meat byproducts (including fat) at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residues of chlorfenapyr in plants is adequately understood and the residue of concern in citrus consists of the parent molecule. Expressed on a whole basis, the parent compound accounted for 56-75% of the total radioactive residue (TRR) 98% of which was associated with the external rinse and peel.

2. *Analytical method*. The gas chromatography (GC) analytical method M2284, which is proposed as the enforcement method for the residues of chlorfenapyr in citrus, has a limit of detection (LOD) of 0.01 ppm (0.025 ppm for juice), and a limit of quantitation (LOQ) of 0.05 ppm.

3. *Magnitude of residues*. Extensive citrus field trials have been conducted over multiple growing seasons in all major citrus growing regions of the United States, Argentina, and Brazil. The results of these studies indicate that at application rates of 1.05 lbs active ingredient acre (ai/A), the maximum expected chlorfenapyr residues are 0.4 ppm in oranges, 0.38 ppm in lemons, and 0.27 ppm in grapefruit samples harvested at a minimum of 7 days following the last application. These field trial data are adequate to support the proposed tolerance of 0.5 ppm in/on citrus. The results of processing studies indicate that chlorfenapyr residues do not concentrate in molasses and juice. The actual concentration factors in dried pulp (2.4x), and citrus oil (70x) are well below the maximum theoretical concentration factors for these commodities. Although citrus oil is not considered to be a ready-to-eat item and is not expected to contribute to the dietary exposure, a tolerance at 35 ppm (0.5 ppm x 70) is proposed for enforcement purposes.

B. Toxicological Profile

1. *Acute toxicity*. Based on EPA's toxicity category criteria, the acute toxicity category for chlorfenapyr technical is Category II or moderately toxic (signal word WARNING), and the acute toxicity category for the 2SC formulation is Category III or slightly toxic (signal word CAUTION). Males appear to be more sensitive to the effects of chlorfenapyr than females. The acute toxicity profile indicates that absorption by the oral route appears to be greater than by the dermal route. The following are the results from the acute toxicity tests conducted on the technical material.

i. *Rat oral* LD_{50} 441/1,152 milligrams/kilograms/body weight (mg/kg/bwt) male/female -- Toxicity Category II.

ii. *Rabbit dermal* LD_{50}: > 2,000 mg/kg/bwt male/female -- Toxicity Category III.

iii. *Acute inhalation*. LC_{50} 0.83/ > 2.7 milligrams per liter (mg/L) male/female -- Toxicity Category III.

iv. *Eye irritation*. Moderately irritating -- Toxicity Category III.

v. *Dermal irritation*. Non-irritating -- Toxicity Category IV.

vi. *Dermal sensitization*. Non-sensitizer -- Non Sensitizer.

vii. *Acute neurotoxicity*. No observed adverse effect level (NOAEL) 45 mg/kg bwt. Not an acute neurotoxicant.

2. *Genotoxicty*. Chlorfenapyr technical (94.5% a.i.) was examined in a battery of *in vitro*, and *in vivo* tests to assess its genotoxicity and its potential for carcinogenicity. These tests are summarized below.

i. *Microbial/microsome mutagenicity assay*. Non-mutagenic.

ii. *Mammalian Cell Chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) Mutagenicity Assay*. Non-mutagenic.

iii. *In vivo micronucleus assay*. Non-genotoxic.

iv. *In vitro--chromosome aberration assay in CHO*. Non-clastogenic.

v. *In vitro--chromosome aberration assay in CHLC*. Non-clastogenic.

vi. *Unscheduled DNA synthesis (UDS) assay*. Non-genotoxic.

3. *Reproductive and developmental toxicity*. Chlorfenapyr is neither a reproductive or developmental toxicant and is not a teratogenic agent in the Sprague-Dawley rat, or the New Zealand white rabbit. This is demonstrated by the results of the following studies:

i. *Rat oral teratology*. NOAEL for maternal toxicity 25 mg/kg bwt/day, and NOAEL for fetal/development toxicity 225 mg/kg/bwt/day.

ii. *Rabbit oral teratology*. NOAEL for maternal toxicity 5 mg/kg/ bwt/day and NOAEL for fetal/development toxicity 30 mg/kg/bwt/day.

iii. *Rat 2-generation reproduction*. NOAEL for parental toxicity/growth and offspring development 60 ppm (5 mg/kg/bwt/day). NOAEL for reproductive performance 600 ppm (44 mg/kg/bwt/day).

4. *Subchronic toxicity*. The following are the results of the subchronic toxicity tests that have been conducted with chlorfenapyr:

i. *28–Day rabbit dermal*. NOAEL 100 mg/kg/bwt/day.

ii. *28–Day rat feeding*. NOAEL > 600 ppm (< 71.6 mg/kg/bwt/day).

iii. *28–Day mouse feeding*. NOAEL > 160 ppm (< 32 mg/kg/bwt/day).

iv. *13–Week rat dietary*. NOAEL 150 ppm (11.7 mg/kg/bwt/day).

v. *13–Week mouse dietary*. NOAEL 40 ppm (8.2 mg/kg/bwt/day).

vi. *13–Week dog dietary*. NOAEL 120 ppm (4.2 mg/kg/bwt/day).

5. *Chronic toxicity*. Chlorfenapyr is not oncogenic in either Sprague Dawley rats or CD-1 mice and is not likely to be carcinogenic in humans. The following are the results of the chronic toxicity tests that have been conducted with chlorfenapyr:

i. *1–Year neurotoxicity in rats*. NOAEL 60 ppm (2.6/3.4 mg/kg/bwt/day male/female).

ii. *1–Year dog dietary*. NOAEL 120 ppm (4.0/4.5 mg/kg/bwt/day male/female).

iii. *24–Month rat dietary*. NOAEL for chronic effects 60 ppm (2.9/3.6 mg/kg/bwt/day male/female) and NOAEL for oncogenic effects 600 ppm (31/37 mg/kg/bwt/day male/female).

iv. *18–Month mouse dietary*. NOAEL for chronic effects 20 ppm (2.8/3.7 mg/kg/bwt/day male/female) and NOAEL for oncogenic effects 240 ppm (34.5/44.5 mg/kg/bwt/day male/female).

6. *Animal metabolism*. A metabolism study was conducted in Sprague Dawley rats at approximately 20 and 200 mg/kg/bwt using radiolabeled chlorfenapyr. Approximately 65% of the administered

dose was eliminated during the first 24 hours (62% in feces and 3% in urine) and by 48 hours following dosing, approximately 85% of the dose had been excreted (80% in feces and 5% in urine). The absorbed chlorfenapyr-related residues were distributed throughout the body and detected in tissues and organs of all treatment groups. The principal route of elimination was via feces, mainly as unchanged parent plus minor N-dealkylated, debrominated and hydroxylated oxidation products. The metabolic pathway of chlorfenapyr in the laying hen and the lactating goat was also similar to that in laboratory rats.

7. *Metabolite toxicology*. The parent molecule is the only moiety of toxicological significance which needs regulation in plant and animal commodities.

8. *Endocrine disruption*. Collective organ weights and histopathological findings from the 2-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that chlorfenapyr would be associated with endocrine effects.

C. Aggregate Exposure

1. *Food*. For purposes of assessing the potential dietary exposure, a Theoretical Maximum Residue Contribution (TMRC) has been calculated from the tolerance of chlorfenapyr in/on citrus at 0.5 ppm. This exposure assessment is based on very conservative assumptions, namely 100% of all citrus is treated with chlorfenapyr and that the residues of chlorfenapyr in citrus are at the tolerance level. Although there are no other established United States permanent tolerances for chlorfenapyr, a petition for a permanent tolerance at 0.5 ppm in cottonseed is pending at the Agency. Therefore, the dietary exposures to residues of chlorfenapyr in or on food will be limited to residues in cottonseed, citrus and food and feed items derived from them. As dried citrus pulp is a dairy and beef cattle feed item, a cold feeding study with dairy cattle was conducted. Since this study demonstrated that measurable residues of chlorfenapyr may occur in milk, meat, and meat byproducts, appropriate residue tolerances for these items are proposed. The contribution of the citrus tolerances alone to the daily consumption uses only 0.23% of the reference dose (RfD) for the overall U.S. population. The combined contributions of the citrus and the pending cottonseed tolerances to the daily consumption uses less than 1% (actual 0.85%) of the RfD for the overall U.S. population and less than 3% (actual 2.23%) and less than 1% (actual 0.89%) of the RfD for children aged 1-6 and for non-nursing infants, respectively.

2. *Drinking water*. This proposed tolerance is for imported citrus. Since there are no currently registered uses of chlorfenapyr in the United States, potential exposure from drinking water is not relevant to this petition.

3. *Non-dietary exposure*. This petition is for a tolerance on imported citrus. As there are no registered uses of chlorfenapyr in the United States at present, the potential for non-dietary exposure is not pertinent to this petition.

D. Cumulative Effects

The pyrrole insecticides represent a new class of chemistry with a unique mechanism of action. The parent molecule, AC 303,630 is a pro-insecticide which is converted to the active form, CL 303,268, via rapid metabolism by mixed function oxidases (MFOs). The active form uncouples oxidative phosphorylation in the insect mitochondria by disrupting the proton gradient across the mitochondrial membrane. The production of adenosine triphosphate (ATP) is inhibited resulting in the cessation of all cellular functions. Because of this unique mechanism of action, it is highly unlikely that toxic effects produced by chlorfenapyr would be cumulative with those of any other pesticide chemical.

In mammals, there is a lower titer of MFOs, and chlorfenapyr is metabolized by different pathways (including dehalogenation, oxidation and ring hydroxylation) to other polar metabolites without any significant accumulation of the potent uncoupler, CL 303,268. In the rat, approximately 85% of the administered dose is excreted in the feces within 48 hours, thereby reducing the levels of AC 303,630 and CL 303,268 that are capable of reaching the mitochondria. This differential metabolism of AC 303,630 to CL 303,268 in insects versus to other polar metabolites in mammals is responsible for the selective insect toxicity of the pyrroles.

E. Safety Determination

1. *U.S. population*. The RfD of 0.03 mg/kg/bwt/day for the residues of chlorfenapyr in citrus is calculated by applying a 100-fold safety factor to the overall NOAEL of 3 mg/kg/bwt/day. This NOAEL is based on the results of the chronic feeding studies in the rat and mouse and the 2-generation reproduction study in the rat. The theoretical maximum residue contribution (TMRC) for the proposed tolerances in citrus alone, (0.0000692 mg/kg/bwt/day), will utilize only 0.23% of the RfD for the general U.S. population and the combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus, milk, and meat (0.0002558 mg/kg/bwt/day) will utilize approximately 0.85% of the RfD for the general U.S. population.

2. *Infants and children*. The TMRC in milk consumed by a non-nursing infant (> 1-year of age) is 0.0002435 mg/kg/bwt/day. The combined tolerances will use less than 1% (actual 0.89%) of the RfD for non-nursing infants. The TMRC in milk consumed by a child (1-6 years of age) is 0.0003886 mg/kg/bwt/day. The combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus meat and milk consumed by a child 1-6 years of age is 0.0006708 mg/kg/bwt/day, which is less than 3% (actual 2.23%) of the RfD. Therefore, the results of the toxicology and metabolism studies support both the safety of chlorfenapyr to humans based on the intended use as an insecticide-miticide on citrus and cottonseed and the granting of the requested tolerances in cottonseed, citrus, milk, milk fat solids, meat, and meat by-products.

Based on the conservative assumptions used in proposing the above tolerances and the absence of other non-dietary routes of exposure to chlorfenapyr, and since the calculated exposures are well below 100% of the reference dose, there is a reasonable certainty that no harm will result from aggregate exposure to residues of chlorfenapyr, including all anticipated dietary exposure and all other non-occupational exposures. The use of a 100-fold safety factor ensures an acceptable margin of safety for both the overall U.S. population as well as infants and children. As the toxicology database (reproduction/developmental and teratology studies) is complete, valid and reliable, no additional safety factor is needed.

The 100-fold margin of safety is adequate to assure a reasonable certainty of no harm to infants and children from the proposed use. As stated earlier, the NOAEL is based on the effects observed in the rat and mouse chronic oncogenicity studies, (reduced bwt gains, increased globulin and cholesterol values and increased liver weights in the rat and reduced bwt gains and vacuolation of white matter of the mouse brain), the 1–year neurotoxicity study in the rat, (reduced bwt gains and vacuolar myelinopathy of

the brain and spinal cord that is completely reversible following termination of treatment and is not associated with any damage to neuronal cell bodies or axons; vacuolation of the white matter is a consequence of edema (water) formation between the myelin layers which result from the unrestricted movement of ions across the cell membranes) and the 2-generation rat reproduction study, (reduced bwt gains for parental animals and reduced pup body weights for the F1 and F2 litters; however no behavioral changes were observed in either F1 or F2 offsprings in the 2-generation reproduction study). Moreover, as the NOAELs for fetal/developmental toxicity are significantly higher than those for maternal toxicity, the results indicate that chlorfenapyr is neither a developmental toxicant nor a teratogenic agent in either the Sprague-Dawley rat or New Zealand White rabbit. Thus, there is no reliable information to indicate that there would be a variability in the sensitivities of infants and children and adults to the effects of exposure to chlorfenapyr.

F. International Tolerances

Section 408(b)(4) of the amended FFDCA requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. There is neither a Codex proposal, nor Canadian, or Mexican tolerances/limits for residues of chlorfenapyr in/on citrus. Therefore, a compatibility issue is not relevant to the proposed tolerance.

[FR Doc. 99–22190 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–819A; FRL–6099–8]

Amended Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–819A, must be received on or before September 10, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–819A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–819A. 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 (PIRIB), 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 PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–819A 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.* You may submit your comments electronically by E-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be

CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–819A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. 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 person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received an amended pesticide petition as follows proposing the establishment of regulations for residues of certain pesticides in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way.

Amended Petition

PP 8F4955

On August 17, 1998, EPA published a notice that it had received a pesticide petition (PP 8F4955) from Novartis crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 proposing tolerances for the fungicide trifloxystrobin. EPA has received an amendment to PP 8F4955 from Novartis crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of trifloxystrobin and its metabolite, CGA–321113 and increasing the tolerance levels in or on the raw agricultural commodities pome fruit at 0.50 parts per million (ppm), cucurbit vegetables at 0.50 ppm, grapes at 2.0 ppm, raisins at 5.0 ppm, peanuts at 0.05 ppm, peanut hay at 4.0 ppm, wet apple pomace at 5.0 ppm, milk at 0.02 ppm, meat, fat and meat by-products of cattle, goats, hogs, horses and sheep at 0.05 ppm and imported bananas at 0.1 ppm. The tolerances proposed in this amendment will not increase the overall risk of the chemical. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

[FR Doc. 99–22204 Filed 8-23-99; 4:11 pm]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–1]

Proposed Administrative Agreement for Collection of CERCLA Past and Projected Clean Up Costs

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Notice; proposed CERCLA 122 administrative agreement.

SUMMARY: U.S. EPA is proposing to execute an Administrative Agreement (Agreement) under section 122 of CERCLA for collection of a percentage of past and projected future response costs at the Carey Electronics Superfund Site. Respondents have agreed to pay $235,000 out of total past and projected clean up costs of approximately $292,000, in return for a covenant not to sue and mutual contribution protection from U.S. EPA and one another. U.S. EPA today is proposing to execute this Agreement because it achieves collection of a high percentage (80.5%) of total Site costs.

DATES: Comments on this proposed settlement must be received on or before September 27, 1999.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (it is recommended that you telephone Ms. Cheryl Allen at (312) 353–6196 before visiting the Region V Office) Ms. Cheryl Allen, OPA (P19–J), Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–6196.

Comments on this proposed settlement should be addressed to: (please submit an original and three copies, if possible) Ms. Cheryl Allen, Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–

19J), Chicago, Illinois 60604, (312) 353–6196.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

SUPPLEMENTARY INFORMATION: The Site is a multi-level building located at 1880 Clifton Avenue in Springfield, Clark County, Ohio. The Site is surrounded on all sides by residential areas, with an elementary school located approximately 1,200 feet to the north. (Additionally, there are 5 other schools located within a 1-mile radius of the Site.) The Carey Electronic Engineering Company still utilizes the basement area of the Site to produce aluminum and copper wool scrubbing and filter products, primarily for use in aviation. The laboratory area of the Site, that contains post-source removal radium (Ra–226) contamination and improperly stored chemicals of concern, is on the second floor of the Site building. Portions of the hallway leading to the laboratory and the stairway leading to the hallway have also been determined to have radioactive contamination.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(I) of CERCLA for comments on the proposed Administrative Agreement.

Comments should be sent to Ms. Cheryl Allen of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–22189 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6428–7]

Notice of Proposed Settlement; Solitron Devises, Inc. Riviera Beach Property, Palm Beach County, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a ''Prospective Purchaser Agreement'' (PPA) concerning property owned by Solitron Devises, Inc. (Solitron) in the City of Riviera Beach, Palm Beach County, Florida. EPA proposes to enter into the PPA with the National Land Company (NLC), a real estate development company. The PPA concerns the acquisition by NLC of certain real property presently owned by Solitron in Palm Beach County, Florida.

The real property in question (the ''Property'') is located at 1177 Blue Heron Blvd., Riviera Beach, Florida and consists of approximately 8 acres. The Property is the subject of a Purchase and Sale Agreement between Solitron and NLC.

The PPA obligates NLC to cooperate fully with EPA in responding to hazardous substances located on the Property. Pursuant to the PPA, NLC will be protected from CERCLA liability, which may arise from their participation in the acquisition of the Property, as described above. The protection is contingent on NLC fulfilling the obligations enumerated in the PPA.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

Written comments may be submitted to Ms. Batchelor on or before September 27, 1999.

Dated: August 12, 1999.

Anita Davis,

Acting Program Services Branch, Waste Management Division.

[FR Doc 99–22188 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 18, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0515.

Title: Section 43.21(c), Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 32.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 32 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to 47 CFR 43.21(c), each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR 32.9000 must file a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owners' equity. These

letters must be filed by no later than April of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the **Federal Register**, but in no event shall such carriers be required to file the letter prior to April 1.

The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenue and total plant is compiled and published in the Commission's annual common carrier statistical publication and long distance market share report.

OMB Control No.: 3060–0655.

Title: Requests for Waiver of Regulatory Fees Predicated on Allegations of Financial Hardship (MD Docket No. 94–19).

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Individuals or households, businesses or other-for-profit.

Number of Respondents: 160.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Total Annual Burden: 160 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC implemented provisions contained in Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, P.L. 103–66 and 103–121, which adds Section 9 to the Communications Act. Section 9 authorizes the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Licensees and permittees may request a waiver of those fees. A number of requests for waiver are based on grounds of financial hardship but lack sufficient documentation to support a finding that a waiver should be granted. As a result, the FCC in ruling on Petitions for Reconsideration in the FY 1994 fee proceeding, the FCC set forth the types of documentation it will rely on to determine if waivers should be granted because of financial hardship, in order to give guidance to parties requesting waivers. Where parties have filed insufficient information with their FY 194 waiver requests, the FCC will afford them an opportunity to perfect their waiver requests by making the showing. The information will be used by FCC staff to determine if a party is entitled to a waiver of its obligation to pay the annual regulatory fee. It will be filed annually, but only by those parties who request waivers of their obligations to pay the fee because of financial hardship.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22132 Filed 8–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Ever Concord Logistics, 403 N. Oak Street, Inglewood, CA 90302. Officer: Yin Wing Yau (Morgan Yau), President, (Qualifying Individual)

Jasper Freight Inc., 12145 Mora Drive, Suite 1, Santa Fe Springs, CA 90670. Officers: Ricco Tseng, Secretary, (Qualifying Individual), Rebecca Chu, President

Meitetsu Express U.S.A. Corporation, 419 Hindry Avenue, Suite A, Inglewood, CA 90301. Officer: Shigeki Shimizu, Vice President (Qualifying Individual)

MTS Transportation, Inc., 8054 E. Garvey Ave., #101, Rosemead, CA 91770. Officers: Ben Chou, Secretary (Qualifying Individual), Shiao-Chuan Cheng, President

North American (U.K.) Limited, 7–8 Borrowdale Road, Wokingham, Berkshire RG41 5UK, England. Officer: William F. Heximer, Secretary (Qualifying Individual)

Pan Asia Line Corporation, 820 S. Garfield Avenue, Suite 303, Alhambra, CA 91801. Officer: Carol P. Yue, President (Qualifying Individual)

Sovereign Express Line, LLC, 64–66 North Main Street, P.O. Box 1309, St. Albans, VT 05478. Officers: Wayne R. Burle, Vice President (Qualifying Individual), Kenneth J. Holzscheiter, President

Valley Freight Consolidators, Inc., 2025 N.W. 102nd Avenue, Unit 109, Miami, FL 33172. Officer: Jose Rodrico Rincon, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Trans-Group International Corporation, 155–06 South Conduit Avenue, #203, Jamaica, NY 11434. Officer: Yuxiong Zhang, President (Qualifying Individual)

Intrans Consolidators Inc., 7941 N.W. 21 Street, Miami, FL 33122–1616. Officers: Ramon R. Gonzalez, Vice President (Qualifying Individual), Conrad M. Wittkop, President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

All Freight Services International, Inc., 8240 N.W. 52nd Terrace, Suite 518, Miami, FL 33166. Officers: Belinda Dominguez, Ocean Manager (Qualifying Individual), Murray Norkin, President

Palumbo USA Inc., 1 Exchange Place, Suite 1000, Jersey City, NJ 07302–3911. Officers: Margarita G. Casseres, Corp. Secretary (Qualifying Individual), Anthony J. Pruzinsky, Director

Admiral Global Services, Inc., 1101 Ellis Avenue, Bensenville, IL 60106. Officers: Philip Edward Moss, Vice President (Qualifying Individual), Patricia Hezinger, President

P.E.X. Commercial Inc., 179 Morningside Drive, Miami Springs, FL 33166. Officer: Xenia Perez, President (Qualifying Individual)

Gamar Corporation, 9300 N.W. 25th Street, Suite 107, Miami, FL 33172. Abraham Sebastiani, Sole Proprietor

McCollisters Transportation System, Inc., 1800 Route 130, Burlington, NJ 08016. Officers: Bruce J. Joiner, Opera. Manager Int'l. Services

Dated: August 20, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22093 Filed 8–25–99; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0296]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the proposed collection of information by September 27, 1999.

ADDRESSES: Submit written comments on the proposed collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products; Availability

I. Description

FDA is issuing a draft guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of the Prescription Drug User Fee Act (PDUFA) products. The draft guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The draft guidance provides information on how the agency will interpret and apply section 119(a) of the FDA Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). Specific PDUFA goals for the management associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The draft guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an end-of-Phase 2 meeting and a pre-new drug application (NDA) meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB Control No. 0910–0014). However, the draft guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is providing revised estimates in this notice.

II. Request for a Meeting

Under the draft guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) and and the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application.

FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), NDA, or biologics license application (BLA) must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under IND's and Form FDA 356h must accompany submissions under NDA's and BLA's. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB Control No. 0910–0014, expires December 31, 1999; and FDA Form 356h, OMB Control No. 0910–0338, expires April 30, 2000.

In the draft guidance, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking data bases. Use of the information in the agency's tracking data bases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the draft guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product,
- The type of meeting being requested,
- A brief statement of the purpose of the meeting,
- A list of objectives and expected outcomes from the meeting,
- A preliminary proposed agenda,
- A draft list of questions to be raised at the meeting,
- A list of individuals who will represent the sponsor or applicant at the meeting,
- A list of agency staff requested to be in attendance,
- The approximate date that the information package will be sent to the agency, and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

III. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the

opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The proposed collection of information described in the draft guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to IND's, NDA's, and BLA's and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an end-of-Phase 2 meeting (§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

Description of Respondent: A sponsor or applicant for a drug or biologic product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for the submission of meeting requests and information packages under the draft guidance.

Request for a Formal Meeting: Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that in fiscal year (FY) 1998, 548 sponsors and applicants (respondents) requested formal meetings with CDER and 495 respondents requested formal meetings with CBER regarding the development and review of a PDUFA product. FDA anticipates that the potential number of respondents submitting meeting requests will remain the same, and therefore estimates that the total number of respondents will be 1,043. The agency further estimates that the total annual responses, i.e., the total number of meetings requested per year, will be 1,043, based on data collected from the offices within CDER and CBER. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the draft guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting. Therefore, the agency estimates that sponsors will use 10,430 hours per year requesting formal meetings with CDER and CBER regarding the development and review of PDUFA products.

Information Package: Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that in FY 1998, CDER held 527 formal meetings and CBER held 415 formal meetings regarding the review of human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379g). FDA anticipates that the potential number of meetings will remain the same; thus, the agency estimates that total annual responses will be 942. As stated previously, it is the current practice for sponsors and applicants to submit information packages to the agency in advance of any such meeting. In FY 1998, 527 respondents submitted information packages to CDER and 415 respondents submitted information packages to CBER prior to the scheduled meetings. FDA anticipates that the potential number of respondents submitting an information package will remain the same; thus, the agency estimates that the total number of respondents will be 942. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with this draft guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency. Therefore, the agency estimates that respondents will spend 16,856 hours per year submitting information packages to the agency prior to a formal meeting regarding the development and review of a PDUFA product.

As stated earlier, the draft guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning end-of-Phase 2 meetings and pre-NDA meetings have been approved by OMB (OMB Control No. 0910–0014). These estimates provide for 100 respondents submitting 100 total annual responses at 24 hours per response, equalling 2,400 total burden hours. Therefore, FDA is subtracting these estimates from the estimates described previously for all formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. Specifically, the agency is subtracting in Table 1 of this document burden estimates for meeting requests and information packages for end-of-Phase 2 meetings and pre-NDA meetings. This reduces the total estimated burden hours from 27,386 to 24,986.

In the **Federal Register** of March 19, 1999 (64 FR 13591), FDA invited comments regarding the agency's estimate of the paperwork burden. One comment was received. The comment stated that FDA's estimate is a relatively accurate accounting of time used in administrative preparation of information for routine meetings. The comment stated that FDA underestimated the time required for creative writing and editing tasks associated with preparation of paperwork prior to a formal meeting where many issues or complicated topics will be discussed.

The agency's estimates are based in part on the expectation that respondents will have already compiled for submission to the agency most of the data and information that is described in the guidance document. The agency anticipates that respondents will have submitted the information as part of the underlying product application. Therefore, the bulk of the paperwork burden is related to administrative tasks, i.e., gathering and copying brief statements about the product and describing details of the anticipated meeting.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting Request and Information Package	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Meeting Request					
CDER	548	1	548	10	5,480
CBER	495	1	495	10	4,950
Total					10,430
Information Packages					
CDER	527	1	527	18	9,486
CBER	415	1	415	18	7,470
Total					16,956
Subtotal					27,386
Less 2,400 hours					24,986
Total					24,986

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

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22100 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop on Bacterial Contamination of Platelets; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Bacterial Contamination of Platelets.'' The objectives of the public workshop are to obtain current information on bacterial contamination of platelets and to encourage future research and development efforts to minimize the risk of transfusion reactions. The public workshop will include an update on the epidemiology of platelet contamination, advances in detection methodology of contamination, and current strategies on bacterial inactivation and contamination avoidance. Results from a U.S. study (the BaCon Study) and similar European studies on microbial contamination will be presented.

Date and Time: The public workshop will be held on Friday, September 24, 1999, from 8:15 a.m. to 5 p.m.

Location: The public workshop will be held at the National Institutes of Health (NIH), NIH Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (CBER) (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843.

Registration and Requests for Oral Presentations: Mail or fax registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (address above) by Friday, September 10, 1999. Onsite registration will be done on a space-available basis on the day of the public workshop, beginning at 7:30 a.m. There is no registration fee for the public workshop. Space is limited, therefore, interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

A poster session will be set up for the public workshop. All participants are encouraged to present their study results in poster format. A limited number of abstracts may be selected for oral presentations. Send your abstracts and requests for oral presentations to Chiang Syin, Division of Transfusion Transmitted Diseases (HFM–320), CBER, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6465, FAX 301–594–6989, or e-mail ''syin@cber.fda.gov'' by Friday, September 10, 1999.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The meeting transcript will also be available on CBER's website at ''http://www.fda.gov/cber/minutes/workshop-min.htm''.

Dated: August 17, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22098 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0362]

Advisory Committee for Pharmaceutical Science Site-Specific Stability Subcommittee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science Site-Specific Stability Subcommittee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 22, 1999, 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Littleton Topper at Topperk@cder.fda.gov or Angie Whitacre at Whitacrea@cder.fda.gov, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, (301) 827–7001, or FDA Advisory Committee

Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the March site-specific stability proposal from the agency and the public comments submitted to Docket No. 98D–0362.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22151 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held October 7, 1999, from 8:30 a.m. to 5 p.m., and October 8, 1999 from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or by e-mail at ''tituss@cder.fda.gov'', or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 7, 1999, the committee will consider the safety and efficacy of new drug application (NDA) supplement 20–592/S–009, Zyprexa® (olanzapine, Lilly), proposed to treat psychosis associated with dementia. On October 8, 1999, the committee will consider the safety and efficacy of NDA supplement 19–839/S–026, Zoloft® (sertraline hydrochloride, Pfizer Pharmaceuticals) proposed to treat posttraumatic stress disorder.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 1, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 1, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22099 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held November 3, 1999, 8 a.m. to 4:30 p.m.

Location: Hilton, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 3, 1999, the committee will consider the safety and efficacy of new drug application (NDA) supplement 18–936/SE1–058, Prozac® (fluoxetine hydrochloride, Lilly), proposed to treat premenstrual dysphoric disorder.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 27, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22101 Filed 8-25-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 14, 1999, 1 p.m. to 5 p.m., and on September 15, 1999, 8 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 14, 1999, the committee will: (1) Hear reports on recent workshops on Thimerosal in Vaccines and Cell Substrates for Vaccine Development and be updated on recent developments concerning the rotavirus vaccine manufactured by Wyeth Laboratories, Inc., and (2) be briefed on selected individual research programs in the Laboratory of Parasitic Biology and the Laboratory of Biophysics. On September 15, 1999, the committee will discuss the use of immunologic surrogates for demonstration of protective efficacy of meningococcal conjugate vaccines.

Procedure: On September 14, 1999, from 1 p.m. to 3:10 p.m., and on September 15, 1999, from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled between approximately 2:10 p.m. and 2:50 p.m. on September 14, 1999, and between approximately 12:10 p.m. and 12:30 p.m. on September 15, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 14, 1999, from 3:10 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of pending investigational new drug applications or pending product licensing applications. Also, on September 14, 1999, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research programs.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22102 Filed 8-25-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–6002]

Memorandum of Understanding Between the Food and Drug Administration and the State of Iowa

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 the State of Iowa. The purpose of the MOU is to establish policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees for the second year.

DATES: The agreement became effective July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 2094 Gaither Rd., Gaithersburg, MD 20850, 301–443–2845.

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 memorandum of understanding.

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

BILLING CODE 4160–01–F

July 26, 1999

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

RE: AUTHORIZATION OF THE STATE OF IOWA TO PARTICIPATE IN THE U.S. FOOD AND DRUG ADMINISTRATION'S MQSA STATES AS CERTIFIERS DEMONSTRATION PROJECT

Control No. 225-99-6002

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

I. PURPOSE:

This Memorandum of Understanding (MOU) establishes policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees while the State of Iowa is participating in the Food and Drug Administration's (FDA) MQSA States as Certifiers Demonstration Project. The Demonstration Project is now renewable for a second year by mutual agreement.

II. BACKGROUND:

This MOU has been developed because of the need to bill and collect annual mammography facility inspection fees according to provisions contained in the MQSA while the State of Iowa is participating in the demonstration project. The State of Iowa voluntarily applied and agreed to participate in this demonstration project.

Each agency recognizes that this MOU documents a working relationship. It does not infer any contractual obligations nor assumption of liability by one agency for any action of the other agency.

It is understood that each agency continues to exercise its respective jurisdictional authority, and that the cooperation extended to the other agency does not transfer any jurisdictional authorities.

III. SUBSTANCE OF AGREEMENT:

1. The State of Iowa will provide the FDA, within five business days, the results of all annual MQSA inspections and MQSA follow-up inspections conducted by the State

during the demonstration project. Based on this information, the FDA will bill and charge each inspected mammography facility a fee of $509 to cover the FDA's costs for the annual inspection. This fee may be subject to change.

The types of services provided by FDA are as follows:

- Training and certification of inspectors.
- Development of instrument calibration procedures and calibration of instruments used in the inspections.
- Supplying, repairing, and replacing inspection equipment.
- Design, programming, and maintenance of inspection data systems.
- Administrative support attributable to facility inspections.

2. Under the MQSA, all certified mammography facilities except governmental entities are subject to the payment of inspection fees. During the period of time the State of Iowa is participating in the Project, facilities that qualify as government entities will not be required to pay the FDA inspection fee but will be required to recertify their government entity status using the form provided by the FDA.

During the period of time the State of Iowa is participating in the Project, the State Department of Public Health will directly bill and charge all facilities certified by the State to perform mammography under MQSA an annual certification fee of $850 for the first unit and $300 for each additional unit.

IV. DEFINITION:

1. Governmental Entity

A "governmental entity" is a mammography facility subject to the MQSA inspection that meets all of the following criteria:

The entire salary of all on-site personnel of the mammography facility is directly paid by a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the building, office, or other space occupied by the mammography facility is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the facility's mammography equipment is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, and a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or

similar political organization or subpart thereof has the ultimate authority to make day-to-day decisions concerning the management and operation of the mammography facility.

or

A facility qualifies as a government entity if at least 50% of the mammography screening examinations provided during the preceding 12 months were funded under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k et seq.

V. AUTHORITY

The FDA is vested with authority under section 354(r) of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq.*) to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. Under 354(q) of the PHS Act, FDA may approve a state to perform some of the agency's certification functions. The MQSA amended Title III of the PHS Act by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities.

The State of Iowa is authorized by State statute, Iowa Code Chapter 136.15

VI. NAME AND ADDRESSES OF PARTICIPATING AGENCIES:

A. FDA:

Office of Health and Industry Programs
1350 Piccard Drive
Rockville, MD 20850

B. State of Iowa:

Department of Public Health
Bureau of Radiological Health
Lucas State Office Building
321 E. 12th Street
Des Moines, IA 50319-0075

VII. LIAISON OFFICERS:

A. For FDA:

Lireka P. Joseph, Dr. P.H.

Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

B. For State of Iowa:

Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

VIII. PERIOD OF AGREEMENT:

After acceptance by both parties, this MOU will be become effective on or after July 1, 1999 and continue until the completion of the demonstration project or upon termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V). This MOU may be modified by mutual written consent at any time. The effective date will be specified in the letter formally approving the State of Iowa as a participant in the demonstration project.

IX. CONCURRENCE:

FDA:

7/26/99
(Signature and date)
Lireka P. Joseph, Dr.P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

State of Iowa:

7-30-99
(Signature and date)
Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

7-30-99
(Signature and date)
Dr. Stephen C. Gleason, D.O.
Director
Iowa Department of Public Health

[FR Doc. 99–22150 Filed 8–25–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0293]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. We cannot reasonably comply with the normal clearance procedures because of deadlines associated with this collection as referenced in the Government Performance and Results Act of 1993.

HCFA is requesting OMB review and approval of this collection within 10 working days of the publication of this notice, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 9 working days of publication of this notice. During this 180-day period, we will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Medicare Telephone Call Center Customer Satisfaction Study.

HCFA Form Number: HCFA–R–0293 (OMB approval #: 0938–NEW).

Use: The purpose of this information collection is to provide the 75+ Medicare call centers with suitably trained staff and survey materials to conduct a standardized random sample of beneficiary calls and administer a customer satisfaction questionnaire. The goal is to develop a national baseline measure of customer satisfaction with the Medicare telephone service provided by carriers and fiscal intermediaries.

Frequency: On occasion.

Affected Public: Medicare beneficiaries.

Number of Respondents: 120,000.

Total Annual Responses: 120,000.

Total Annual Burden Hours: 10,000.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 9 working days of publication of this notice in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Julie Brown HCFA–R–293 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 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. 99–22122 Filed 8–25–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE, Washington, DC Copies may be obtained from: Ms. Sherry Whipple, Program Analyst, Peer Review Branch, Bureau of Health Professions, Room 8C–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5926.

Dated: August 20, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–22153 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605

as amended November 6, 1995, as last amended at 64 FR 36697 dated July 7, 1999). This notice reflects the organizational and functional changes in the Southeast Field Cluster.

Section RF–10—Organization

The Southeast Field Cluster is headed up by the Field Director who reports directly to the Associate Administrator, Office of Field Operations. The Southeast Field Cluster is organized as follows:

1. Immediate Office of the Field Director.
2. Office of Planning, Analysis and Evaluation.
3. Division of Health Resources and Services I.
4. Division of Health Resources and Services II.

Section RF–20—Function

(1.) Immediate Office of the Field Director (RF22)

Serves as HRSA's senior public health official in the Southeast region, providing liaison with State and local health officials as well as professional organizations; (2) provides input from local, regional and state perspectives to assist the Administrator and the Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the HRSA Associate Administrators and the Associate Administrator, Office of Field Operations, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (e.g., Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with other Federal agencies, state and local health departments, schools of public health, primary care associations and organizations, community health centers, and others in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

(2.) Office of Planning, Analysis, and Evaluation (RF23)

Provides technical assistance, consultation, training to Field Cluster staff, grantees related to data systems, planning, and evaluation; (2) serves as focal point for States and Agency grantees on data and data systems issues related to HRSA program requirements; (3) develops statistical profiles of HRSA grantees in the region, and analysis of Geographic Information Systems profiles and other profiles developed by federal, state and local agencies in the region; (4) develops State profiles; (5) conducts and disseminates, as appropriate, trend analysis of financial data, health indicators, and service data to identify emerging trends among HRSA grantees and health service catchment areas in the Southeast; (6) provides consultation and support to private nonprofit organizations involved in health care delivery around special studies, research, and evaluation related to health disparities; (7) analyzes program related reports; and (8) maintains Field Cluster program related database.

(3.) Division of Health Resources and Services I (RF24)

Directs and coordinates field development and implementation of HRSA programs and activities in four states within the Southeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities

(4.) Division of Health Resources and Services II (RF25)

Directs and coordinates field development and implementation of programs and activities in four states within the Southeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional academic and other private sector activities.

Section RF–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective August 4, 1999.

Dated: August 4, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–22152 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 16, 1999, pages 18918–18919 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial. Type of Information Collection Request: Revision, OMB control number 0925–0407, expiration date October 31, 1999. Need and Use of Information Collection: This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 251,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. The anticipated total sample size, after eight years of recruitment, is projected to be 148,000. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung, colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information will be used to analyze the differential effectiveness of screening in high versus low risk individuals. Frequency of Response: On occasion. Affected Public: Individuals or households. Type of Respondents: Adult men and women. The annual reporting burden is as follows: Estimated Number of Respondents: 142,359; Estimated Number of Responses per Respondent: 1.65; Average Burden Hours Per Response: 0.40; and Estimated Total Annual Burden Hours Requested: 94,809. The annualized cost to respondents is estimated at: $948,090. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

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 Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. John Gohagan, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 330, 6130 Executive Boulevard, MSC7346, Bethesda, MD 20892–7346, or call non-toll-free number (301) 496–3982 or E-mail your request, including your address to: JG72P@.NIH.GOV

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 27, 1999.

Dated: August 19, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–22242 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Consumer Liaison Group

The National Cancer Institute (NCI), the Federal Government's primary agency for cancer research, is now accepting nominations for five members of the National Cancer Institute Director's Consumer Liaison Group (DCLG) who will be appointed in July, 2000. The DCLG is a chartered Federal advisory committee of the NCI. It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer. DCLG members are appointed for three-year terms.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI, from the consumer advocate perspective on a wide variety of issues, programs and research priorities. The DCLG serves as a channel for consumer advocates to voice their views and concerns. Specifically the DCLG members:

- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.
- Establish and maintain strong collaborations between the NCI and the

cancer advocacy community to reach common goals.

Eligibility Requirements for Individual Members

To serve on the DCLG, a member must meet the following minimum eligibility requirements:

- Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.
- Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria for Evaluating Individual Candidates

Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

- Cancer advocacy experience.
- Ability to communicate effectively.
- Ability to represent broad issues, think ''globally''.
- Ability to contribute to an effective group process.
- Leadership ability.

Characteristics of the DCLG

In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Multicultural diversity.
- A broad mix of cancer sites.
- Representation of the medically underserved.
- Men and women.
- A range of organizations (local/regional and national).
- Age diversity.
- Geographic diversity (rural/urban mix).

Selection Process

A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

Nominations may come from members of organizations, or individuals, including self-nominations. The nominations must be postmarked no later than November 1, 1999. To request a nomination package send your name, advocacy organization affiliation (if any), and address to the Office of Liaison Activities, NCI, Building 31; Room 10A06, 31 Center Drive, MSC 2580, Bethesda, MD 20892–2580. You may also request a package via fax to 301 480–7558 or e-mail to liaison@od.nci.nih.gov

Dated: August 19, 1999.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–22237 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health, announces the establishment of the Secretary's Advisory Committee on Xenotransplantation (Committee).

This Committee will advise the Secretary of Health and Human Services, through the Assistant Secretary for Health, on all aspects of the scientific development and clinical applications of xenotransplantation. The Committee's charge includes: advise on the current state of knowledge regarding xenotransplantation, review current and proposed xenotransplantation clinical trails, identify and discuss the medical, scientific, ethical, legal, and/or socioeconomic issues raised by these clinical trials, advise on the potential for transmission of infectious diseases, recommend changes to the PHS Guidelines on Infectious Disease Issues in Xenotransplantation, and discuss other issues that are relevant to xenotransplantation.

Unless renewed by appropriate action prior to its expiration, the Charter for the Secretary's Advisory Committee on Xenotransplantation will expire two years from the date of establishment.

Dated: August 16, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–22240 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group Comparative Medicine Review Committee.

Date: October 13–14, 1999.

Open: October 13, 1999, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Closed: October 13, 1999, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22231 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group General Clinical Research Centers Review Committee.

Date: October 12–13, 1999.

Open: October 12, 1999, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20814.

Closed: October 12, 1999, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20814.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22232 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: September 15, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22235 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Mucosal Immunity and Infection.

Date: October 8, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2212), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, HIN, Room 2217, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22224 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel International Clinical Studies Support Center.

Date: September 22–23, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Yen Li, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, 301–496–2250, yli@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22225 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 5–6, 1999.

Open: October 5, 1999, 9:00 AM to 10:00 AM.

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

Closed: October 5, 1999, 10:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

Contact Person: Denise A. Russo, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, drusso@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22226 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could dislose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel ADRC–SEP 1.

Date: September 13–15, 1999.

Time: 6:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, Phd, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22229 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Aging Special Emphasis Panel Demography of Aging/K–12.

Date: August 27, 1999.

Time: 11:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute Aging, the Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22230 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Deafness and Other Communication Disorders Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council Planning Subcommittee.

Date: October 7, 1999.

Open: 2:00 PM to 3:00 PM.

Agenda: Program documents.

Place: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: October 8, 1999.

Open: 8:30 AM to 11:30 AM.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–22233 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 31, 1999.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892–7003, (Telephone Conference Call).

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21K@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training, 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22234 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Dental Research Special Emphasis Panel 99–72, Review of R03s and K grants.

Date: September 7, 1999.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact person: William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institutes of Dental Research Special Emphasis Panel 99–55, Review of R13s.

Date: September 20, 1999.

Time: 12:10 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22236 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 27–29, 1999.

Open: September 28, 1999, 9:00 AM to 3:45 PM.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: September 28, 1999, 3:45 to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: September 29, 1999, 9:00 AM to 12:00 PM.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Planning Subcommittee.

Date: September 27, 1999.

Open: 12:00 PM to 5:00 PM.

Agenda: Reports and program discussion.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: September 28, 1999.

Open: 7:00 AM to 8:45 AM.

Agenda: Outreach and Public Information items.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: September 28, 1999.

Closed: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22228 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine.

Date: October 14–15, 1999.

Open: October 14, 1999, 9:00 AM to 1:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 14, 1999, 1:00 PM to 2:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Open: October 14, 1999, 2:00 PM to 5:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Open: October 15, 1999, 9:00 AM to 12:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7N–705, Bethesda, MD, 301–496–4411.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22238 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel NHAAP Phase 1.

Date: August 23, 1999.

Time: 9:30 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Susan Sparks, PhD, Senior Education Specialist, National Library of Medicine, Extramural Programs, Rockledge One, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22239 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Phase II Next Generation Internet (NGI) Contract Proposals.

Date: September 1–2, 1999.

Time: September 1, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Time: September 2, 1999, 8:30 AM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Paul A. Fontelo, BS, MD, MPH, Special Expert, High Performance Computing & Communications, Lister Hill Nat'l Ctr for Biomed Communications, National Library of Medicine, 8600 Rockville Pike, Bldg 38A, Rm B1N3OP, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22241 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 31, 1999.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.)

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22227 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting and a workshop of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 1999.

The SAMHSA National Advisory Council meeting will be open and will include follow up to the June 11 SAMHSA National Advisory Council Meeting, a reauthorization and appropriation update, Center Directors' Reports, an update on the Agency's review activities, and an update on issues pertaining to service delivery in psychiatric hospitals. In addition, there will be status reports by the Council's workgroups on Access to Quality Care, Co-Occurring Disorders, Data Analysis and Program Evaluation, HIV/AIDS, Children, Communication, and Parity.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements

to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: September 22, 1999, 8:30 a.m. to 5:15 p.m.

Place: Embassy Suites Chevy Chase Hotel, Tenleytown Rooms I & II, 4300 Military Road Washington, DC, Bethesda, Maryland 20814.

Open: September 22, 1999, 8:30 a.m. to 5:15 p.m.

Contact: Toian Vaughn, Executive Secretary, Parklawn Building, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–4266; FAX: (301) 443–1587 and e-mail: TVaughn@samhsa.gov.

Dated: August 19, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–22105 Filed 8–25–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the first meeting of the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes will be held on September 16, 1999, at the Federal Energy Regulatory Commission. The purpose of the meeting is to:

(1) Review the goals, scope, and objective of the Interagency Task Force (ITF);

(2) Discuss the responsibilities of the Advisory Committee and the process by which the Committee will provide comments on ITF work products; and

(3) Review and discuss the ITF Working Groups' products on National Environmental Policy Act and noticing procedures.

DATES: September 16, 1999; 9:00 am–5:30 pm.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Security at the building entrance will issue you a visitor's pass and direct you to the Commission meeting room upon your arrival.

FOR FURTHER INFORMATION CONTACT: Carol Connors, Federal Energy Regulatory Commission, telephone 202–208–0870.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the Concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to attend and participate in the meetings.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 99–22160 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Application

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–015753–0

Applicant: Barry Koffler, High Falls, New York

The applicant requests a permit to purchase, in interstate commerce, one female and one male captive bred Hawaiian (=nene) goose (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing the species propagation and survival.

DATES: Written comments on this permit application must be received on or before September 27, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the permit number for the application when requesting copies of documents.

Dated: August 9, 1999.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–21112 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Environmental Assessments or Environmental Impact Statements for Permit Applications To Incidentally Take the Preble's Meadow Jumping Mouse in Boulder, Douglas, Elbert, El Paso, and Jefferson Counties, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and announcement of meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this notice to advise the public that one or more Environmental Assessments (EA) and/or Environmental Impact Statements (EIS) will be prepared regarding applications for permits under section 10(a) of the Endangered Species Act to allow the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in those counties with an accompanying Habitat Conservation Plan (HCP). Public scoping meetings will be held as identified below.

DATES: See ''Supplementary Information'' section for times and places of Public scoping meetings to discuss the proposed action as it affects each county identified with each meeting date. Additional dates may be announced in the future for meetings sponsored by other local governments.

ADDRESSES: Kathleen Linder, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Lee Carlson, Colorado Field Supervisor, (see **ADDRESSES** above), or telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Public Participation

1. October 18, 1999, 6:00 p.m., Boulder County—County Courthouse, County Commissioners' Hearing Room, Third Floor, 1325 Pearl Street, Boulder, Colorado 80306.

2. September 29, 1999, 9:00 a.m., Douglas County—Phillip S. Miller County Building, Commissioners' Hearing Room, 100 Third Street, Castle Rock, Colorado 80104.

3. September 21, 1999, 7:00 p.m., Elbert County—County Courthouse, 215 Comanche Street, Kiowa, Colorado 80117.

4. October 13, 1999, 6:00 p.m., El Paso County—Pikes Peak Community College, Rampart Range Campus, 11195 Highway 83, Colorado Springs, Colorado 80921.

5. September 30, 1999, 6:00 p.m., Jefferson County—County Courthouse, 100 Jefferson County Parkway, Golden, Colorado 80419.

Each meeting will include a presentation about the Preble's meadow jumping mouse, the background and history of the HCP development process, the information available on the presence of this species in the county, activities that may be affected by their presence, and strategies to conserve the species while allowing land use activities to continue. Submission of written and oral comments and questions will be accepted at the meeting. Written comments regarding EA or EIS scoping also may be submitted by October 30, 1999, to the address above.

The Preble's meadow jumping mouse was listed as a threatened species on May 11, 1998. Because of that listing, the species is protected by the Act's prohibition against ''taking.'' The Act defines ''take'' to mean—to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. ''Harm'' is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, we may issue permits to carry out prohibited activities involving threatened species under certain circumstances. Regulations governing permits for endangered and threatened wildlife are at 50 CFR 17.22.

Each of the Colorado counties listed above is preparing to apply to the Service for an incidental take permit pursuant to section 10(a)(1)(b) of the Act, which authorizes the issuance of incidental take permits to non-Federal landowners. Each permit would authorize the incidental take of the Preble's meadow jumping mouse, and possibly other threatened or endangered species listed in the HCP(s), during the course of conducting otherwise lawful land use or development activities in the county. Although public and private entities or individuals have participated in development of the HCP(s) and may benefit by issuance of the incidental take permit, each county government listed above has accepted the responsibility of coordinating preparation of an HCP, submission of the permit application, and coordination of the preparation and processing of an EA or EIS for Service review and approval.

The action to be described in each HCP is a program that will ensure the continued conservation of the Preble's meadow jumping mouse in the county for which the HCP(s) is prepared, while resolving potential conflicts that may arise from the otherwise lawful activities that may involve this species and its habitat on non-Federal lands in that county. The environmental impacts that may result from implementation of a conservation program described in the HCP(s) or as a result of implementing other alternatives will be evaluated in the EA or EIS. The county governments listed above, the Colorado Department of Natural Resources (CDNR), and numerous other entities are engaged in gathering information and developing HCP(s), section 10(a)(1)(B) permit applications, and related EA's and/or EIS's in the counties listed above. In this case, the HCP(s), section 10(a)(1)(B) permit application, and EA or EIS materials are being developed concurrently.

Development of the HCP has involved, and will continue to involve, an open process coordinated by CDNR. A total of 15 open meetings have been held on February 4, February 13, February 18, February 19, February 20, March 10, March 11, March 17, April 15, September 1, September 3, September 8, and September 15, 1998, and June 21, 1999. Those involved in this effort to date include other State and Federal agencies, counties, cities, towns, industry representatives, agricultural representatives, environmental representatives, and biologists. It is anticipated that implementation of the conservation strategies identified in the HCP(s) may be through purchases of habitat, voluntary management agreements, county staff actions, implementing agreements with property owners, and other techniques.

Alternatives

1. *County HCP(s) and Incidental Take Permit(s) (Proposed Action)*—This action, which is the proposed action, seeks to address lands that constitute potential Preble's meadow jumping mouse habitat within each county, whether publicly or privately owned or large or small in size. Such lands may include publicly owned lands, (such as Federal facilities, State land board lands, State park lands, and other State-owned lands; utility, highway, and railroad rights-of-ways; facilities, parks, and open spaces owned by local governments; facilities and lands owned by municipal utilities; and other lands owned by local governments) as well as private and publicly owned land being used for other land uses, such as agriculture or development. Individual conservation strategies of landowners may include:

a. Avoiding disturbance of floodplains or nearby areas;

b. Engaging in agricultural practices designed to maintain habitat;

c. Revegetating riparian corridors between significant habitat areas;

d. Participating in Federal or State land conservation incentive programs;

e. Creating conservation easements with tax benefits;

f. Creating habitat banks and selling conservation credits to others;

g. Mitigating lost habitat through the creation or enhancement of habitat off site;

h. Participating in existing local government development review processes;

i. Avoiding the grazing of large numbers of animals on small acreage tracts;

j. Engaging in other practices or strategies designed to maintain habitat, or possibly to enhance habitat, as science confirms their effectiveness;

k. Creating an individual HCP if participation in the county HCP(s) and incidental take permit(s) is not attractive or feasible for the landowner.

This alternative seeks authority for long-term incidental take permit(s). The HCP(s) will assure continued conservation measures as well as monitoring and reporting procedures, as required by the Service for the issuance of an incidental take permit. Service issuance of the incidental take permit will authorize certain activities to proceed in each county without violating the Act. Individual landowners may participate in the HCP(s) through voluntary management programs, implementing agreements with the county government, certificates of inclusion in a county permit, sale or

donation of lands to a public or private conservation organization, participation in State or Federal incentive programs for land conservation, partnerships with other participants in the HCP effort, agreement to the terms of the HCP(s) and the incidental take permit(s), exemption from regulation based on the terms of the HCP or permit, or other methods.

2. *Multiple Individual HCP(s) and Incidental Take Permits for Individual Landowners*—This alternative would involve individual landowners, or groups of landowners, preparing individual HCP(s) for individual land use or development projects as the need arises. Any conservation strategy listed in the proposed action could be applied to similar facts or circumstances in an individual HCP. Conservation strategies not discussed earlier also could be developed. This alternative would involve separate HCP development and application processes. In addition, it would require separate permit review processes by the Service with the necessity of conducting separate EA or EIS review procedures and documents. Implementation and oversight would probably not involve the county government or CDNR, but would require oversight and implementation as described in separate implementation agreements and the permits themselves.

3. *Single Statewide HCP and Incidental Take Permit*—This alternative would involve the development of a single HCP for the seven Colorado counties listed, and a single incidental take permit related to that HCP. Individual public and private landowners, including county, town, and city governments, might participate in the HCP through voluntary management programs, implementing agreements, certificates of inclusion in the single incidental take permit, sale or donation of lands to a public or private conservation organization, participation in State or Federal incentive programs for land conservation, partnerships with other participants in the HCP effort, agreement to the terms of the HCP and the incidental take permit, exemption from regulation based on the terms of the HCP or permit, or other methods. Implementation of the terms of the HCP might require an intergovernmental agreement with each local government whose boundaries include a participating landowner.

Alternatives 1, 2, and 3 also incorporate the concept of ''adaptive management.'' As science and conservation strategies evolve or demonstrate a need to change, the landowner could modify the conservation strategies as needed. Therefore, as science and information progress, so may the conservation strategies and activities under the HCP(s) and permit(s).

4. *No Action Alternative*—Under the No Action Alternative, no section 10(a)(1)(B) permit would be issued and activities involving the take of the Preble's meadow jumping mouse would remain prohibited under section 9 of the Act. Activities that would avoid the take of the species could continue. Proposed activities on non-Federal land that may affect the Preble's meadow jumping mouse would require submitting an individual section 10(a)(1)(B) permit to the Service. If a Federal action (such as construction of a proposed road or interchange with Federal funds) would affect the species, incidental take could be allowed through the consultation process outlined in section 7 of the Act, and through the development of an incidental take statement if the proposed action were determined to not jeopardize the continued existence of the species.

Issue Resolution and Environmental Review

The primary issue to be addressed through the scoping and planning process for the HCP(s) and related EA or EIS documents is how to resolve potential conflicts between development and land management practices and listed species in each county. A tentative list of issues, concerns, and opportunities has been developed. There will be discussion of the potential effects of each alternative, which will include the following areas:

a. The Preble's meadow jumping mouse and its habitat in each county.

b. Other federally listed threatened or endangered species in each county.

c. State listed species in the State of Colorado.

d. Effects on other species of plants and animals.

e. Socioeconomic effects.

f. The use of Federal, State, county, or local public lands for conservation of the Preble's meadow jumping mouse.

g. The use of privately owned lands for conservation of the Preble's meadow jumping mouse.

h. Need for adequate funding.

i. Effects on species recovery.

Environmental review of the proposed action will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and our procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions from other agencies, tribes, and the public on the scope of issues to be addressed in the EA or EIS.

Public Comments Solicited

We solicit written comments on the information described above. All comments received by the date specified in the **DATES** section above will be considered.

Authority: National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: August 17, 1999.

Terry Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 99–21891 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan Alternatives, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Programmatic Environmental Impact Statement (DPEIS) for the proposed Navajo Nation Ten-Year Forest Management Plan Alternatives is now available for public review and comment. The DPEIS, prepared by the Bureau of Indian Affairs in cooperation with the Navajo Nation Forestry Department, describes alternative ways to promote the protection and sustained use of forest resources and guide the development of multi-year implementation programs for the Navajo Nation Forestry Department. A description of the proposed project location and of the environmental issues addressed in the DPEIS follow as supplementary information. This notice also announces a series of public hearings to receive public comments on the DPEIS.

DATES: Comments must be received on or before October 20, 1999. The dates and locations of the public hearings are listed below. All of these public hearings will begin at 7:00 p.m. to 9:00 p.m.

September 21, 1999, Fort Defiance Chapter House, Fort Defiance, AZ.

September 22, 1999, Chinle Chapter House, Chinle, AZ.

September 23, 1999, Shiprock Chapter House, Shiprock, NM.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to Harold D. Russell, Area Forester, Bureau of Indian Affairs, Navajo Area Office, Federal Building, 301 West Hill, P.O. Box 1060, Gallup, New Mexico 87305. You may also comment via the Internet to: Russell@105.doi.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Navajo Area Office directly at (520) 729–7228. Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The public hearings will be held at the locations listed in the **DATES** section.

The DPEIS is available for review at two locations: (1) The Branch of Environmental Services, Navajo Area Office, Federal Building, 301 West Hill, Gallup, New Mexico; and (2) the Branch of Forestry, Bureau of Indian Affairs, 1 mile north on Route 12, Fort Defiance, Arizona. To obtain a copy of the DPEIS, please write to the Navajo Nation Forestry Department, P.O. Box 230, Fort Defiance, Arizona 86504, or call (520) 729–4007.

FOR FURTHER INFORMATION CONTACT: Harold D. Russell, (520) 729–7228.

SUPPLEMENTARY INFORMATION: The proposed action is to adopt a ten-year management plan for the Navajo Forest. The Navajo Forest lies in the Chuska Mountains and Defiance Plateau areas of the Navajo Nation, along the Arizona-New Mexico border. The area encompasses nearly 600,000 acres.

The DPEIS presents a preferred alternative, the no action alternative and three other action alternatives. Under the preferred alternative, approximately 79,500 acres out of 253,754 acres designated as commercial timberland would be harvested over the next ten years. Individual treatment areas would be limited to 100 acres or less, and harvesting would incorporate a combination of even-aged and uneven-aged management systems designed to promote more diversity in the vegetative structure. This alternative also designates 74,735 acres as Special Management Areas (SMA's), which would be excluded from commercial timberland in order to protect critical wildlife habitat and vital watershed areas, even where these SMA's are located within the most productive areas of the forest.

Timber protection activities under the preferred alternative include, where needed, fire prevention, prescribed burns, trespass control and insect and disease control. An estimated 680 acres per year would be subjected to prescribed burns, and 75 acres per year treated for insects and disease. Additional activities include monitoring and mitigation in accordance with published plans, guidelines or handbooks referenced in the DPEIS.

The no action alternative continues current levels of production—approximately 88,000 acres over the next ten years, with even-aged management and without SMA's. The three other action alternatives include: (1) No timber harvesting and no SMA's; (2) even-aged management, with a lower rate of harvest—approximately 79,000 acres over the next ten years—than the no action alternative, and with SMA's; and (3) uneven-aged management, with approximately 84,400 acres to be harvested over the next ten years and without SMA's. All of the alternatives include timber protection plus monitoring and/or mitigation measures.

The DPEIS addresses the environmental issues identified during public scoping. These include timber resources, other forest resources, water resources, biological resources, air quality, cultural resources and socio-economics.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22130 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent to Amend Existing Land Use Plans of the Bureau of Land Management (BLM), Northern and Central California Regions, for Purposes of Establishing Standards for Land Health

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Intent to amend existing land use plans of the Bureau of Land Management (BLM), northern and central California regions, for purposes of establishing Standards for Land Health.

SUMMARY: BLM California recently completed a process to incorporate Rangeland Health Standards and Guidelines for Livestock Grazing into the existing land use plans of the northern and central California regions (Alturas, Arcata, Bakersfield, Eagle Lake, Redding, Surprise, Ukiah Field Offices). However, the standards and guidelines were limited in scope to BLM's grazing management program.

This proposal will apply the Rangeland Health Standards to all other resource uses and activities through BLM's planning process in accordance with 43 CFR 1610. 5–5. All existing land use plans will be amended at the same time. BLM anticipates no significant adverse environmental effects of implementing this proposal. Since the standards will help ensure consistent management of the public lands, BLM expects the environmental effects to be positive. BLM will complete an environmental assessment (EA) as part of the plan amendment process. A separate planning process to establish Land Health Standards for the California desert region is expected to be completed in the year 2000.

The intent of the standards is to provide for a balance of sustainable development and multiple use along with progress toward attaining healthy, properly functioning ecosystems. The standards will be implemented, to the extent feasible, through terms and conditions of permits, leases, and other authorizations. BLM authorizations should determine whether the standards

are met, and if not, whether reasonable mitigation measures are available which would allow the standards to be met or significant progress toward meeting the standards achieved.

DATES: Interested parties may submit comments on the scope of this amendment, including suggesting any reasonable alternatives for BLM's consideration, identifying possible adverse environmental effects of the amendment, or submitting any other suggestions or concerns BLM should take into account. Comments on this notice must be received by BLM at the following address on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Land Health Coordinator, U.S.D.I., Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825; tel: (916) 978–4400.

Dated: August 10, 1999.

Carl D. Rountree,

Deputy State Director, Natural Resources.

[FR Doc. 99–22171 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500 1990–00]

Front Range Resource Advisory Council (Colorado) Open Houses and Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of open houses and public comment period.

SUMMARY: Notice is hereby given that the Front Range Resource Advisory Council (Front Range RAC) will hold an open house in Golden, Colorado for the purpose of gathering public comments and input on Outdoor Recreation Management Guidelines. These Guidelines will be recommended to the Bureau of Land Management in Colorado for consideration and use in day-to-day management of public lands in Colorado. The RAC will also accept written comments on the Outdoor Recreation Management Guidelines.

DATES: The open house will be held September 7, 1999 at the Holiday Inn Denver West Village, 14707 W. Colfax Ave., Golden, Colorado from 7 p.m. to 9 p.m. The two open houses previously published in the July 30, 1999 **Federal Register** have not changed and are scheduled from 7 p.m. to 9 p.m. at the Beidleman Environmental Center, 740 W. Caramillo Street, Colorado Springs, Colorado on August 17, 1999 and from 7 p.m. to 9 p.m. at the Chaffee County Fairgrounds, 10165 County Road 120, Salida, Colorado on August 31, 1999. Any changes to the time, date and/or location of the open houses will be publicized in the local media. The written public comment period which began July 30, 1999 ends September 15, 1999. Comments should be sent to Bureau of Land Management, Front Range Center, Attn: RAC, 3170 East Main Street, Canon City, Colorado 81212. Written comments and those given at the Open Houses will be equally considered. A copy of the Draft Outdoor Recreation Management Guidelines may be requested.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553

SUPPLEMENTARY INFORMATION: The Front Range RAC, along with the other RACs in Colorado, intend to develop a joint set of outdoor recreation management guidelines to recommend to the BLM in Colorado for adoption and use in everyday management of the lands the agency administers. The open houses are intended as a means for the RACs to gather informal input and ideas on the proposed set of guidelines that all the RACs in Colorado have agreed with so far. After September 15, 1999, representatives from all RACs will jointly develop a set of final recommended guidelines to submit to the BLM for consideration. The guidelines will include recommendations dealing with the management of off-highway vehicle use.

Kenneth Smith,

Acting Front Range Center Manager.

[FR Doc. 99–22120 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–1990–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on September 16, 1999 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics to be discussed at the meeting will include current issues within the Center including a discussion on the comments received from the Recreation Guidelines Public Open Houses and public comment period. All Resource Advisory Council meetings are open to the public.

Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, September 16, 1999 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Kenneth Smith,

Acting Front Range Center Manager.

[FR Doc. 99–22121 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Open Houses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Open Houses on Draft Recreation Guidelines.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will hold a series of open houses in southwestern Colorado for the purpose of gathering public comments and input on recreation management guidelines to be recommended to the Bureau of Land Management (BLM) in Colorado for use

in the day-to-day management of public lands in southwestern Colorado.

DATES: The open houses are scheduled for the following dates and times. All open houses will begin at 7 p.m. and end at 9 p.m. Any changes to the time, date and/or location of the Open Houses will be publicized in the local media.

September 14, 1999—Gunnison, Colorado; Gunnison County Fairgrounds Multipurpose Building, 275 South Spruce Street.

September 15, 1999—Lake City, Colorado; Town Armory, 230 North Bluff (corner of North Bluff and 3rd Streets).

September 16, 1999—Montrose, Colorado; BLM Southwest Center conference room, 2465 South Townsend Avenue.

September 20, 1999—Durango, Colorado; BLM-Forest Service/Public Lands Center conference room, Burnett Court.

September 22, 1999—Hotchkiss, Colorado; Senior Citizen's Center (corner of Cedar & Main)

September 29, 1999—Norwood, Colorado; Norwood Community Center, 1670 Naturita Street.

September 30, 1999—Cortez, Colorado; Senior Nutrition-Outreach Center, 103 North Chestnut Street.

The open houses will begin with an explanation of the highlights of the draft recreation guidelines before public input is solicited. Written comments can be sent to the SWRAC at the Bureau of Land Management, ATTN:RAC, Southwest Center, 2465 South Townsend, Montrose, CO 81401. In order to be considered, written comments must be received by October 13, 1999.

ADDRESSES: For additional information, contact Roger Alexander, BLM Southwest Center, 2465 South Townsend, Montrose, CO 81401, telephone 970.240.5335 or email Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The Southwest RAC, along with the Northwest and Front Range RACs, have developed a joint set of draft recreation guidelines to recommend to the BLM Colorado for adoption and use in everyday management of the public lands the agency administers. The open houses are intended as a means for the RACs to gather informal public input and ideas on the draft recreation. Upon completion of the open houses, representatives from the three RACs will jointly fashion a set of final recommended guidelines to submit to the BLM. The draft recreation guidelines include recommendations dealing with the management of off-highway vehicle use.

Dated: August 20, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–22126 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in September and October, 1999 in Montrose, Colorado, and in November, 1999 in Durango, Colorado.

DATES: The meetings will be held on Thursday, September 16, 1999; Thursday, October 14, 1999; and Thursday, November 18, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The September 16, 1999, meeting will be held at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 1 p.m. and end no later than 5 p.m. The agenda will be limited to the introduction of new members and discussion on the draft recreation guidelines developed by BLM Colorado's three RAC's. Public comment is scheduled for 4:30 p.m., but the public is encouraged to provide comments on the draft recreation guidelines at an open house scheduled for 7 p.m. at the same address.

The October 14 meeting will also be held at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 9 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1 p.m.

The November 18 meeting will be held at the BLM–US Forest Service Public Lands Center Sonoran conference room at 15 Burnett Court, Durango, Colorado. The meeting will begin at 9 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1 p.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: August 20, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–22127 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220–00–GP9–0281]

Deschutes and Crook Counties: ATV Restrictions

AGENCY: Bureau of Land Management, Prineville District Office, DOI.

ACTION: Notice is hereby given that 30 days from the published date of this notice, all motorized use on public lands described legally in this notice is allowed only on routes designated and signed as open to motorized use. All other public lands including routes not signed and identified as open are closed to motorized use.

Legal Description

This closure order applies to all public lands within the entire area known as Cougar Butte. These public lands are located in Township 21 South, Range 20 East, Sections 21–23, 25–27, and 36; Township 21 South, Range 21 East, Sections 30–32; and Township 22 South, Range 21 East, Sections 5 and 6.

General Location

These public lands are located approximately 1–4 miles west and north of Hampton, Oregon in Deschutes and Crook Counties; approximately 1–2 miles north of Highway 20; three-four miles east of Lizard Creek; 2–6 miles west of Rhubarb Spring, west of the western boundary road of the Hampton Butte Wilderness Study Area. (OR–5–42). A map showing these public lands where motorized use is restricted is available for public review at the Prineville BLM office, 3050 NE Third, Prineville, OR 97754.

SUMMARY: The purpose of this vehicle restriction is to limit all motorized use to designated routes, and limit camping to within 300 feet of the designated route. All types of motor vehicles would be allowed on the first one-half mile of the designated route ending at a All Terrain Vehicle (ATV) Trailhead. Camping would be allowed during the first one-half mile, and within 300 feet of either side of the route. ATV use only would be allowed to continue on the designated route to the fence located on the east side of Cougar Butte. No motor vehicle use would be allowed beyond this fence. The route would be clearly marked by signs and a user map would be provided at key access points. The need for reduced motorized use to designed routes only is due to resource degradation by motorized vehicles on steep slopes having erosive soils, trespass and adjacent private lands and unauthorized motorized use in the Hampton Butte Wilderness Study Area east of these legally described public lands.

The creation of new vehicle routes continues to increase during hunting seasons. New motorized routes are created on public and adjacent private lands, due to limited public land acreage, rugged steep topography and irregular shaped public land ownership pattern.

This designated order maintains natural and scenic values by limiting motorized use to designated routes and avoid unauthorized cross-country motorized use. More specifically, this closure restricts motorized use to designated routes to reduce impacts to natural values, including soils and vegetation, and to prevent unauthorized trespass on adjacent private lands.

Exemptions to this closure order apply to administrative personnel or landowners accessing their property. Other exemptions to this closure order may be made on a case-by-case basis by the authorized officer. The authority for this vehicle restriction is 43 CFR 8364.1(a): Closure and restriction orders.

Penalities

Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR.

EFFECTIVE DATE: These supplementary rules will become effective 30 days from the published date of this notice, to allow for analysis of public comments and will remain in effect year-around until further notice.

SUPPLEMENTARY INFORMATION: The Brothers/LaPine Resource Management Plan/Record of Decision was finalized July 1989. Public lands surrounding Cougar Butte were designated as Open for motorized use, so cross-country vehicle use was allowed. North of Hampton, Oregon, Motorized vehicle use in the Hampton Butte and Cougar Well Wilderness Study Areas are restricted to existing routes. User maps at key access points into both these WSAs identify routes open to motorized use. All other routes and public lands in both WSAs are closed year-round to motorized use.

FOR FURTHER INFORMATION CONTACT: Berry Phelps, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754 or call 541–416–6700.

Dated: August 9, 1999.

James L. Hancock,

District Manager.

[FR Doc. 99–21622 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WY–921–41–1310; WYW132170]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 17, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW132170 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW13270 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–22168 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–1310; WYW144497]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 17, 1999.

Pursuant to the provisions of 30 U.S.C. 1889 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW144497 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144497 effective June 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–22169 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action; Competitive Sale of Public Lands in Clark County, Nevada

The following lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), and will be sold competitively in accordance with section 203 of the Federal Land Policy and Management

Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value (FMV).

Serial No./Parcel No.	Legal Description	Gross acres (net acres)	Fair market value
N–63198 99–01BS	T. 20 S., R. 60 E., sec. 27, N½SE¼NW¼SW¼, NW¼SW¼NE¼SW¼, SE¼NW¼NW¼SW¼, NW¼NW¼NW¼SW¼	12.50 (7.54) ..	$2,275,000
N–61734 99–02	T. 22 S., R. 61 E., sec. 14, W½NW¼NE¼SE¼SE¼, SW¼NE¼SE¼SE¼, W½SE¼NE¼SE¼SE¼	.5.0 (4.55) ..	1,090,000
N–65663 99–03	T. 22 S., R. 61 E., sec. 14, NW¼SW¼NE¼NW¼, E½SW¼SW¼NE¼NW¼, W½SE¼SW¼NE¼NW¼, W½NW¼NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, W½NE¼SE¼NW¼NW¼, E½NW¼SE¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½SE¼SE¼NW¼NW¼, E½NE¼NE¼SW¼NW¼, E½NW¼NE¼SW¼NW¼, E½SW¼NE¼SW¼NW¼, W½SE¼NE¼SW¼NW¼ NE¼SE¼SW¼NW¼, E½NW¼SE¼SW¼NW¼, E½SW¼SE¼SW¼NW¼, E½SE¼SW¼NW¼, W½NW¼SE¼NW¼, E½NE¼SW¼SE¼NW¼, SE¼SW¼SE¼NW¼, W½SW¼SE¼NW¼, W½NW¼SE¼SE¼NW¼	42.50 (28.99)	2,900,000
N–65664 99–04	T. 22 S., R. 61 E., sec. 14, NW¼NW¼NE¼SW¼, E½NE¼NW¼SW¼	7.50 (3.23) ..	161,500
N–65665 99–05	T. 22 S., R. 61 E., sec. 14, W½NW¼SW¼NE¼SW¼, E½NE¼SE¼NW¼SW¼	2.50 (0.90) ..	45,000
N–65666 99–06	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼NE¼SW¼	1.25 (1.25) ..	62,500
N–65667 99–07	T. 22 S., R. 61 E., sec. 14, E½NE¼NW¼NE¼SW¼	1.25 (1.10) ..	55,000
N–65668 99–08	T. 22 S., R. 61 E., sec. 14, S½SW¼NE¼SW¼, E½SE¼SE¼NW¼SW¼	6.25 (4.00) ..	200,000
N–65669 99–09	T. 22 S., R. 61 E., sec. 14, W½NE¼NW¼SE¼SW¼, NW¼NW¼SE¼SW¼	3.75 (2.12) ..	106,000
N–65670 99–10	T. 22 S., R. 61 E., sec. 14, NW¼NE¼SE¼SW¼	2.50 (2.50) ..	125,000
N–65671 99–11	T. 22 S., R. 61 E., sec. 14, E½SW¼NW¼NE¼SW¼, W½SE¼NW¼NE¼SW¼	2.50 (2.50) ..	125,000
N–65672 99–12	T. 22 S., R. 61 E., sec. 14, W½SW¼NE¼SE¼SW¼, S½NW¼SE¼SW¼	6.25 (3.77) ..	188,500
N–65673 99–13	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼SE¼SW¼, W½NW¼SE¼SE¼SW¼, SE¼SW¼SE¼SW¼, W½SW¼SE¼SE¼SW¼	6.25 (3.37) ..	168,000
N–65674 99–14	T. 22 S., R. 61 E., sec. 14, E½SE¼NE¼SW¼SW¼, E½NW¼SE¼SW¼SW¼, NE¼SE¼SW¼SW¼, NW¼SW¼SE¼SE¼SW¼, W½SW¼SW¼SE¼SW¼, SE¼SE¼SW¼SW¼, E½SW¼SE¼SW¼SW¼	12.50 (7.59) ..	1,060,000
N–65675 99–15	T. 22 S., R. 61 E., sec. 14, W½SE¼SE¼NW¼SW¼, NE¼NE¼SW¼SW¼	3.75 (0.58) ..	29,000
N–65676 99–16	T. 22 S., R. 61 E., sec. 14, W½NW¼NE¼NW¼SW¼, SW¼NE¼NW¼SW¼, E½SW¼NW¼NW¼SW¼, SE¼NW¼NW¼SW¼, E½NE¼SW¼NW¼SW¼, NE¼SE¼NW¼SW¼, E½NW¼SE¼NW¼SW¼	15.00 (10.46)	835,000
N–65677 99–17	T. 22 S., R. 61 E., sec. 14, NE¼NW¼SW¼SW¼, E½NW¼NW¼SW¼SW¼, SW¼NW¼SW¼SW¼, W½SE¼NW¼SW¼SW¼, NW¼SW¼NW¼SW¼, E½SW¼SW¼NW¼SW¼, NW¼SW¼SW¼SW¼, E½SW¼SW¼SW¼SW¼	12.50 (11.55)	1,615,000
N–65678 99–18	T. 22 S., R. 61 E., sec. 14, SE¼NE¼SE¼SW¼	2.50 (2.20) ..	110,000
N–65679 99–19	T. 22 S., R. 61 E., sec. 14, W½NW¼NW¼NW¼SW¼	1.25 (0.77) ..	295,000
N–65680 99–20	T. 22 S., R. 61 E., sec. 14, E½NW¼SW¼NW¼, SW¼NW¼SW¼NW¼, N½SW¼SW¼NW¼, E½SW¼SW¼SW¼NW¼, SE¼SW¼SW¼NW¼, W½NW¼SE¼SW¼NW¼, W½SW¼SE¼SW¼NW¼	18.75 (11.29)	1,130,000
N–65681 99–21	T. 22 S., R. 61 E., sec. 14, NW¼NW¼NW¼, N½SW¼NW¼NW¼, SW¼SW¼NW¼NW¼, W½SE¼SW¼NW¼NW¼	18.75 (7.61) ..	2,635,000
N–65682 99–22	T. 22 S., R. 61 E., sec. 14, E½NW¼NE¼NW¼	5.0 (4.62) ..	1,105,000
N–65683 99–23	T. 22 S., R. 61 E., sec. 14, E½SE¼SW¼SW¼SW¼	1.25 (1.06) ..	75,000
N–65684 99–24	T. 22 S., R. 61 E., sec. 14, NE¼SE¼SE¼SW¼	2.50 (2.20) ..	110,000

The lands described herein have been segregated from location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws in accordance with Public Law 105–263 until the lands are patented. Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all other forms of appropriations under the public land laws and mineral material sales. Until the completion of the sale, the BLM is no longer accepting, or will consider as filed, and will return applications for land use authorizations on such public lands. The segregation from forms of appropriations under the public land laws and mineral material sales will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. The terms and conditions applicable to the sale are:

All Parcels Subject to the Following:

1. All minerals shall be reserved.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

PARCEL 99–01BS

Subject to those rights for highway and flood control purposes which have been granted to the City of Las Vegas by Right-of-way No. N–37142 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for roadway and sewer drainage system purposes which have been granted to the City of Las Vegas by Right-of-way No. N–41255 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for natural gas line purposes which have been granted to Southwest Gas Corporation by Right-of-way No. N–48328 under the Act of February 25, 1920 (041 STAT 0437; 30 U.S.C. 185 Sec.28).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–61675 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

PARCEL 99–02

Subject to a reservation of the North 30 feet of the W½NW¼NE¼SE¼SE¼ and the South 30 feet of the SW¼NE¼SE¼SE¼, W½SE¼NE¼SE¼SE¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Babel Eberhard by Right-of-way No. N–62348 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

PARCEL 99–03

Subject to a reservation of the North 50 feet of the W½NW¼NE¼NW¼NW¼ and the South 40 feet of the SE¼SW¼NW¼ and the South 40 feet of the SW¼SW¼SE¼NW¼ and the South 40 feet of the SE¼SW¼SE¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–43408 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–43255 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–61633 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–6445 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C. 959).

PARCEL 99–04

Subject to a reservation of the North 40 feet of the NW¼NW¼NE¼SW¼ and the North 40 feet of the NE¼NE¼NW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

PARCEL 99–05

No reservations.

PARCEL 99–06

No reservations.

PARCEL 99–07

Subject to a reservation of the North 40 feet of the E½NE¼NW¼NE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–31351 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

PARCEL 99–08

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–09

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–10

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–12

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–13

Subject to a reservation of the South 50 feet of the SE¼SW¼SE¼SW¼ and the South 50 feet of the W½SW¼SE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–41937 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–14

Subject to a reservation of the South 50 feet of the E½SE¼SW¼SW¼SW¼ and the South 50 feet of the E½SW¼SE¼SW¼SW¼ and the South 50 feet of the W½SW¼SW¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–41937 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–15

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–16

Subject to a reservation of the West 50 feet of the NW¼SW¼NW¼SW¼ and the North 40 feet of the W½NW¼NE¼NW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–17

Subject to a reservation of the West 50 feet of the SW¼NW¼SW¼SW¼ and the West 50 feet of the NW¼SW¼SW¼SW¼ and the South 55 feet of the E½SW¼SW¼SW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–48159 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–48056 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–18

Subject to a reservation of the East 40 feet of the SE¼NE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–6486 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for telephone line purposes which have been granted to Nevada Power Company by Right-of-way No. N–7664 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for sewer line purposes which have been granted Clark County Sanitation District by Right-of-way No. N–57156 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–20

Subject to a reservation of the West 50 feet of the SW¼NW¼SW¼NW¼ and the West 50 feet of the NW¼SW¼SW¼NW¼ and the South 40 feet of the E½SW¼SW¼SW¼NW¼ and the South 40 feet of the SE¼SW¼SW¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–21

Subject to a reservation of the North 50 feet and the West 60 feet of the NW¼NW¼NW¼ and the West 50 feet of the W½SW¼NW¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–59915 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–5238 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–42999 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–22

Subject to a reservation of the North 50 feet of E½NW¼NE¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–5238 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–42999 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–23

Subject to a reservation of the South 50 feet of the E½SE¼SW¼SW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–48159 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–48056 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–24

Subject to a reservation of the East 50 feet of the NE¼SE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–54946 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–55281 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

The parcels will be offered for competitive sale beginning at 10:00 a.m. PST, November 4, 1999, in City Council Chambers, Las Vegas City Hall, 400 E. Stewart Avenue, Las Vegas, Nevada. Registration for oral bidding will begin at 8:00 a.m. the day of the sale and will end promptly at 10:00 a.m. All bidders are required to register.

Each parcel will be offered by sealed bid and oral auction. All sealed bids must be received in the BLM's Las Vegas Field Office (LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, by no later than 4:15 pm PST, November 2, 1999. Sealed bid envelopes must be marked on the front left corner with the parcel number and sale date. Bids must be for not less than the FMV specified in this notice, with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The highest qualified sealed bid on each parcel will determine the starting monetary point for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised fair market value. Oral bids must be in increments of $500.00. The highest qualifying bid for any parcel, whether sealed or oral, shall be declared the highest bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit in the form of cash, personal check, bank draft, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid immediately following the close of the sale.

The remainder of the full price bid, whether sealed or oral, shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Unsold parcels will be withdrawn from sale, but may be offered again at a future date.

Federal law requires that bidders must be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; and an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership papers, shall accompany the bid deposit.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. This information is also available on the Internet at http://www.nv.blm.gov. Click on Southern Nevada Public Land Management Act, then you must click on Land Sale Information.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 18, 1999.

Michael F. Dwyer,

Field Manager.

[FR Doc. 99–22128 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Notice of Intent To Amend the Kremmling Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Kremmling Field Office Resource Management Plan, 1984.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kremmling Field Office, is proposing to amend the Kremmling Resource Management Plan, approved in December, 1984. The amendment will consider changing the boundaries of the Upper Colorado River Special Recreation Management Area, changing land use priorities for some public lands within the Area boundary, and establishing management prescriptions for the Area. The management prescriptions being considered will include: (1) no surface occupancy for oil and gas development, and (2) withdrawing the entire SRMA from settlement, sale, location, or entry under the general land laws, including the mining laws.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Northwest Center, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 12,175 acres of public land in Grand and Eagle Counties, located along the Colorado River from approximately 7½ miles upstream of Kremmling, Colorado to State Bridge, Colorado.

Dated: August 23, 1999.

Linda Gross,

Field Manager, Kremmling Field Office.

[FR Doc. 99–22191 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Notice of Intent to Amend the Kremmling Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend the Kremmling Field Office Resource Management Plan, 1984.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kremmling Field Office, is proposing to amend the Kremmling Resource Management Plan, approved in December, 1984. The amendment will identify land use priorities for parcels of property acquired through land exchanges completed since the Kremmling Resource Management Plan was approved in December, 1984, and provide for the establishment of land use prescriptions and priorities for future acquisitions at the time the lands are acquired.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Northwest Center, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 11,146 acres of public land in the Kremmling Resource Area that has been acquired through land exchange since the original Kremmling Resource Management Plan was approved in December, 1984.

Dated: August 23, 1999.

Linda Gross,

Field Manager, Kremmling Field Office.

[FR Doc. 99–22192 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–7130–00–9789–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

Tps. 22 and 23 N., Rs. 119 and 120 W., accepted August 17, 1999

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest within thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: John P. Lee, (307) 775–6216, Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: August 17, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–22123 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Production Accounting and Auditing System Reports on Solid Minerals, OMB Control Number 1010–0063 which expires on December 31, 1999.

Form

Mine Information Form, MMS–4050; Facility and Measurement Information Form, MMS–4051S, Solid Minerals Operations Report, MMS–4059A&B; Solid Minerals Facility Report, MMS–4060A&B.

DATES: Written comments should be received on or before October 25, 1999.

ADDRESSES: The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

Public Comment Procedure

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Production Accounting and Auditing System Reports on Solid Minerals, OMB Control Number 1010–0063'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from

organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: 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.

The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

We developed the Production Accounting and Auditing System (PAAS), an integrated computer database containing production processing data submitted by Federal and Indian lease operators, including operators of solid mineral leases. The PAAS database is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The PAAS data is compared with data in our Auditing and Financial System (AFS) database which tracks sales of mineral production from a lease and associated royalty payments as reported by payors. The comparison between production data (PAAS) and sales and royalty data (AFS) enables MMS to verify that the proper amount of royalties are being received for the minerals extracted from a lease.

Lessees file four forms to submit the required solid minerals data. Two forms are used to establish an MMS reference database of relatively static information on mines, facilities, and measurement points; this reference database eliminates the necessity for operators to continually report this static data. To monitor lease production, lessees file two operations reports to provide ongoing information on production, sales volumes, and inventories of mines and processing facilities.

The burden imposed on lessees submitting required information is directly proportional to mine activity and the point of sale, or the royalty determination. The more complicated the operations, the greater the reporting burden on the respondents. Mine/facility operators are required to submit the required production data to allow MMS to accurately and completely determine the correct amount of the royalty due on the minerals removed from Federal and Indian lands.

Currently the PAAS database includes 211 mine operators and 290 mines containing 653 leases. Coal lease operators make up 45 percent of the total respondents. Solid mineral leases also include limestone, molybdenum, potassium, sodium, and sand and gravel operations. The total number of facilities maintained on PAAS includes 27 coal processing plants, 20 refiners, 13 mill and 44 remote storage facilities. It is estimated that there will be a continuing growth of 3 percent per year for the number of new operators, mines, facilities, and leases added to PAAS.

The annual burden for responding to this information collection using the PAAS solid mineral forms, including 1 hour per operator per year to maintain records necessary for completion of PAAS forms, is estimated to be 2,920 hours.

Dated: August 20, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–22096 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Pearl Harbor, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Pearl Harbor, HI in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, and the O'ahu Island Burial Council. Koa Mana and the Office of Hawaiian Affairs were also contacted for consultation, but have not responded.

In 1978, human remains representing a minimum of 13 individuals were recovered by Toni Han, Owen Narikawa, and Bishop Museum staff following the disturbance of burials during construction of a new complex of naval magazines at West Loch Naval Magazine, Pearl Harbor, O'ahu, HI. No known individuals were identified. The 62 associated funerary objects include non-human bone, beads, a mirror, and a ceramic plate.

In 1998, the U.S. Navy determined, based on a 1978 Deed of Gift, that these human remains and associated funerary objects were in the control of the Bishop Museum. Based on the style and types of associated funerary objects, manner of interments, recovery locations, and consultation information, these individuals have been identified as Native Hawaiian. In keeping with prior consultations with Native Hawaiian organizations, the Bishop Museum did not attempt to determine the age of the human remains.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 13 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 62 objects listed above are reasonably

believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of the Hui Malama I Na Kupuna O Hawai'i Nei, the Office of Hawaiian Affairs, the O'ahu Island Burial Council, and Koa Mana. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Valerie Free, Unit Manager, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 847-8205, before September 27, 1999. Repatriation of the human remains and associated funerary objects to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: August 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22162 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Harper County, KS in the Possession of the Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Harper County, KS in the possession of the Kansas State Historical Society, Topeka, KS.

A detailed assessment of the human remains was made by Kansas State Historical Society (KSHS) professional staff in consultation with representatives of the Wichita and Affiliated Tribes.

In 1988, human remains representing four individuals were recovered from the Hallman site (14HP524), Harper County, KS during excavations directed by KSHS archeologists. No known individuals were identified. No associated funerary objects were present.

Based on archeological context, these individuals have been identified as Native American. Based on material culture, geographic location, and radiocarbon dates, the Hallman site has been identified as a Bluff Creek Complex occupation dating from c. 1020 A.D. Based on temporal position, geographic location, and general character of material culture, the Bluff Creek Complex has been identified as possibly being ancestral to the Wichita tribe.

Based on the above mentioned information, officials of the Kansas State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Kansas State Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Wichita and Affiliated Tribes.

This notice has been sent to officials of the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Randall Thies, Archeologist, Kansas State Historical Society, 6425 SW Sixth Avenue, Topeka, KS 66606-1099; telephone: (913) 272-8681, ext. 267, before September 27, 1999. Repatriation of the human remains to the Wichita and Affiliated Tribes may begin after that date if no additional claimants come forward.

Dated: August 17, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22165 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Modoc and Siskiyou Counties, CA in the Control of Klamath Basin National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Tulelake, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Modoc and Siskiyou Counties, CA in the control of Klamath Basin National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Tulelake, CA.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife, Oregon State Museum of Anthropology (OSMA), and California State University, Chico Department of Anthropology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

During the 1940s, human remains representing 16 individuals were recovered from Lower Klamath Lake National Wildlife Refuge during authorized excavations conducted by field crews of the University of Oregon. No known individuals were identified. The five associated funerary objects include one non-human tooth, one antler drill cap, one hammer, one olivella bead, and one unidentified animal bone.

In 1961, human remains representing one individual were recovered from Clear Lake National Wildlife Refuge authorized excavations by amateur archeologist Carrol B. Howe, who donated these human remains to OSMA. No known indivdiuals was identified. No associated funerary objects are present.

In 1992, human remains representing three individuals were turned over to Klamath Basin NWRC by the Siskiyou County Sheriff's Department. These human remains were given into the Sheriff's possession on the unconfirmed evidence that they had been removed from an archeological site at Tulelake NWR. No known individuals were identified. No associated funerary objects are present.

Based on apparent age, locations, archeological context, and consultation with the Klamath Indian Tribe of Oregon, these human remains have been identified as Native American. Based on oral history, ethnographic and historic accounts, and locations of the burials, these individuals have been affiliated with the Klamath and Modoc tribes. Representatives of the Modoc Tribe of Oklahoma have indicated the Klamath Indian Tribe of Oregon represents Modoc interests in the Klamath Basin NWR.

Based on the above mentioned information, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent

the physical remains of 20 individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Francis G. Maiss, Acting Project Leader, Klamath Basin National Wildlife Refuge Complex, Route 1, Box 74, Tulelake, CA 96134; telephone: (530) 667-2231; fax: (530) 667-3299, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 16, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22164; Filed 8-25-99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from New Mexico in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Pueblo of Jemez.

Before 1966, human remains representing a minimum of six individuals were removed from the Unshagi site, an abandoned pueblo on the Jemez River, NM under unknown circumstances by person(s) unknown. In 1966, these human remains were transferred to the Los Angeles County Museum of Natural History from the Alan Hancock Foundation at the University of Southern California. No known individuals were identified. No associated funerary objects are present.

Based on accession records, these human remains have been identified as Native American. Ethnohistoric information indicates the Unshagi site has been identified as ancestral to the Pueblo of Jemez. Consultation with representatives of the Pueblo of Jemez confirms that the Unshagi site was inhabited exclusively by ancestors of the Pueblo of Jemez.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of six individuals of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 27, 1999. Repatriation of the human remains to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Deparmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 99–22166 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Alaska in the Possession of the Laboratory of Anthropology, University of Alaska-Anchorage, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Laboratory of Anthropology, University of Alaska-Anchorage, Anchorage, AK.

A detailed assessment of the human remains was made by Laboratory of Anthropology, University of Alaska-Anchorage professional staff in consultation with representatives of Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Region, Inc. Foundation, and the Kenaitze Indian Tribe.

In 1974, human remains representing a minimum of 23 individuals were recovered at the Cottonwood Creek site (SEL 030) on the north shore of Kachemak Bay, south-central Alaska during archeological excavations conducted by Alaska Methodist University and the Anchorage Community College. No known individuals were identified. The 3,200 associated funerary objects include bone and shell beads, labrets, two bone knives, two diamond-shaped artificial eyes, a tiny bone inlay, and an edged slate scrap.

Based on the associated funerary objects; radiocarbon dating of the site; and manner of interment unique to the time period, these burials are estimated to date to between 2,000 and 1,500 years ago. Based on these dates, the Cottonwood Creek site has been identified as a late-stage Kachemak Tradition occupation.

In 1974, human remains representing a minimum of four individuals were recovered from the Chugachik Island site (SEL 033) on Chugachik Island during a test excavation conducted by Alaska Methodist University and the State of Alaska Department of Natural Resources Division of Parks, Office of History and Archeology. No known individuals were identified. No associated funerary objects were present.

In 1977, human remains representing a minimum of 13 individuals were

recovered from the Chugachik Island site (SEL 033) during archeological excavations conducted by the University of Alaska-Anchorage and Anchorage Community College. No known individuals were identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of one individual were removed from an eroding midden face at the Chugachik Island site (SEL 033) by a unknown visitor and donated to the Laboratory of Anthropology, University of Alaska, Anchorage. No known individual was identified. No associated funerary objects are present.

In 1981, human remains representing up to 45 individuals were recovered from the Chugachik Island site (SEL 033) during archeological excavations conducted by the University of Alaska-Anchorage and Anchorage Community College. No known individuals were identified. No associated funerary objects are present.

In 1982, human remains representing a minimum of three individuals were recovered from the Chugachik Island site (SEL 033) and an associated beach front by Peter Zollars under the supervision of the University of Alaska-Anchorage. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing one individual were recovered from the Chugachik Island site (SEL 033) by Peter Zollars under the supervision of the University of Alaska-Anchorage. No known individual was identified. No associated funerary objects were present.

In 1995, human remains representing a minimum of four individuals were recovered from the Chugachik Island site (SEL033) by a local resident. No known individuals were identified. The one associated funerary object is a birdbone tube cut at both ends.

At an unknown date, human remains representing one individual from a beach at the Chugachik Island site (SEL033) were recovered by an unknown person and donated to the University of Alaska-Anchorage. No known individual was identified. No associated funerary objects are present.

Based on radiocarbon dating, burial practices, intentionally modified human remains, and material culture, the Chugachik Island site has been identified as a Kachemak Tradition occupation dating to between 2400 to 1500 years ago.

In 1977, human remains representing one individual were recovered from the Yukon Island Fox Farm site (SEL041) on Yukon Island during excavations under the direction of William Workman (University of Alaska-Anchorage) and John Lobdell (Anchorage Community College). No known individual was identified. No associated funerary objects were present.

In 1978, human remains representing one individual were recovered from the Yukon Island Fox Farm site (SEL041) during a house pit trench excavation conducted by Frederica De Laguna and Karen Workman which included this disturbed burial in slough deposits. No known individual was identified. In 1993, three associated funerary objects were recovered from this burial and consist of a whalebone dagger and two barbed darts.

In 1985, human remains representing a minimum of one individual were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by Peter Zollars. No known individual was identified. No associated funerary objects are present.

In 1986, human remains representing a minimum of three individuals were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by Peter Zollars. No known individual was identified. The one associated funerary object is a hammerstone.

In 1987, human remains representing a minimum of two individuals were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by William Workman (University of Alaska-Anchorage) and Peter Zollars. No known individuals were identified. The ten associated funerary objects include a porpoise skull and other non-human bones.

In 1978, human remains representing a minimum of one individual were recovered from preserved buried beach deposits at the Great Midden site (SEL001) on Yukon Island during excavations conducted by John Lobdell of Anchorage Community College and Frederica De Laguna. No known individual was identified. No associated funerary objects are present.

Based on radiocarbon dating and material culture, the Yukon Island Fox Farm site and the Great Midden site have been identified as Kachemak Tradition occupation dating to 1500—3000 years ago.

In 1984, human remains representing a minimum of one individual were collected from a burial eroding down a steep slope at the front of the North Bluff site on Yukon Island by William Workman of the University of Alaska-Anchorage. No known individuals were identified. No associated funerary objects are present.

This site has not been investigated, however, a late Kachemak Tradition provenance seems likely based on the considerable depth of the exposed cultural deposits.

In 1978, human remains representing a minimum of three individuals were collected from an eroding midden site on Neptune Bay, Kachemak Bay by University of Alaska-Anchorage and Anchorage Community College archeologists. No known individuals were identified. No associated funerary objects are present.

This site on Neptune Bay has not been investigated, however, a late Kachemak Tradition provenance seems likely based on the considerable depth of the exposed cultural deposits.

Although the people of the Kachemak Tradition withdrew from Kachemak Bay no later than around 1,000 years ago, they were closely related in biology and culture to contemporary Kachemak Tradition people in the Kodiak Archipelago, with whom it is probable that they amalgamated. The Kodiak version of the Kachemak Tradition has been clearly documented by detailed archeological study of cultural material from a number of archeological sites and human biological study of several hundred human remains as the primary cultural and biological ancestor of the contemporary Alutiiq people of the Kodiak Archipelago and adjacent areas. The Kachemak Bay manifestation of the Kachemak Tradition should thus be viewed as a regional expression of ancestral Alutiiq or Pacific Eskimo culture, a complex long-enduring (at least 3,800 years) regional mosaic of cultural patterns with living descendents in the Kodiak archipelago, Prince William Sound, and elsewhere in south central Alaska.

Based on the above mentioned information, officials of the University of Alaska-Anchorage have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 108 individuals of Native American ancestry. Officials of the University of Alaska-Anchorage have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 3,215 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Alaska-Anchorage have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Chugach Alaska Corporation, the Native Village of Port Graham, the Native Village of Nanwalek

(aka English Bay), and the Seldovia Village Tribe.

This notice has been sent to officials of the Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Region, Inc. Foundation, the Kenaitze Indian Tribe, the Native Village of Port Graham, the Native Village of Nanwalek (aka English Bay), and the Seldovia Village Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Professor William Workman, Department of Anthropology, University of Alaska-Anchorage, 3211 Providence Drive, Anchorage, AK 99508; telephone: (907) 789-6842, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Chugach Alaska Corporation on behalf of the Native Village of Port Graham, the Native Village of Nanwalek (aka English Bay), and the Seldovia Village Tribe may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–22167 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University Museum, University of Arkansas, Fayetteville, AR.

A detailed assessment of the human remains was made by University Museum professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana.

In 1932, human remains representing a minimum of 19 individuals were recovered from the Kinkead-Mainard site (3PU2), Pulaski County, AR during excavations conducted by the University Museum. No known individuals were identified. The 117 associated funerary objects include ceramic vessels, ceramic sherds, a clay ball, lithic debris, copper beads, a copper band, a copper nugget, pigment, animal bones, a tortoise carapace, an antler pendant, antler projectile points, bone awls, shell beads, a mussel shell, and leather fragments.

Based on the associated funerary objects, and skeletal and dental morphology, these human remains have been identified as Native American. Based on ceramic styles and construction, this site has been identified as a manifestation of the Menard Complex during the protohistoric period (1500-1700 AD). French historical documents from 1700 indicate only the Quapaw tribe had villages in the area of the Kinkead-Mainard site. In 1818, the Quapaw ceded the central Arkansas River valley, including the Kinkead-Mainard site, to the United States. Based on historical information and continuity of occupation, these human remains have been affiliated with the Quapaw Tribe of Indians, Oklahoma.

In 1965, human remains representing eight individuals were recovered from the Parkin site (3CS29), Cross County, AR during the Arkansas Archeological Society summer excavation under the direction of the University Museum. No known individuals were identified. The eight associated funerary objects include ceramic vessels, potsherds, and a pottery object.

In 1966, human remains representing 17 individuals were recovered from the Parkin site (3CS29), Cross County, AR during the University of Arkansas Archeological Field School. No known individuals were identified. The 21 associated funerary objects include pottery vessels, potsherds, animal bones, and stones.

Based on the associated funerary objects, and skeletal and dental morphology, these human remains have been identified as Native American. Based on historical documents, Spanish artifacts at the site, and archeological research, the Parkin site is thought to be the village of Casqui from the DeSoto era (c. 1541-3 AD). Based on radiocarbon dates and Native ceramics, the Parkin site has been dated to the late Mississippian to the early protohistoric period (1350-1600 AD). French historical documents from 1700 indicate only the Quapaw tribe had villages in the area of eastern Arkansas above the mouth of the Arkansas River. Based on historical information, oral tradition, and continuity of occupation, these human remains have been affiliated with the Quapaw Tribe of Indians, Oklahoma.

Based on the above mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 44 individuals of Native American ancestry. Officials of the University Museum, University of Arkansas have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 146 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22163 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items From Shannon County, SD in the Possession of the Wyoming State Museum, Cheyenne, WY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Wyoming State Museum, Cheyenne, WY which meet the definition of ''sacred objects'' under Section 2 of the Act.

The cultural items are two arrows with steel points and fletched with feathers; a wooden bow with pink ribbons attached at knocks, front stained blue and belly stained red; and a pipestem.

In 1919, John Hunton of Fort Laramie, WY donated these cultural items to the Wyoming State Museum. Donor information accompanying these cultural items indicates that on December 29, 1890, they were picked up on the Wounded Knee Massacre site by a U.S. Army scout Baptiste ''Little Bat'' Garnier, who later gave them to John Hunton.

The donor information accompanying these cultural items clearly indicates that they were removed without permission of the owners or relatives following the massacre. Consultation evidence provided by representatives of the Cheyenne River Sioux Tribe states that ''mourning [associated with Wounded Knee].. cannot end until all of the property stolen away from the dead... is returned... and all necessary spiritual ceremonies relating to the traditional burial rites of the Lakota have been performed and executed by Lakota spiritual leaders.''

Officials of the Wyoming State Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these four cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Wyoming State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, and Rosebud Sioux Tribe of the Rosebud Indian Reservation.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, Rosebud Sioux Tribe of the Rosebud Indian Reservation, and Standing Rock Sioux Tribe of North and South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Jennifer Alexander, Supervisor of Collections, Wyoming State Museum, 6101 Yellowstone Road, Cheyenne, WY 82002; telephone: (307) 777-5472 before September 27, 1999. Repatriation of these objects to the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, and Rosebud Sioux Tribe of the Rosebud Indian Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within or the content of this notice.

Dated: January 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22161 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Allocation of Water Supply and Expected Long-Term Contract Execution, Central Arizona Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) concerning proposed modifications to previous Central Arizona Project (CAP) water allocation decisions. Reclamation is initiating public scoping for the proposed NEPA document and will be conducting scoping meetings pursuant to section 102(2)(C) of NEPA.

The Department anticipates it will reallocate and offer contracts for certain quantities of CAP water in connection with (1) settlement discussions arising out of operation of the CAP; (2) settlement discussions arising from legal claims involving the Gila River Indian Community (GRIC) and the San Carlos Apache Tribe (San Carlos); and (3) negotiations regarding implementation of the 1982 Southern Arizona Water Rights Settlement Act.

DATES: Three scoping meetings will be held to solicit comments on issues that should be addressed in the EIS:

September 14, 1999, from 1:00–3:30 p.m.
National YWCA Leadership Development Center, 9440 N. 25th Avenue, Phoenix, Arizona 85021–2789.

September 15, 1999 from 6:30–9:00 p.m.
Francisco Grande Resort Ballroom, 26000 Gila Bend Highway, Casa Grande, Arizona 85222.

September 16, 1999, from 1:00–3:30 p.m.
Tucson Community Center, Maricopa-Mojave Room, 260 S. Church, Tucson, Arizona 85701.

At each meeting, Reclamation will make a short presentation. Oral comments from the audience will then be accepted. A court reporter will prepare a written record of all comments made.

Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend the meeting(s) may arrange for necessary accommodations by calling Ms. Janice Kjesbo (602–216–3864; fax 602–216–4006) no later than August 30, 1999.

ADDRESSES: Send written comments concerning the proposal to Mr. Bruce Ellis, Environmental Program Manager, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix Arizona, 85069–1169. To be most helpful, comments should be received by September 27, 1999. Written comments received by Reclamation become part of the public record associated with this action. Accordingly, such comments (including name, address, or telephone information shown on written correspondence) will be available to requestors of information through the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Questions concerning the process, the proposed action or alternatives, or this notice should be directed to Ms. Sandra Eto, Environmental Resource Management Division, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 850689–1169; telephone (602) 216-3857. To be placed on a mailing list for any subsequent information, please write or telephone Ms. Janice Kjesbo, Environmental Resource Management Division, Phoenix Area Office (see address above), telephone (602) 216–3854 or fax (602) 216–4006.

SUPPLEMENTARY INFORMATION: Reclamation proposes to modify existing allocations of CAP water under terms consistent with ongoing settlement discussions regarding operation of the CAP, the status of CAP water, and resolution of outstanding Indian water rights claims. In connection with preparation of the EIS,

Reclamation will analyze the environmental consequences of a proposed action that allocates and offers contracts for CAP water. This action is consistent with contemplated reallocation of CAP water that has emerged from extensive discussions among settlement parties. Environmental analysis of the proposed reallocation does not preclude additional adjustments being made to the final reallocations, depending upon the course of negotiations.

In addition to the proposed action (i.e. reallocation of CAP water based upon current settlement negotiations), Reclamation intends to develop and evaluate alternative allocation scenarios as part of its NEPA analysis. These ''action'' alternatives will identify other reallocation and contracting scenarios the Secretary of the Interior (Secretary) could implement in the absence of settlement. Thus far, three alternative reallocation scenarios are being considered for inclusion in the EIS. These alternatives could be modified, and/or other alternatives developed based upon input received during the scoping period.

CAP water, estimated for these purposes to be 1,415,000 acre-feet [1] (AF) of primarily Colorado River water available for use within the Project service area, is divided into three basic categories. The majority of the water in each of these categories has been allocated and contracted; however, some in each category remains unallocated and/or uncontracted. The categories can be described as follows: Water previously allocated for use by municipal and industrial (M&I) entities (620,678 AF); water allocated for ''Federal purposes'' (453,224 AF, the great majority of which is under contract to Indian tribes); [2] and water previously allocated for use by non-Indian agricultural (NIA) districts, consisting of the CAP water supply that remains after water in the other two categories has been contracted (for the purposes of this notice, the amount of water in this NIA category is estimated to be 341,098 AF [3]). The following are assumed to occur or pertain to the proposed action and all three action alternatives currently under consideration:

a. 17,800 AF of Indian priority water would be allocated and contracted to GRIC. This represents CAP water that was previously allocated and contracted to the Harquahala Valley Irrigation District (HVID) but relinquished in 1992 to the Secretary for use in the settlement of water rights claims of Indian tribes having claims to the water in the Salt and Verde River system (which is already included in the ''Federal purposes'' category);

b. an estimated 18,600 AF of NIA priority water would be allocated and contracted to GRIC, in accordance with the ''Settlement Agreement Among the Gila River Indian Community, Roosevelt Water Conservation District, and the United States of America (May 10, 1999).'' This represents CAP water previously allocated and contracted to the Roosevelt Water Conservation District but relinquished in 1992 to the Secretary to hold for the use and benefit of GRIC (which is already included in the ''Federal purposes'' category);

c. 17,000 AF of M&I category water previously allocated to ASARCO, Inc., that is anticipated to be voluntarily assigned to GRIC as part of a settlement of GRIC water rights claims;

d. the NIA category includes an estimated 43,654 AF that has been or is anticipated to be assigned to several cities within Maricopa County through agreements with the Hohokam Irrigation and Drainage District (HIDD); and

e. with the exception of the water previously allocated to HVID, all CAP water would retain its current priority (which determines the order of priority in reducing deliveries during times of shortages on the Colorado River).

Proposed Action and Action Alternatives. Following are descriptions of actions—in addition to those identified above—that are contemplated to occur under the proposed action and the three alternatives currently being considered:

A. Proposed Action

1. Water allocated for M&I use would total 603,678 AF (which represents 620,678 AF less 17,000 Af of ASARCO water described in ''c'' above). An amount of 65,647 AF within this category, that is currently uncontracted, would be reallocated to M&I entities after consultation with the State of Arizona, Department of Water Resources (ADWR). CAP M&I water service subcontracts would be offered to these allottees.

2. Water allocated for NIA use would be reduced by an estimated 200,000 AF. This water would be reallocated for Federal purposes. Of the estimated 141,098 AF remaining in the NIA category, 97,444 AF would be reserved for use by non-Indian agricultural or M&I entities under a process to be developed. The remaining 43,654 AF represents the water associated with HIDD that has been or is anticipated to be assigned to several Maricopa County cities (see ''d'' above).

3. Water allocated for Federal purposes would be increased by an estimated 200,000 AF from reallocation of water from the NIA category described in A.2. above. This water would be contracted as follows: 102,000 AF to GRIC; 28,200 AF to the Tohono O'odham Nation; and 69,800 AF reserved by the Secretary for use in facilitating future Indian water rights settlements.

B. Alternative #1

1. Water in the M&I category would be handled the same as under the Proposed Action. The 65,647 AF that is currently uncontracted would be reallocated and contracted as described under the Proposed Action.

2. The amount of water in the NIA category would not change from present conditions (estimated for purposes of this action to be 341,098 AF); however, an estimated 112,578 AF of water in this category would be made available for use by non-Indian agricultural and/or M&I entities under a process to be developed. This amount is an estimate of that portion of water within the NIA category for which allocations were made in 1983, but for which no contracts were executed. No change in status would occur to the remaining estimated 228,520 AF in the NIA category.

3. An estimated amount of 1,518 AF of Indian priority water already held for Federal purposes (originally allocated to HVID) would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

C. Alternative #2

1. Water allocated for M&I use would be reduced by 65,647 AF, the amount within this category that is currently uncontracted. This water would be reallocated for Federal purposes (see

[1] The 1,415,000 acre-foot amount is an agreed to approximation of the number of acre-feet of Colorado River water available in a normal year for diversion and use by the CAP, after deducting estimated system losses.

[2] In a **Federal Register** notice (48 FR 12446, March 24, 1983), the Secretary allocated 638,823 AF of CAP water for M&I purposes, and 309,828 AF of CAP water to Indian tribes in central Arizona. Subsequent settlements of Indian water rights and reallocations of CAP water increased the total water for ''Federal purposes'' to 453,224 AF—18,145 AF of which came from the M&I category.

[3] The calculation of amounts of water with regard to the NIA category varies; analysts among the settlement parties disagree on the exact numbers associated with water in this category. These differences are due to the order of the calculations made and other assumptions used. Use of specific numbers in this notice is not meant to imply a degree of precision that does not exist, and it should be noted the various amounts of water attributed to the NIA category in this notice are estimates for purposes of describing alternative reallocation scenarios.

C.3. below). The water remaining in this category would be 538,031 AF (which includes a reduction of 17,000 acre-feet of ASARCO water; see ''c'' above).

2. Water allocated for NIA use would be reduced by an estimated 28,665 AF. This estimate represents NIA water previously allocated to Queen Creek Irrigation District (ID), Chandler Heights Citrus ID, San Tan ID and Tonopah ID. In addition, as in Alternative #1, an estimated 112,578 AF of water would be made available for use by non-Indian agricultural and/or M&I entities under a process to be developed. No change in status would occur to the remaining estimated 199,855 AF in this category.

3. The amount of CAP water available for Federal purposes would be increased by an estimated 94,312 AF as a result of the reallocations described in C.1 and C.2 above. The 65,647 AF from the M&I category would be contracted as follows: 20,000 AF to GRIC; 28,200 AF to Tohono O'odham Nation; 3,947 AF to San Carlos; and 13,500 AF to the Navajo and Hopi tribes. The estimated 28,665 AF from the NIA category would be contracted as follows: 9,000 AF to GRIC; and an additional 19,665 AF to San Carlos. In addition, as in Alternative #1, an estimated amount of 1,518 AF already held for Federal purposes would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

D. Alternative #3

1. Changes to amounts of water in the M&I category would be as described in Alternative #2.

2. Water allocated for NIA use would be reduced by an estimated 297,444 AF. An estimated 43,654 AF associated with HIDD would remain in this category (see ''d'' above).

3. The amount of water available for Federal uses would be increased by an estimated 272,091 AF as a result of the reallocations described in D.1 and D.2 above. The 65,647 AF from the M&I category would be contracted as under Alternative #2 (20,000 AF to GRIC; 28,200 AF to Tohono O'odham Nation; 3,947 AF to San Carlos; and 13,500 AF to the Navajo and Hopi tribes). An estimated 206,444 AF reallocated from the NIA category would be distributed as follows: 82,000 AF would be contracted to GRIC, and 124,444 AF would be reserved by the Secretary for future Federal purposes. As in Alternatives #1 and #2, an estimated 1,518 AF would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

4. The remaining 91,000 AF of water reallocated from the NIA category described in D.2 above would be reserved by the Secretary for as yet to be determined non-Federal users.

Following is a table that summarizes the estimated total number of AF that would comprise each pool of CAP water, by alternative:

Cap water category	Current condition	Proposed action	Alternative #1	Alternative #2	Alternative #3
M&I category	620,678	603,678	603,678	538,031	538,031
NIA category	341,098	141,098	341,098	312,433	43,654
Held for ''Federal purposes''	453,224	670,224	470,224	564,536	742,315
Held for ''non-Federal purposes''	.....	.....	.....	.....	91,000
Total (in AF):	1,415,000	1,415,000 AF	1,415,000	1,415,000	1,415,000

In addition to the proposed action and the three action alternatives, Reclamation will also evaluate environmental consequences that are anticipated to occur in the absence of the proposed action (the no Federal action). By definition, the no Federal action alternative means that no water would be reallocated and no new contracts would be signed. Currently, uncontracted water from the previous CAP allocations, including 65,647 AF of M&I category water, and that portion of the NIA pool which has either been declined (about 112,578 AF) or considered to be relinquished (subject to Secretarial consent) from four non-Indian irrigation districts (about 28,665 AF), is delivered by the Central Arizona Water Conservation District to entities through two-party excess water agreements. The United States is challenging these agreements in ongoing litigation regarding operation of the CAP. For purposes of this analysis it is assumed that under the no Federal action scenario, this practice would continue pending resolution of the ongoing litigation.

Reclamation is circulating this notice in anticipation of considerable public interest and the need to ensure that all relevant issues are evaluated in the EIS. Reclamation will consult other Federal, State, and local agencies with specific expertise regarding environmental impacts related to the project.

Dated: August 20, 1999.

Robert Johnson,

Regional Director.

[FR Doc. 99–22195 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Monthly Report Naturalization Papers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty-days'' until October 25, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–4. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,920 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer,

United States Department of Justice,

Immigration and Naturalization Service.

[FR Doc. 99–22111 Filed 8–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Nonimmigrant Checkout Letter.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty-days'' October 25, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–146. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used in making inquiries of persons in the United States or abroad concerning the whereabaouts of aliens, and also requests departure information by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr.. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22112 Filed 8–25–99 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Inter-Agency Alien Witness and Informant Record.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 15, 1999 at 64 FR 18637. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 27, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Inter-Agency Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–854. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used by law enforcement agencies (LEA) to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification. This form also provides the Department of States and the Immigration and Naturalization Service with information necessary to identify the requesting LEA, the alien witness and/or informant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22113 Filed 8–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10671, et al.]

Proposed Exemptions; Pacific Coast Roofers Pension Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section

102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pacific Coast Roofers Pension Plan (the Plan); Located in San Jose, California

[Application No. D–10671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making of loans by certain banks (the Banks), under a loan program (the Program) providing for loans to Bank customers for residential and commercial re-roofing jobs that are performed by contributing employers to the Plan, pursuant to an arrangement in which the Plan will purchase certificates of deposit (the CDs) issued by the Banks, provided the following conditions are met:

(a) Alan D. Biller and Associates, Inc. (Biller), an independent investment manager with respect to the Plan's equities and fixed-income investments, determines on an on-going basis the appropriateness of the Plan's investment of up to 5% of the Plan's total assets in CDs, including CDs issued under the Program, with respect to the Plan's overall investment objectives and policy guidelines;

(b) Turner Dale Associates, Inc. (TDA), an independent investment manager with respect to the Plan's assets involved in the Program, which is also independent of the Banks, acts on the Plan's behalf pursuant to a written Investment Management Agreement to determine on an on-going basis whether the Plan should make each particular investment in the CDs under the Program, and should continue or terminate participation in the Program;

(c) TDA determines at least annually that the Banks participating in the Program are solvent institutions, based on analysis of all relevant information involving the Banks' financial status;

(d) The requirements of section 408(b)(4) of the Act are satisfied if any Bank participating in the Program is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b–4);

(e) The Plan's CDs will have a maturity date of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Banks for CDs of the same size and maturity being purchased at the time of the transaction by customers of the Bank not participating in the Program;

(f) The Banks offer CDs provided under the Program to other, unrelated customers in the ordinary course of business;

(g) Interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, are at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase;

(h) No person who is a party in interest with respect to the Plan, including contributing employers, trustees and other plan fiduciaries, receives a loan under the Program;

(i) The total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the Plan's total assets at the time of any transaction;

(j) No Plan trustee currently engages in any personal or business transactions with a Bank which will be involved in the Program, and if a trustee engages in such transactions in the future, the trustee shall recuse himself or herself with respect to any decision regarding the Program on behalf of the Plan;

(k) The Plan's investment in CDs is not part of an agreement, arrangement or understanding designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and

(l) If a customer defaults on a loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

Summary of Facts and Representations

1. The Plan, which covers workers in the roofing industry, is a multiemployer defined benefit plan established in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. The Plan currently has approximately 5400 participants and approximately $300 million in net assets. The Plan is administered by a board of trustees (the Trustees) with an equal number of Trustees representing labor and management, who are the named fiduciaries of the Plan. The Trustees are authorized to appoint one or more investment managers to handle investment decisions for portions of the assets of the Plan. These Plan assets include fixed-income investments made pursuant to the Plan's investment guidelines established by the Trustees. The Trustees have appointed Biller to act as investment manager with respect to the decision to include the Program among the Plan investments.

Biller is an independent investment manager with respect to the Plan. Biller has no interest in, or affiliation with, the Bank. Biller will also not have any interest in, affiliation with, or any business dealings with any bank selected in the future to participate in the Program. Biller has determined that up to 5% of the Plan's assets may be invested in certificates of deposit (CDs) in accordance with the Plan's investment guidelines.

2. With respect to the Program, the Trustees have selected TDA as investment manager, within the meaning of Act section 3(38), with full authority and responsibility regarding the investment by the Plan in each particular CD under the Program. TDA, as investment manager, is an independent fiduciary with respect to the Plan, and is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. TDA has experience handling investments for collectively bargained, jointly-trusteed employee benefit plans subject to the Act. TDA, which is located in Burlingame, California, currently has approximately $130 million in employee benefit plan assets under management.

3. The Plan proposes to invest up to 5% of its assets in CDs to be issued by various banks selected by TDA. The bank currently selected by TDA to issue CDs under the Program is United Labor Bank (hereinafter referred to as ''the Bank''), although the Plan may invest in CDs issued by other Banks meeting the Program's standards and requirements. The Bank had assets in excess of $67 million as of September, 1997. The Bank was incorporated in 1990 and operates branches in Oakland and Los Angeles, California. The Bank is a member of the Federal Home Loan Bank System, and is federally regulated. The Bank is subject to certain regulatory requirements

administered by the board of Governors of the Federal Reserve System, the Office of Thrift Supervision and the Federal Financial Institution Examination Council.

TDA is independent of the Bank, and will be independent of any Banks selected in the future to provide CDs under the Program. There will be no transactions between TDA and the Bank (or future Banks) that will interfere with the independence of TDA to serve as the Plan's investment manager for CD investment purposes. TDA will review, at least annually, the financial condition and creditworthiness of the Bank to ensure that it continues to be a solvent financial institution. Moreover, TDA would base its selection of any other Banks to participate in the Program on the Banks' capitalization, creditworthiness, and ability to provide the Plan maximum rates of returns on CDs.

The Bank is not currently a fiduciary for the Plan's assets and will not be a fiduciary for any assets of the Plan involved in the proposed CD investment.[1] In addition, with the exception of one Trustee who previously served on the Bank's board of directors, no member of the Plan's Board of Trustees has any ownership interest in the Bank, or maintains an account with the Bank. That Trustee owns 100 out of approximately 200,000 shares of stock in the Bank. The applicants represent that the Trustee will not participate in any decisions with respect to the Program. If, in the future, any member of the Board of Trustees acquires an interest in the Bank, that member will be precluded from participating in any decisions with respect to the Program on behalf of either the Plan or the Bank.

Further, no Trustee currently engages in any personal or business transactions with the Bank. Should a Trustee wish to engage in personal or business relations with the Bank or other Banks that may become involved in the Program in the future, that Trustee must make his intention known to the Board and must remove himself from any considerations or decisions regarding the Plan's participation in the Program while such Banks are involved in the Program. As a result, the Trustees will not derive any financial benefit, such as banking services at a reduced cost, or business or personal loans under more favorable terms than those provided to other customers, as a result of the Plan's participation in the Program.[2]

4. The terms and conditions of the proposed agreement with the Bank are embodied in a written agreement (the Deposit Agreement). The Plan's initial $1 million deposit will be invested in a master certificate of deposit (Master CD) at the Bank's regular 30-day rate for large CDs, subject to adjustment higher or lower each month. The Master CD is essentially the total pool of available assets for investment in the CDs at any given time.

5. Under the Program, after the Plan's initial investment in the CDs, and as subsequent investments in CDs are made, the Bank will make loans (the Loans) from its own funds to customers who meet the Bank's normal lending standard for similar loans, to finance re-roofing jobs (whether residential or commercial), provided the work is done by employers who are required under collective bargaining agreements to contribute to the Plan on behalf of the employees who would be doing the re-roofing work. As the Program proceeds, and new Loans are made, the Plan will have the opportunity each month to make additional CD investments. The Loans will be for at least $1,500 and will have terms ranging from 2 to 5 years. The applicant represents that if the Bank makes Loans in a greater dollar amount than the dollar amount of CDs purchased by the Plan, the Plan will be under no obligation to make an additional CD purchase. Further, the applicant represents that there is no intention, express or implicit, to link the dollar amount of Loans made to Bank customers with the Plan's CD investments under the Program.

The Loans under the Program will not be made directly to Plan participants or parties in interest with respect to the Plan.[3] More specifically, no Loans would be made to contributing employers under the Program. Further, the Trustees and other Plan fiduciaries involved in any decision regarding the Plan's participation in the Program will be prohibited from receiving Loans under the Program.

6. Each month TDA will consider whether, and to what amount, to invest in a specific CD under the Program. TDA will use its discretion to determine whether it is prudent to invest the principal amount of the Loans then outstanding, or some larger amount, in CDs. The amount determined by TDA to be prudent would then be transferred from the Master CD to a CD. The CD in which the Plan invests will have terms identical to those of CDs of the same size and maturity offered and sold by the Bank to unrelated customers not participating in the Program. The applicants represent that the CDs will have a maturity term of at least one year from the date of issuance. Further, the interest rates on the CDs will pay the maximum rates of interest for CDs of the same size and maturity offered by the Bank or Banks at the time of the CD investment.

All decisions concerning the Plan's CD investments will be made by TDA. TDA will determine whether the Plan should make CD purchases based upon a variety of factors, including: (1) The financial condition and creditworthiness of the Bank, or Banks, issuing the CDs; (2) the presence and extent of Federal Deposit Insurance Corporation (FDIC) protection for the Plan's CD investments; (3) the yield and liquidity of the CD in comparison to other CDs of similar risk and term; and (4) the expenses that the Plan will incur in connection with the purchase. In this manner, TDA will ensure that the total net rate of return to the Plan from the CD investments will be at least comparable to, or better than, the rate of return available on other fixed-income investments of similar risk and term at the time of the CD purchase. TDA will also be responsible for decisions to suspend purchases of CDs by the Plan based on these criteria. The Trustees will monitor TDA's investments to ensure that the CD purchases are

[1] Section 408(b)(4) of the Act states, in pertinent part, that the prohibitions of section 406(a) of the Act shall not apply to the investment of a plan's assets in deposits which bear a reasonable interest rate in a bank supervised by the United States or a State, if such bank is a fiduciary of such plan and if such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or an affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment. Thus, the Plan's proposed purchase of the CDs from a Bank that is a fiduciary or other party in interest with respect to the Plan would be exempt from the restrictions of section 406 by section 408(b)(4) of the Act if the conditions of the exemption, and the regulations thereunder (see 29 CFR 2550.408b–4), were met. However, the exemptive relief proposed herein would permit the Banks to make certain loans to customers for re-roofing jobs performed by contributing employers of the Plan pursuant to an arrangement involving the Plan's purchase of CDs from the Banks. The Department notes that such an arrangement is a separate transaction which would not be exempted by section 408(b)(4) of the Act. The Department also notes that the proposed exemption is limited only to relief from the prohibitions of section 406(a)(1)(D) of the Act which may result from the making of such loans pursuant to the described arrangement.

[2] Section 406(b) of the Act states, in pertinent part, that a fiduciary with respect to a plan shall not deal with the assets of a plan in his own interest or for his own account and shall not receive any consideration for his personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

[3] Thus, the Department is providing no relief in this proposed exemption for any prohibited transactions that may occur as a result of a Bank making a Loan to a party in interest with respect to the Plan under an arrangement designed to benefit that party in interest.

consistent with the Plan's asset allocation guidelines. TDA has reviewed the Bank's financial condition and has determined that it is prudent for the Plan to invest in CDs of the Bank.

7. To ensure that the interest rate on Loans under the Program is at a fair market rate, the Bank will set the interest rate for the borrower at 4% more than the interest rate for the CD as set by TDA. As noted, CDs will pay the maximum rate of interest for CDs issued by the Bank. The 4% difference represents the Bank's compensation for its origination, servicing, marketing and assumption of the risk of loss with respect to the Loans. By setting the Loan rates in this manner, the Bank will ensure that interest rates and fees are reasonable, so that potential borrowers are not discouraged from seeking Loans. The Loan interest rate will in no way impact the return to the Plan on the CDs.

8. Counsel for the Bank has prepared an opinion that all CDs issued by the Bank are eligible for FDIC pass-through deposit insurance up to the maximum limit under current regulations of the FDIC (see 12 CFR Part 330). Pursuant to FDIC regulation section 330.14(a), deposits of an employee benefit plan, such as the Plan, are insured on a pass-through basis in an amount of up to $100,000 per plan participant where certain recordkeeping requirements are met.[4] Should any funds on deposit with the Bank or other Banks participating in the Program cease to be eligible for such insurance, the Plan will be entitled to withdraw such funds from such Bank(s) immediately.

9. If TDA reasonably believes that interest rates on CDs will decline during an upcoming period, TDA may establish a minimum rate at which the Plan will invest in a CD for that upcoming period that is not to exceed 25 basis points below the effective annual yield at the end of the preceding period on U.S. Treasury Notes with the same term. TDA will not invest in a CD that does not meet this threshold. TDA represents that this measure of flexibility will allow it to exercise its expertise as an investment manager to obtain for the Plan the maximum CD rate set by the Bank or Banks for a given period based on the anticipated change.

[4] The applicant represents that in order for FDIC insurance to be provided on a pass-through basis, FDIC regulation section 330.5 requires that a pension plan deposit be identified as such, and that records evidencing the ownership interests of each beneficiary under the plan be maintained by either the bank or the plan. The applicant represents that these requirements will be met with respect to the Program, and, accordingly, the CDs under the Program will be eligible for FDIC pass-through insurance.

10. Biller has the ongoing responsibility to determine whether up to 5% of the Plan's assets can prudently be invested in CDs in connection with the Program, and will make this determination based on, among other factors, the asset allocations for the Plan and the Plan's investment guidelines. TDA has the responsibility to monitor whether the Bank is financially secure, whether the CDs are at maximum rates, and whether it is in the best interest of the Plan to continue or suspend its participation in the Program with the Bank. Under the terms of the Deposit Agreement, the Plan has the right: (a) To inform the Bank prior to the beginning of a month of the minimum acceptable CD interest rate it will accept with respect to Loans made that month; (b) to suspend the transfer of assets from the Master CD to a CD in any month by giving notice to the Bank prior to the beginning of the month; and (c) to terminate its participation in the Program on 15 days' written notice to the Bank (upon termination, the Master CD would be paid to the Plan at the end of the month, and any outstanding CD would continue for a period of one year, at which time it would be paid to the Plan). Biller represents that based on its review of the Plan's projections of contributions, benefits and actuarial liabilities, it has determined that it is prudent for the Plan to invest up to 5% of its assets in federally-insured CDs issued at competitive market rates.

11. When, in the judgment of TDA, the expected rate of return on a CD issued by a Bank through the Program will not equal or exceed the rates available to the Plan from comparable, insured fixed-income investments, TDA will suspend or terminate the Plan's participation in the Program with respect to that Bank. TDA will make this determination by ensuring, based on relevant available information and its own expertise, that the interest rates on the CDs made available by the Bank remain comparable to other fixed-income investments of similar risk and duration and do not fall below the rates available for CDs offered by other banks.

12. The Plan's assets have been invested in a broadly diversified portfolio of fixed-income securities, common stocks and real estate investments. Biller has evaluated the Plan's portfolio of fixed-income investments and determined that the investment of up to 5% of net assets in insured CDs having rates of return which would be equal to, or greater than, those available in comparable, insured fixed-income investments would be an appropriate investment for the Plan. TDA has also determined that the purchase of Master CDs and CDs through participation in the Program, under conditions which it can monitor, would be a prudent investment strategy for the Plan. These determinations are supported by TDA's assessment of the economic merits of the investments apart from any benefits that may accrue to the Plan's participants as a result of increased employment opportunities and employer contributions to the Plan that may be generated by the Program.[5]

13. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) Biller, an independent equities and fixed-income investment manager for the Plan, has reviewed the proposed investment Program and has determined that an investment of up to 5% of the Plan's assets in CDs, including CDs issued under the Program, is appropriate and consistent with the Plan's investment guidelines; (b) TDA, the independent investment manager with respect to the assets of the Plan

[5] In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the decision to include the Program among the Plan's investments, and to invest in particular CDs under the Program. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the fiduciaries of the Plan must act ''prudently'' with respect to the decision to include the Program, as well as to the actual decision to commit Plan assets to the Program (including, where relevant, the determination of how much, if any, to invest in CDs under the Program, which banks to purchase the CDs from, and the maturity dates of the CDs). In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing assets in CDs would not be prudent if such CDs would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such CDs would involve a greater risk to the security of plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in CDs, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make an investment in CDs of a particular bank may not be influenced by non-economic factors, such as a desire to encourage the bank to make loans to finance re-roofing jobs where the work is being performed by contributing employers, unless the CD investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the Plan. Finally, we note that the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of the Plan's participation in the Program or any CD purchases thereunder.

involved in the Program, has reviewed the Program and determined that it is in the Plan's interest based solely on the economic and financial merits of the Plan's involvement in the Program; (c) TDA will act on the Plan's behalf regarding the Plan's investment in Master CDs and CDs and will monitor all transactions relating to such investments; (d) the requirements of Act section 408(b)(4) will be satisfied if any bank participating in the Program is a fiduciary or party in interest with respect to the Plan; (e) the Plan's CDs will have a maturity of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Bank for CDs of the same size and maturity; (f) the Bank will offer CDs provided under the Program to other, unrelated customers in the ordinary course of its business; (g) interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, will be at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase; (h) TDA will determine at least annually that the Bank, or any other Bank participating in the Program in the future, is a solvent institution, based on an analysis of all relevant information involving the Bank's (or other Banks') financial status; (i) no person who is a party in interest with respect to the Plan, including contributing employers, Trustees and other plan fiduciaries, will receive a loan under the Program; (j) the total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the fair market value of the Plan's total assets at the time of any transaction; (k) no Plan Trustee currently engages in any personal or business transactions with the Bank, and if a Trustee engages in such transactions in the future, the Trustee will recuse himself with respect to any decision regarding the Program on behalf of the Plan; (l) the Plan's investment in CDs is not part of an arrangement designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and (m) if a customer defaults on a Loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Electric Pension Trust (the Trust); Located in Fairfield, Connecticut

[Application Nos. D–10679 through D–10682]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the lease (the Lease) by the Trust of office space in a certain commercial office building (the Property) to Transport International Pool, Inc. (TIP), a party in interest with respect to employee benefit plans of General Electric Company (GE) and/or an affiliate whose assets are held in the Trust, provided that the following conditions are satisfied:

(1) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary;

(2) The terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser;

(4) The independent fiduciary for the Trust reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust;

(5) The independent fiduciary monitors and enforces compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and

(6) The independent fiduciary expressly approves any renewal of the Lease, and the rental rate under such renewal is based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 1, 1998.

Summary of Facts and Representations

1. The Trust holds assets of the GE Pension Plan, which constitutes approximately 99% of Trust assets, and also of the Knolls Atomic Laboratories Pension Plan, ERC Retirement Plan, and Components Pension Plan for Puerto Rico (collectively, the Plans). The Plans are all defined benefit plans that cover employees of GE and various GE subsidiaries. As of October 5, 1998, the Plans had, in the aggregate, over 400,000 participants and beneficiaries. As of December 31, 1997, the Trust had total assets of approximately $38.9 billion.

The trustees of the Trust are five individuals (the Trustees), who are officers of GE and/or its subsidiaries. The Trustees are appointed by the Benefit Plans Investment Committee of GE, an oversight committee that determines the investment policies of the Trust. The Trustees maintain overall responsibility for investment of the Trust assets. The specific responsibility for investment of the Trust assets that are relevant to the application rests with the General Electric Investment Corporation (GEIC), subject to the approval of one or more of the Trustees.

GEIC, a Delaware corporation and a wholly owned subsidiary of GE, is a registered investment adviser under the Investment Advisers Act of 1940. GEIC provides investment management and advisory services to a variety of GE-affiliated entities. As of January 1, 1998, GEIC had approximately $53.25 billion of assets under management.

2. TIP, a Pennsylvania corporation, is a wholly owned subsidiary of Transport Pool Corporation, which is a wholly owned subsidiary of General Electric Capital Corporation. General Electrical Capital Corporation is a wholly owned subsidiary of General Electric Financial Services, Inc., which, in turn, is a wholly owned subsidiary of GE. TIP is primarily engaged in the business of semi-trailer sales and leasing. TIP sponsors its own pension plan, and its employees do not participate in the GE Pension Plan. Accordingly, TIP is not an employer (within the meaning of section 3(5) of the Act) with respect to the Plans whose assets are held in the Trust, but is a party in interest with respect to the Plans under section 3(14)(G) of the Act by virtue of its relationship to GE and other GE affiliates.

3. The transaction for which an exemption is requested involves the leasing, by the Trust to TIP, of office space in an 18-story office tower located at 18101 Von Karman Avenue, Irvine, California (i.e., the Property). The value of the Property, as of October 5, 1998, was approximately $75 million.

The Property is within the Lakeshore Towers Project. Lakeshore Towers Limited Partnership Phase I (the Partnership) is a California limited partnership through which the Trust owns the Lakeshore Towers Project.[6] The Lakeshore Towers Project consists of the Property, a 1,700 space parking garage, a restaurant, and a sporting club on approximately 15 acres of land. The Lakeshore Towers Project is located on land that is ground leased from unrelated parties. The land consists of seven separately parceled leasehold estates. It is located in the John Wayne Airport Area of Orange County, California.

Dorn–Platz & Company (the Property Manager), a realty company which is independent of GE and its affiliates, serves as a manager of the Property and is located in Glendale, California. In this capacity, the Property Manager oversees any new construction or developments, supervises and negotiates the leasing of space, and manages any financing and re-financing arrangements involving the Property.

4. TIP formerly had its local office in the Los Angeles business district. In late 1997, it began looking to relocate its office to Orange County, largely for the increased convenience of its employees and the need for a larger space. In the course of its search for space, it independently located the Property, unaware of the Partnership's affiliation with the Trust. TIP decided that it was interested in leasing space in the Property and entered into negotiations with the Property Manager. Only during negotiations with the Property Manager did TIP discover the relationship of the parties and the need to obtain an exemption from the prohibited transaction rules of the Act. Once this discovery was made, negotiations ceased, and the Trustees sought independent legal counsel regarding the possibility of obtaining an administrative exemption.

5. In accordance with the advice of counsel, the Trustees at that point retained John S. Adams, M.A.I., of John S. Adams & Associates, Inc., as an independent fiduciary to represent the Trust with respect to the Lease. Mr. Adams is a real estate appraiser who is licensed in the State of California. Mr. Adams represents that he and his firm are independent of the Trust, GE, and GE's affiliates (including TIP) and derive less than 1% of annual gross income therefrom. Mr. Adams states that he is knowledgeable as to the subject transaction, for he has 26 years experience in the valuation and analysis of all types of real estate, including urban office buildings similar to the Property. Mr. Adams also acknowledges his duties, responsibilities, and liabilities in acting as a fiduciary under the Act to the Trust for purposes of the Lease.[7]

Mr. Adams prepared a report, dated September 9, 1998, which provides an appraisal of the Property, as well as an evaluation of the Lease. In the report, Mr. Adams states that he inspected and analyzed the Property, which has a net rentable area of 378,781 sq. ft. On the basis of a review of a number of comparable leases in the same general market area, Mr. Adams concluded that the space in the Property covered by the Lease had a fair market rental value, as of August 31, 1998, in the range of $2.21 to $2.48 per sq. ft. Mr. Adams' analysis of the Lease terms is described in Paragraph 7, below.

6. The Lease, which commenced on October 1, 1998, has a term of five years. The urgency to execute the Lease was due to TIP's immediate need for additional space to house its divisional sales and operations office. As of that date, the Trust had substantially completed the agreed upon tenant improvements: construction of a wall to separate the TIP office space from other rentable areas on the 10th floor of the Property, painting interior walls, etc. The cost to the Trust came to $1.95 per sq. ft.

Under the Lease, TIP has leased approximately 2,532 rentable sq. ft. of space on the 10th floor of the Property, which constitutes approximately 0.67 percent of the rentable square footage in the Property. The space may be used for general office use only. In addition, TIP leases eight parking spaces allocated to TIP on an in-common, non-exclusive and unreserved basis in the parking facility for the Property at the monthly charge of $60.00 per stall.

The Lease provides for a rental rate of $2.40 per sq. ft. of rentable area, or $6,076.80 per month. TIP is to pay its proportionate share of the Trust's real estate taxes and other expenses relating to the Property for years after 1998, to the extent that these taxes and expenses exceed those for the 1998 year (the ''base'' year). In addition, TIP is responsible for any additional taxes levied or assessed that are attributable to TIP's improvements to personal property within the leased space, its activities with the leased space, or any transactions involving the leased space.

Late payments are subject to (1) an interest charge on amounts unpaid from the time due until paid to compensate the Trust for the loss of the use of amounts owed and (2) an additional 10% late payment charge to compensate for administrative expenses incurred by the Trust in handling delinquent payments.

TIP does not have any options or rights to expand or extend the Lease, nor has it received any period of free rent. Any assignments or subleases by TIP are void unless the Trust has provided prior written consent, and, if consented to, may be subject to additional charges. In such instances, TIP is not released from any of its Lease obligations. Any alterations to be made by TIP to the leased space during the term of the Lease are also subject to the Trust's written consent.

7. Prior to the execution of the Lease, Mr. Adams, the independent fiduciary, reviewed and approved the terms and conditions of the Lease on behalf of the Trust. In his report, dated September 9, 1998, Mr. Adams stated that such terms and conditions were at least as favorable to the Trust as those the Trust could obtain in a comparable arm's length transaction with an unrelated party. Mr. Adams noted that the effective rental rate was $2.40 per sq. ft., which was at the upper end of the appraised range of $2.21 to $2.48 per sq. ft. for the Property. Mr. Adams took into account the fact that the Lease does not provide for periodic rental adjustments. He explained that if the Lease had been negotiated to include an escalation clause, the Trust would have been required to accept a lower rental rate than $2.40 per sq. ft. for the initial years of the Lease. Mr. Adams stated that he considered the flat rental rate favorable to the Trust, as landlord, because it allows the Trust to obtain a higher starting rent upfront. In all other respects, Mr. Adams noted that the Lease provides TIP, as tenant, with no unusual market advantages.

Mr. Adams also determined that the Lease was in the best interests of the Trust. In this regard, Mr. Adams stated that the execution of the Lease would reduce building vacancy and enhance cash flow for the Trust with respect to the Property.

Finally, Mr. Adams has agreed to monitor and enforce compliance with the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease, and will take whatever actions necessary to safeguard the interests of the Trust with respect to the Lease. Mr.

[6] For convenience, this notice will refer to the Trust as the ''landlord'' under the Lease rather than to the Partnership through which the Trust owns Lakeshore Towers Project, in which the Property is contained.

[7] In this regard, Mr. Adams will confer with legal counsel having expertise with respect to the requirements of the Act, as needed.

Adams will also expressly approve any renewal of the Lease.[8] The rental rate under such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

8. In summary, the applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary (i.e., Mr. Adams); (b) the terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party; (c) the rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser; (d) Mr. Adams, the independent fiduciary for the Trust, reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust; (e) Mr. Adams will monitor and enforce compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and (f) Mr. Adams will expressly approve any renewal of the Lease, and the rental rate upon such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

Notice to Interested Persons

Notice of the proposed exemption will be given to all active employees of GE and its affiliates who are participants and beneficiaries in the plans whose assets are held in the Trust by posting a notice (along with a copy of the proposed exemption as published in the **Federal Register**) at GE locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters. Notice of the proposed exemption will be given to former employees and retirees, and all others eligible to receive the Summary Annual Reports for the affected plans, by publication of a notice in the 1998 Summary Annual Reports, which are to be mailed no later than December 15, 1999. In both instances, the notice shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing from all interested persons are due within 30 days following distribution of the 1998 Summary Annual Reports.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Jonas Builders, Inc. Restated Profit Sharing Plan (the Plan); Located in Milwaukee, Wisconsin

[Application No. D–10764]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain building, which contains a warehouse and a single-family residence (collectively; the Building), by the Plan to Mr. Gerald Jonas, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) All terms and conditions of the sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market value of the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building is a one-time transaction for cash;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan receives an amount equal to the greater of either: (i) The original acquisition cost of the Building plus any improvement costs and real estate taxes that were incurred by the Plan from the date the Building was acquired by the Plan until the date of the proposed sale (i.e., the total cost of $1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was established on December 28, 1970. As of April 27, 1998, the Plan had two participants, Mr. Gerald Jonas (Gerald Jonas) and his son Mr. Mark Jonas. Gerald Jonas is also the Plan's trustee. As of December 31, 1998, the Plan had total assets of $8,649,839.

Jonas Builders, Inc. (the Employer) is the sponsor of the Plan. Gerald Jonas is the sole owner and shareholder of the Employer. The Employer is in the business of commercial and industrial real estate. The Employer was incorporated on November 25, 1981 in the State of Wisconsin and is located in Milwaukee, Wisconsin.

2. On April 22, 1991, the Plan purchased the Building from Scott Paper Company, an independent third party, for a purchase price of $1,530,108. The original acquisition of the Building was financed through Catholic Family Insurance,[9] which lent the Plan $1,000,000 of the purchase price. The Plan paid the remaining $530,108 in cash. As of May 28, 1999, the outstanding principal balance of the loan was $276,984.98.[10] The Plan paid the remaining $530,108 in cash. At the time it was originally acquired, the value of the Building represented approximately 36.65% of the Plan's total assets.[11] The applicant represents that the Plan has incurred $7,422 in improvement costs to install a loading dock. Furthermore, the Plan has paid $391,892.73 in real estate taxes from 1991 (i.e., year of original acquisition) until December 31, 1998. Therefore, the total cost to the Plan for the Building was $1,530.108 + $7,422+ $391,892.73 = $1,929,422.73, as of December 31, 1998.

It is represented that Gerald Jonas, as the Plan's trustee, made the original decision to purchase the Building as an investment for the Plan.

3. The Building consists of a warehouse of approximately 217,000 square feet (the Warehouse) and a single family home (the Home). The Warehouse part of the Building is located at 4425 N. Washington Road, and the Home is located at 4513 N. Port Washington Road, in Glendale,

[8] It is represented that in the event it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Adams, the applicant will notify the Department 60 days in advance of such appointment. Any Successor shall be independent and possess comparable experience and responsibilities as Mr. Adams.

[9] The applicant represents that Gerald Jonas has a personal mortgage for another piece of property with Catholic Family Insurance, but that no other relationship exists between the parties.

[10] The applicant states that this loan will not be paid off as a result of the proposed transaction. Gerald Jonas will assume the Plan's obligation under the loan and the Plan will be released from further liability with respect to the loan.

[11] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Building by the Plan violated any of the provisions of Part 4 of Title I of the Act.

Wisconsin. The Building is located in an area of other warehouse, office and manufacturing buildings which is approximately 4 miles north of downtown Milwaukee, Wisconsin. The applicant represents that the Building is not adjacent to any property owned by the Employer, Gerald Jonas, or any other parties in interest with respect to the Plan.

For the last several years, only a fraction of the Building has been leased. The Plan has attempted to find additional tenants for the Building. Recent tenants have been willing to enter into only short term leases. The applicant states that leasing the entire Building on a long-term basis would be very beneficial to the Plan.[12] However, the Plan has been unable to find a tenant or tenants willing to lease the entire Building in its current condition (as noted in paragraph 4 below) or to enter into any longer term leases.

The applicant represents that the Plan has attempted to sell the Building to unrelated parties and that the Building has been listed on the market for several years. However, the Plan has not received any acceptable offers for the Building. Polacheck Realty was the listing company.

4. The Building was appraised (the Appraisal) on January 18, 1999, by Paul A. Vandeveld (Mr. Vandeveld), MAI, an independent and qualified appraiser with Vandeveld and Associates Real Estate Appraisals located in Brookfield, Wisconsin. Mr. Vandeveld states that in appraising the Building, he valued both the Warehouse and the Home.

The Appraisal states that the Building consists of a four building complex that is partially occupied by two separate commercial tenants (Wilson Services and Jefferson Smurfit), which are using the Warehouse. Mr. Vandeveld notes that only 91,380 square feet of the Building is leased (which is only approximately 41% of the total square feet in the Building).

Mr. Vandeveld states that the Home is a modest frame structure which the assessment records indicate was built in 1890. The Home has a full basement, two upper level bedrooms, living room, dining room, kitchen and full bath. However, the exterior appearance of the Home is poor. Mr. Vandeveld concludes that because of the age of the Home, its small size and its poor appearance and condition, the value of the Home is minimal compared to the Warehouse.

In preparing the Appraisal, Mr. Vandeveld used the Cost Approach, the Direct Sales Comparison Approach, and the Income Approach. However, because the Warehouse is mostly vacant, more reliance was placed on the direct sales comparison approach to value the Building. Mr. Vandeveld determined that the fair market value of the Warehouse and the Home was $2,250,000 and $40,000, respectively, for a total value of $2,290,000, as of January 18, 1999 .

5. The applicant represents that the proposed transaction is in the best interest and protective of the Plan because the sale of the Building will be for an amount equal to the greater of: (i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan from the date of acquisition until date of the proposed sale (i.e., a total cost of $1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale. The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building.

The transaction will be a one-time cash sale, and will enable the Plan to diversify its investment portfolio. In this regard, the Plan has tried unsuccessfully over the last few years to sell the Building to an unrelated party. The applicant maintains that the Plan will sustain economic hardship if the Plan is forced to keep the Building and undertake costly renovations to the Building in order to make it attractive to either prospective tenants or a third party buyer.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) All terms and conditions of the sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market value for the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan will receive an amount equal to the greater of:

(i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan since the date of the acquisition of the Building until the date of the proposed sale; or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any

[12] In this regard, the applicant represents that during the years 1991 through (and including) July, 1999, the aggregate rental income earned by the Plan from the Building was $2,054,958.

such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 20th day of August, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–22024 Filed 8–25–99; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[IA 99–037]

Stanislaw Piorek, Ph.D.; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Stanislaw Piorek, Ph.D. is a former employee of New Technology Development for Metorex, Inc. (MI). While employed by MI, he functioned as Radiation Safety Officer and Vice President. MI holds Nuclear Regulatory Commission (NRC) License Nos. 29–30342–02G and 29–30342–01. License No. 29–30342–02G authorizes distribution of generally licensed devices. License No. 29–30342–01 authorizes sealed sources for use and possession incident to the distribution of specifically licensed devices; research and development as defined in 10 CFR 30.4; manufacturing and testing of analyzer devices; installation and removal from analyzer devices; repair and servicing of devices; calibration of instruments, receipt, storage, and transfer of devices from customers for disposal; demonstrations of devices; and instruction and training in the use of devices.

II

On August 20, 1998, NRC conducted a safety inspection of activities authorized by MI's licenses. The inspection reviewed the circumstances surrounding the unauthorized distribution of x-ray fluorescence analyzer devices (SIPS Probes) from October 1997 through July 1998. Based on the findings of the August 20, 1998 inspection, the NRC's Office of Investigations (OI) initiated an investigation on August 24, 1998. The OI investigation determined that Stanislaw Piorek, Ph.D. deliberately failed to stop shipments of x-ray fluorescence analyzer devices during the period January 1998 through July 1998, knowing that MI was not authorized by the NRC to distribute them. In addition, OI concluded that Dr. Piorek deliberately failed to submit quarterly reports to the NRC, regarding the transfer of radioactive material, for the fourth calendar quarter of 1997 and the first calendar quarter of 1998. As a result, the NRC has concluded that Dr. Piorek violated 10 CFR 30.10, ''Deliberate Misconduct,'' in that Dr. Piorek caused the Licensee to be in violation of NRC requirements. Specifically: (1) in failing to stop distribution of x-ray fluorescence analyzer devices, Dr. Piorek caused the licensee to be in violation of 10 CFR 30.3; and (2) in failing to submit quarterly reports to the NRC, Dr. Piorek caused the licensee to be in violation of 10 CFR 32.52. Dr. Piorek has cooperated in the investigation of these matters and has admitted that these violations occurred.

III

In a telephone call on August 4, 1999, Dr. Piorek, through his attorney, agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of three (3) years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities. On August 11, 1999, Dr. Piorek consented to the issuance of this Order with the commitments, as described in Section IV below. Dr. Piorek further agreed in the August 11, 1999 letter that this Order be effective upon issuance and that he waived his right to a hearing.

I find that Dr. Piorek's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Dr. Piorek's commitments be confirmed by this Order. Based on the above and Dr. Piorek's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 32, and 10 CFR 30.10, *it is hereby ordered, effective immediately, that:*

A. For a period of three years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities, Dr. Stanislaw Piorek is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition covers the following activities: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

Dr. Piorek may, however, provide advice to personnel on their use of devices containing licensed materials if such advice is described in a plan for such activities, which is reviewed and approved by the RSO or authorized designee. This advice is limited to the use of devices, not the contained licensed material. Dr. Piorek is not permitted to provide advice concerning use or installation of licensed material or compliance with NRC requirements. In addition, the actual conduct of such activities must be under the supervision of an authorized user. For purposes of this Order, an authorized user is a person who is listed on the license as a user of, or is an individual who supervises other persons using, NRC licensed material.

B. No less than five (5) days prior to the first time that Dr. Stanislaw Piorek engages in, or exercises control over, NRC-licensed activities during a period of five (5) years following the three-year prohibition stated in Section IV.A above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. This notice shall be accompanied by a statement by Dr. Stanislaw Piorek, under oath or affirmation, that he understands the applicable NRC requirements and is committed to compliance with NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Dr. Piorek of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Dr. Piorek , may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North,

11555 Rockville Pike, Rockville, MD 20852–2738, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 19th day of August, 1999.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 99–22205 Filed 8–25–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Revision to Information Collection for OMB Review; Comment Request; Customer Satisfaction Survey for Plan Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget approve a revision to a collection of information consisting of annual customer satisfaction surveys mailed to plan participants and beneficiaries in pension plans trusteed by the PBGC (OMB Approval No. 1212–0058; expires 11/30/01). To supplement the annual survey, the PBGC proposes to send an abbreviated questionnaire in the form of a comment card to a randomly selected sample of participants and beneficaries shortly after a call to the PBGC.

DATES: Comments should be submitted by September 27, 1999.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. Copies of the request for approval and of the proposed collection of information are available from the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY 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 PBGC is requesting OMB approval of a revision to a collection of information consisting of annual customer satisfaction surveys mailed to plan participants and beneficiaries in pension plans trusteed by the PBGC (OMB Approval No. 1212–0058; expires 11/30/01). To supplement the annual survey, the PBGC proposes to send an abbreviated questionnaire in the form of a comment card to a randomly selected sample of participants and beneficaries shortly after a call to the PBGC.

This voluntary collection of information will put a slight burden on a very small percentage of the public. The PBGC estimates that it will collect information through the comment card from 1,680 participants and beneficiaries annually and that the total annual burden will be 56 hours.

Issued at Washington, DC, this 19th day of August, 1999.

Gail A. Sevin,

Acting Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–22129 Filed 8–25–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form BDW, SEC File No. 270–17 OMB Control No. 3235–0018

Form 15Ba2–5, SEC File No. 270–91, OMB Control No. 3235–0088

Form 15c1–5, SEC File No. 270–422, OMB Control No. 3235–0471

Form 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472

Form 15c3–1, SEC File No. 270–197, OMB Control No. 3235–0200

Form 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235–0473

Form 17Ad–17, SEC File No. 270–412, OMB Control No. 3235–0469

Form 17a–10, SEC File No. 270–154, OMB Control No. 3235–0122

Form 17f–2(c), SEC File No. 270–35, OMB Control No. 3235–0029

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below and as defined under the Securities Exchange Act of 1934 (''Exchange Act'').

Form BDW is used by broker-dealers to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 broker-dealers annually will inure an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding broker-dealers and their registered personnel. The annualized compliance burden per year is 225 hours ($900 \times 25 = 225$ hours). The annualized cost to respondents, utilizing staff at an estimated cost of $35

per hour, would be $7,875 (225 × $35 = 7,875).

Rule 15Ba2–5, Registration of Fiduciaries permits a duly appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without Rule 15Ba2–5, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under Rule 15Ba2–5, the registration of a municipal securities dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that the fiduciary files with the Commission, with 30 days after entering upon the performance of its duties, a statement setting forth substantially the same information required by Form MSD or Form BD. That statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately one respondent per year that requires an aggregate total of 4 hours to comply with Rule 15Ba2–5. This respondent makes an estimated one annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of $80 (i.e., 4 hours × $20).

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 390 respondents collect information annually under Rule 15c1–5 and that approximately 3,900 hours would be required annually for these collections. The approximate cost per hour in $100, resulting in a total cost of compliance for the respondents of $390,000 (3,900 hours @ $100).

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 780 respondents collect information annually under Rule 15c1–6 and that approximately 7,800 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $780,000 (7,800 hours @ $100).

Rule 15c3–1 requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. Rule 15c3–1 facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that approximately 8,500 active broker-dealer respondents registered with the Commission incur an aggregate burden of 950 hours per year to comply with Rule 15c3–1.

Rule 17Ad–3(d) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agents' failure to comply with the Commission's minimum performance standards than the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that of the seven transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under Rule 17Ad–3(b), such transfer agent is simply sending a copy of a form that has already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Rule 17Ad–17 requires approximately 1,500 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with Rule 17Ad–17.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is 7,500 hours annually for all transfer agents. The cost of compliance with each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is $5.2 million.

Rule 17a–10 requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 350 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 4,200 hours. Each broker-dealer will spend approximately $1,200 per response for a total annual expense for all broker-dealers of $420,000.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Exchange Act to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The plan or information is collected from the exchange or national securities association only once.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled

responsibly and with due care for confidentiality.

To date, plans have been approved for seven exchanges and one national securities association: the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Exchange, the Philadelphia Stock Exchange, and the Chicago Board Options Exchange, and for the National Association of Securities Dealers (collectively the ''SROs''). For the SROs that have already submitted their fingerprint plans to the Commission, there is no requirement for them with approved plans to submit subsequent filings to the Commission and, therefore, there is no continuing annual reporting or recordkeeping burden.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 16, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22115 Filed 8–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23956; 812–11112]

Core Trust (Delaware), et al.; Notice of Application

August 19, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered investment companies to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent.

APPLICANTS: Core Trust (Delaware) (''Core Trust''), Norwest Advantage Funds (''Norwest Advantage''), and Norwest Select Funds (''Norwest Select'') (collectively, ''Norwest Trusts''); Norwest Bank Minnesota, N.A. (''Norwest Bank''); Norwest Investment Management, Inc. (''Norwest''); Stagecoach Funds, Inc. (''Stagecoach''); Life & Annuity Trust (''LAT''); Wells Fargo Bank, N.A. (''WF Bank''); and Wells Capital Management Incorporated (''WCM'').

FILING DATES: The application was filed on April 20, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated 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 September 13, 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: Norwest Advantage and Norwest Select, Attn: Don L. Evans, Two Portland Square, Portland, ME 04101; Core Trust, Attn: David I. Goldstein, Two Portland Square, Portland, ME 04101; Norwest Bank and Norwest, Attn: Jeffrey P. Lund, Norwest Center, Sixth and Marquette, Minneapolis, MN 55479–1026; Stagecoach and LAT, 111 Center Street, Little Rock, AR 72201; WF Bank and WCM, Attn: C. David Messman, 525 Market Street, San Francisco, CA 94105.

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 Norwest Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Norwest Advantage consists of thirty-nine series, Norwest Select consists of four series, and Core Trust consists of twenty-one series. Norwest serves as investment adviser to each series of the Norwest Trusts, with the exception of the International Portfolio of Core Trust (each such series a ''Norwest Advised Fund''). Norwest is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a wholly-owned subsidiary of Norwest Bank, which in turn is a wholly-owned subsidiary of Wells Fargo & Company (''Wells Fargo''). Norwest Bank serves as custodian for each Norwest Advised Fund.

2. Stagecoach, a Maryland corporation, and LAT, a Delaware business trust, are open-end management investment companies registered under the Act. WF Bank serves as investment adviser and custodian for the thirty-four series of Stagecoach and the six series of LAT (each a ''Wells Fargo Fund'' and, together with the Norwest Advised Funds, the ''Funds''). WF Bank is exempt from registration under the Advisers Act and is a wholly-owned subsidiary of Wells Fargo. WCM, an investment adviser registered under the Advisers Act and a wholly-owned subsidiary of WF Bank, is a subadviser for the Wells Fargo Funds.

3. Applicants request that any relief granted pursuant to the application also apply to (i) future series of the Norwest Trusts, Stagecoach, and LAT, and to all other registered open-end management investment companies for which Norwest or WF Bank (or a person controlling, controlled by, or under common control with Norwest or WF Bank) may now or in the future act as investment adviser (collectively, ''Future Funds''); and (ii) any entity controlling, controlled by, or under common control with Norwest Bank that acts as custodian for any Fund or Future Fund (each a ''Norwest Affiliate'').[1]

4. Each of the Norwest Advised Funds is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. Pursuant to

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund or Norwest Affiliate that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

no-action relief obtained by Norwest Advantage, the Norwest Advised Funds currently participate in a securities lending program (''Program'') with Norwest Bank acting as lending agent for each such Fund.[2] Under the Program, Norwest Bank may lend portfolio securities on behalf of each Norwest Advised Fund to pre-approved borrowers on terms pre-approved by Norwest. As collateral for the securities loaned, Norwest Bank may accept cash or other types of collateral, such as government securities. Cash collateral is invested by or under the direction of Norwest in instruments pre-approved by Norwest.

5. Norwest provides certain services in connection with the Program. Norwest determines which securities are available for loan and has the discretion and power to prevent any loan from being made or to terminate any loan. Norwest also monitors Norwest Bank to ensure that securities loans are effected in accordance with its instructions and within the procedures adopted by the board of trustees of each Norwest Trust (each a ''Norwest Board'' and, collectively, the ''Norwest Boards''), including a majority of the trustees of each Norwest Board who are not ''interested persons'' within the meaning of the Act. The Norwest Advised Funds currently pay Norwest Bank a fee for its lending services that is based on the number and complexity of the actions that Norwest Bank performs in connection with the Program. Applicants contend that this compensation arrangement is administratively cumbersome and time-consuming. Applicants request relief to permit the Norwest Advised Funds to pay to Norwest Bank fees based on a share of the revenue generated from securities lending transactions. With respect to securities loans collateralized by cash, Norwest Bank would receive a pre-negotiated percentage of the return earned on investment of the cash collateral, after payment of any agreed-upon amount to the borrower. In the case of collateral other than cash, Norwest Bank would negotiate a lending fee to be paid by the borrower to the Norwest Advised Fund, of which Norwest Bank would receive a pre-negotiated percentage.

6. Each of the Wells Fargo Funds is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. The Wells Fargo Funds intend to establish a securities lending program and to retain Norwest Bank as custodian and lending agent for each Wells Fargo Fund. The duties to be performed by Norwest Bank as lending agent would be consistent with, and not exceed, the parameters set forth in the Norwest Letter. Applicants request relief to permit the Wells Fargo Funds to compensate Norwest Bank for its services as lending agent by paying it a percentage of the lending fee received by a Wells Fargo Fund or of the return earned by such Fund on the investment of cash collateral.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act, in relevant part, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''Second Tier Affiliate''), acting as principal, from participating in any joint enterprise or other joint arrangement or profit-sharing plan in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Section 2(a)(3) of the Act defines ''affiliated person'' to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

2. Norwest Bank is an affiliated person of Norwest because it controls Norwest. As investment adviser to the Norwest Advised Funds, Norwest is an affiliated person of each Norwest Advised Fund. Norwest Bank, therefore, is a Second Tier Affiliate of each Norwest Advised Fund. Norwest Bank also may be deemed to be an affiliated person or Second Tier Affiliate of certain Norwest Advised Funds because it and its affiliates hold more than 5% of the outstanding voting shares of those Funds. With respect to the Wells Fargo Funds, WF Bank is the investment adviser to, and hence an affiliated person of, each Wells Fargo Fund. Norwest Bank and WF Bank are affiliated persons of one another because each is under the control of Wells Fargo. Norwest Bank, therefore, is a Second Tier Affiliate of each Wells Fargo Fund.

3. Applicants state that each Fund's proposed lending arrangements may be deemed a joint enterprise or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 because Norwest Bank, as lending agent, would share in the revenue generated by each Fund's securities lending transactions. Applicants therefore request an order to permit the Funds to engage in the proposed fee sharing arrangement with Norwest Bank.

4. In determining whether to grant an order under rule 17d–1, the Commission will consider (i) whether the proposed arrangement is consistent with the provisions, policies, and purposes of the Act, and (ii) the extent to which the investment company's participation is on a basis different from or less advantageous than that of the other participants. Applicants believe that their request for relief meets these standards.

5. Applicants state that each Norwest Trust, Stagecoach, and LAT will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship between each Fund and Norwest Bank, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of Norwest Bank as lending agent to a Fund and implementation of the proposed fee arrangement, each Norwest Board, the board of directors of Stagecoach, and the board of trustees of LAT (each a ''Board''), including a majority of the trustees or directors of each Board who are not ''interested persons'' within the meaning of the Act (''Independent Trustees/Directors''), will determine that: (i) The contract with Norwest Bank is in the best interests of the Fund and its shareholders; (ii) the services to be performed by Norwest Bank are required by the Fund; (iii) the nature and quality of the services provided by Norwest Bank are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for Norwest Bank's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each contract of each Norwest Trust, Stagecoach, and LAT, on behalf of each of their respective Funds, with Norwest Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of each Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

(c) In connection with the approval of Norwest Bank as lending agent to a Fund and implementation of the proposed fee arrangement under the terms described in the application, each Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the

[2] Norwest Bank Minnesota, N.A. (pub. avail. May 25, 1995) (''Norwest Letter'').

findings referred to in paragraph (a) above.

(d) Each Board, including a majority of the Independent Trustees/Directors, will: (i) Determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually such conditions and procedures for continuing appropriateness.

(e) On behalf of each Fund, each Norwest Trust, Stagecoach, and LAT will maintain and preserve: (i) Permanently, in an easily accessible place, a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities; and (ii) for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that the loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Fund's securities lending program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of the Boards, including a majority of the Independent Trustees/Directors, will be required for the initial and subsequent approvals of Norwest Bank's service as lending agent for the Funds, for the institution of all procedures relating to the securities lending programs of the Funds, and for any periodic review of loan transactions for which Norwest Bank acts as lending agent.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22116 Filed 8–25–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41766; File No. SR–GSCC–98–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Establishment of a Cross-Margining Program

August 19, 1999.

On November 16, 1998, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–98–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''ACT'').[1] Notice of the proposal was published in the **Federal Register** on February 10, 1999.[2] The Commission received five comment letters from four commenters.[3] For the reasons discussed below, the Commission is approving the proposed rule change.[4]

I. Description

Under the rule change, GSCC will establish a cross-margining program with futures clearing organizations (''FCOs'').[5] GSCC will begin cross-margining with the New York Clearing Corporation (''NYCC'')[6] and intends to set up cross-margining arrangements with other FCOs.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41019 (February 3, 1999), 64 FR 6727.

[3] Letters from Dennis A. Dutterer, President and Chief Executive Officer, Board of Trade Clearing Corporation (March 3, 1999 and May 18, 1999); Sal Ricca, President, GSCC (April 19, 1999); George F. Haase, Jr., President, New York Clearing Corporation (April 23, 1999); and Scott C. Rankin, Vice President and Assistant General Counsel, The Bond Market Association (July 23, 1999).

[4] The Commission also notes that the Commodity Futures Trading Commission (''CFTC'') has approved New York Clearing Corporation's proposal to enter into a cross-margining arrangement with GSCC. Letter from David Van Wagner, Acting Associate Director, Division of Trading and Markets, CFTC to George F. Haase, Jr., President, New York Clearing Corporation.

[5] Under the rule change, the term *FCO* is defined in GSCC's Rules as a clearing organization for a board of trade designated as a contract market under Section 5 of the Commodity Exchange Act that has entered into a cross-margining agreement with GSCC. This will include NYCC and any other futures clearing organization with which GSCC establishes a cross-margining arrangement.

[6] Until January 15, 1999, NYCC was known as the Commodity Clearing Corporation.

[7] Each FCO that participates in cross-margining with GSCC will have a separate cross-margining agreement with GSCC. According to GSCC, each of these agreements will have essentially similar terms, and no preference will be given by GSCC to one FCO or its members over another. GSCC will file proposed rule changes for all proposed cross-margining arrangements with other FCOs, setting forth any difference in a proposed new cross-margining arrangement from the cross-margining arrangements with NYCC and any other approved cross-margining arrangements.

[8] The term *affiliate* will be defined in each cross-margining agreement between GSCC and an FCO. Under the form agreement between GSCC and NYCC that GSCC included with its filing, ''affiliate'' means a clearing member of one clearing organization that (1) directly or indirectly controls, (2) is directly or indirectly controlled by, or (3) is under common control with a clearing member of another clearing organization. Ownership of 10% or more of the common stock of an entity is deemed control of the entity under the definition.

[9] The GSCC cross-margining arrangement will be applicable on the futures side only to positions in a proprietary account of a cross-margining participant (or its affiliate) at an FCO. The arrangement will not apply to positions in a customer account at an FCO that would be subject to segregation requirements under the Commodity Exchange Act.

A. General Description of the Cross-Margining Program

Under the rule change, cross-margining will be available to any GSCC member that is a member of or that has an affiliate[8] that is a member of an FCO that has entered into a cross-margining agreement with GSCC. Any such member (or pair of affiliated members) may elect to have its margin requirements at both clearing organizations calculated based upon the net risk of its cash and forward positions at GSCC and its offsetting positions in related futures contracts carried at the FCO. Cross-margining is intended to lower the cross-margining participant's (or pair of affiliated members') overall margin requirement.

GSCC and each FCO will determine which of their members are eligible to participate in the cross-margining program. In order to be a GSCC cross-margining participant, a member must either (a) also be a member of an FCO or (b) have an affiliate that is a member of an FCO.[9] In addition, the GSCC member (and its affiliate, if applicable) must sign an agreement under which it agrees to be bound by the cross-margining agreement and which allows GSCC or an FCO to apply the member's (or its affiliate's) margin collateral to satisfy any obligation of GSCC to an FCO (or vice versa) that results from the default of the member (or its affiliate).

Margining based on the net risk of correlated positions will be carried out through an arrangement under which GSCC and the FCO agree to share the proceeds from correlated positions and supporting collateral. Under this arrangement, each clearing organization will hold and manage its own collateral.

GSCC will offset each cross-margining participant's residual margin amount at GSCC against the offsetting residual margin amounts of the participant (or its

affiliate) at each FCO pro rata based upon the residual margin amount available at each.[10] GSCC and each FCO may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant's positions at GSCC and its (or its affiliate's) futures positions at an FCO. If more than one FCO is cross-margining with GSCC for a cross-margining participant, the participant's long or short position in government securities at GSCC will be apportioned pro rata among its offsetting short or long positions (if any) at each FCO.[11]

Each clearing organization will guarantee the cross-margining participant's (or its affiliate's) performance to the other clearing organization up to a specified maximum amount. Each clearing organization's guaranty will be backed by the positions and margin deposits of its cross-margining participant. The amount of the guaranty will ordinarily be equal to the amount of the offsetting residual margin used to reduce the cross-margining participant's margin requirement.

GSCC will issue a guaranty to each FCO with respect to a cross-margining participant (or its affiliate) in an amount based on the pro rata allocation among the FCOs of the participant's residual margin amounts. In the event of a default and liquidation of a cross-margining participant, the loss sharing arrangements as between GSCC and each FCO will be based on the same pro rata shares. Loss sharing between clearing organizations will be subject to a cap.

B. Summary of the Operation of the Cross-Margining Program

Data Exchange: GSCC and each FCO will exchange daily position and margin data for each cross-margining participant (or pair of affiliated members) with respect to each product eligible for cross-margining.

Collateral Management: Margin collateral will be collected, maintained, valued, and returned separately by GSCC and each FCO according to its own rules and procedures. GSCC will not maintain cross-margining accounts for a cross-margining participant separate from the cross-margining participant's regular account at GSCC, and there will be no separate collateral pool at GSCC for cross-margining activity.

Unified Margin Calculation: GSCC will agree with each of the FCOs on the particular products cleared by each that are sufficiently price correlated to be eligible for cross-margining treatment (*e.g.*, cash positions in two-year Treasury notes and futures on two-year Treasury notes). Such products will be referred to as ''eligible products'' and a cross-margining participant's long or short positions in eligible products will be called ''eligible positions.'' GSCC and FCO will agree upon a common margin formula including the percentage of principal amount to be used as the base margin calculation on each long or short position in each eligible product, any disallowance factors to be applied when offsetting long and short margin amounts in different eligible products, and the minimum charges for offsetting positions.[12]

Coordinated Mark to Market Process: GSCC and each FCO will coordinate their daily mark to market and variation margin processes. If a cross-margining participant does not pay its debit mark or make a required clearing fund or margin deposit to one clearing organization on a particular business day, the other will be so informed and will not pay out to that participant (or its affiliate) any credit mark or clearing fund or margin withdrawal relating to cross-margined positions.

Daily Calculation of Cross-Margining Reduction and Cross-Guaranties: On each business day, GSCC will complete its own internal margining process for buy-sell, repo, and Treasury auction transactions for each cross-margining participant (including to the extent permitted in GSCC's rules the setting off or netting of GCF repo transactions with other activity).[13] Each FCO will perform an equivalent internal process for each of its cross-margining members by offsetting long margin amounts against short margin amounts for futures and options on futures contracts that are eligible products to the extent specified in the FCO's rules.[14]

After completing the internal margining process, each clearing organization may have ''residual'' long or short margin amounts for a member in various eligible products. The residual long or short margin amount is the amount of long or short margin (*i.e.*, margin with respect to a long position or a short position) that has not been ''used up'' in the internal offsetting process.[15]

Each FCO will inform GSCC how much residual long or short margin amount in each eligible product that the FCO intends to make available for cross-margining offsets on that day for each cross-margining participant. GSCC then will determine the amount of the long or short residual margin offered by each FCO that GSCC can offset against the participant's short or long residual margin amounts at GSCC for purposes of determining the cross-margining reduction.[16] GSCC will inform each FCO of the cross-margining reduction as between GSCC and that FCO for each cross-margining participant. The cross-margining reduction is the amount by which GSCC and the FCO may each appropriately reduce its cross-margining participant's margin requirement to reflect the cross-margining offset.[17]

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[10] All possible offsets among positions carried by a cross-margining participant within a single clearing organization will be carried out before any offsets are carried out between GSCC and the FCO.

[11] For example, if a cross-margining participant has a $9 million residual short margin amount at GSCC and residual long margin amounts in the same product of $8 million at FCO 1 and $4 million at FCO 2, GSCC will use two-thirds of the $9 million margin amount ($6 million) for offset against the participant's FCO 1 activity and one-third of the $9 million margin amount ($3 million) for offset against FCO 2 activity.

[12] According to GSCC, an appropriate conversion method will be agreed upon to equate the size of futures and cash positions for offset purposes.

[13] For a description of GSCC's GCF Repo service, refer to Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 [File No. SR–GSCC–98–02] (order approving proposed rule change).

[14] For example, on each business day, GSCC and NYCC each will calculate for each cross-margining participant an initial margin requirement with respect to eligible positions. This calculation will be done independently based upon an agreed upon method without the other clearing corporation's review. However, GSCC and NYCC will review generally each other's margining process on a periodic basis, and each will have the obligation to inform the other of any material changes to its margining process.

[15] A margin amount may be ''used up'' whether or not there has been a full offset against it. For example, assume that a GSCC member has a $1 million gross margin requirement on a short position in the 10-year note (offset class F) that is offset against a $1 million gross margin requirement on a long position in the long bond (offset class G). Because there is a 20% disallowance on offsets between classes F and G, the member has a $200,000 margin requirement after the offset. However, both $1 million margin amounts have now been entirely used up, and nothing is available for further offset either within GSCC or for cross-margining with an FCO.

[16] The *cross-margining reduction* is determined by the residual margin amounts made available by an FCO and ''used'' by GSCC in determining the amount of the cross-guaranties. It does not depend upon the amount, if any, by which either GSCC or an FCO actually reduces a cross-margining participant's margin requirement. In other words, after an offer by an FCO of $1 million in residual margin and acceptance by GSCC of that amount for offset, the cross-margining reduction would be $1 million, and the base amount of the cross-guaranties would be fixed at that amount. However, either clearing organization might nevertheless decide to reduce the cross-margining participant's clearing fund or margin requirement by less than $1 million or not at all. In any event, the cross-margining reduction under the cross-margining agreement would still be $1 million. The clearing organization would simply have made a determination to hold more collateral without affecting the amount of the guaranty it receives from the other clearing organization.

[17] If a cross-margining participant has eligible positions at more than one participating FCO, the

As a result, the maximum cross-margining reduction that a cross-margining participant will receive will be determined by the amount of residual margin taken by GSCC. For example, if an FCO offers $1 million in residual short margin for a particular member in 2-year note futures and if GSCC sets all of that amount off against a $2 million cash position in the 2-year note, then the cross-margining reduction amount will be $1,000,000 for GSCC and $1,000,000 for the FCO.

Under the anticipated terms of the cross-margining agreements between GSCC and each participating FCO, GSCC will be deemed to have extended its guaranty of a cross-margining participant's (or its affiliate's) obligation to each FCO in a base amount equal to the cross-margining reduction for that participant. Similarly, each participating FCO will be deemed to have extended its guaranty of the cross-margining participant's (or its affiliate's) obligation to GSCC in the same base amount. For example, if GSCC has a residual short margin amount for a cross-margining participant of $10 million in a product which is offset against an FCO's residual long margin amount of $4 million, then the base amount of the cross-guaranties is $4 million, and GSCC can reduce the participant's margin requirement for that product to $6 million because the FCO will have guaranteed $4 million.[18]

Each clearing organization will represent to the other that it will margin a cross-margining participant's positions such that the amount of margin is adequate to cover the cross-margining participant's obligations to that clearing organization including the obligation to reimburse any payment under the guaranty. In addition, on any day that is a business day for an FCO and not for GSCC or vice versa, the gross-guaranties as they existed on the immediately preceding business day will remain in effect. It shall be the responsibility of the clearing organization that is open for business on such day to adjust its margin requirements with respect to cross-margining participants to cover such cross-margining participants' obligations.[19]

Default of a Cross-Margining Participant: Liquidation and Loss-Sharing: If a cross-margining participant becomes insolvent and its eligible positions are liquidated by GSCC and the FCO(s), GSCC and each FCO will calculate its ''net loss'' or ''net surplus'' from the liquidation.[20] GSCC and each FCO will use their best efforts to coordinate the liquidation of eligible positions so that offsetting or hedged positions can be closed out simultaneously. GSCC and each FCO may unilaterally elect not to terminate or suspend and liquidate the eligible positions of its cross-margining participant. However, a clearing organization that does so will remain liable to the other on this guaranty. In addition, a clearing organization that elects not to liquidate the eligible positions of a defaulting participant will be deemed to have no net loss and no net surplus.

In the event a cross-margining participant is liquidated, if either GSCC or an FCO has a net loss and the other has a smaller net loss, no net loss, or a net surplus, then the one with the larger net loss (''worse-off party'') is entitled to receive a payment from the other (''better-off party'') that equalizes its losses. The amount of this equalizing payment will be capped at the least of: (1) The ''maximum guaranty amount'' of the better-off party; (2) if the better-off party has a net loss, an amount that together with its net loss equals its total cross-margining reduction; or (3) the worse-off party's net loss.

Generally, the guaranty arising from the cross-margining reduction will be a cap on the amount of loss that either GSCC or an FCO can incur as the result of a default by a participating member (or its affiliate) to the other. The ''maximum guaranty amount'' of GSCC or the FCO will exceed the amount of the cross-margining reduction only to the extent that the better-off party has funds of the participant remaining (*i.e.*, a ''net surplus'') after satisfying all other obligations of the participant to the better-off party.[21]

C. Information Specific to the Current Form Agreement Between GSCC and NYCC

Participation in the Cross-Margining Program: Any netting member of GSCC other than an interdealer broker will be eligible to participate. Any clearing member of NYCC will be eligible to participate.

Positions subject to Cross-margining: The products that will initially be eligible for cross-margining at GSCC are its offset classes for the 2-year note, 5-year note, 10-year note, and 30-year bond and at NYCC are its 2-year note, 5-year note, 10-year note, and 30-year bond futures products. Residual margin amounts will be applied only within the same ''offset class'' (*e.g.*, the 2-year note against the 2-year note future). All eligible positions maintained by a cross-margining participant in its account at GSCC and in its (or its affiliate's) proprietary account at NYCC will be eligible for cross-margining.

Unified Margin Factors: GSCC and NYCC will apply GSCC's margin factors to eligible positions.

Daily Procedures: On each business day by midnight, NYCC will inform

participant's total margin reduction at GSCC will be the sum of the cross-margining reductions between GSCC and each FCO.

[18] As noted above, GSCC and each FCO will retain the right to reduce a cross-margining participant's clearing fund or margin requirement by less than the amount of the cross-margining reduction or not to reduce it at all.

[19] The cross-margining participant's margin or clearing fund deposit will remain fixed at the clearing organization that is closed, and the closed clearing organization must therefore continue to rely on the guaranty based on the previous day's cross-margining reduction. However, the clearing organization that is open ordinarily will be able to assess and collect additional margin or clearing fund deposits if needed to reflect updated positions in the participant's account on its own books as well as the fixed guaranty obligation that is still outstanding to the other clearing organization.

[20] Under the form agreement between GSCC and NYCC that GSCC included with its filing, net surplus and net loss are calculated as follows:

In the event that (i) the sum of ''available margin'' and any proceeds of eligible positions realized by such clearing organization (including securities deliverable to and amounts receivable with respect to securities deliverable by such cross-margining participant in settlement of eligible positions) and any mark to market payments or other settlement amounts due from such clearing organization with respect to eligible positions exceeds (ii) the sum of the mark to market payments or other settlement amounts owed to such clearing organization with respect to or as a result of the closeout of eligible positions (including securities deliverable by or amounts payable with respect to securities deliverable to such cross-margining participant with respect to eligible positions) plus any interest expense, fees, commissions, or other costs reasonably incurred in such closeout or otherwise arising from such eligible positions, then the amount of such excess shall be deemed to be the net surplus. In the event that the sum referred to in clause (i) of the preceding sentences is less than the amount referred to in clause (ii), the difference shall be the net loss.

''Available margin'' is defined as the amount of clearing fund deposits, margin, or other collateral remaining after satisfaction of all obligations of the cross-margining participant to the clearing organization other than obligations arising from eligible positions.

[21] Where a cross-margining participant had eligible positions at more than one FCO, GSCC's net loss or net surplus for purposes of the cross-margining agreement between GSCC and any one FCO will be a portion of GSCC's aggregate net loss or net surplus from all eligible positions and available margin at GSCC that is equal to the portion of the residual margin at GSCC that was offset against the residual margin at that FCO. For example, assume that FCO 1 and FCO 2 each offer GSCC $2 million in residual short margin based on a $200 million short position in futures on the 10-year note. If GSCC has only $2 million in residual long margin, it would ''take'' $1 million residual from each FCO for offset purposes. If GSCC incurs a $10 million loss in liquidating the $200 million futures position, GSCC's ''net loss'' for purposes of its agreement with FCO 1 would ordinarily be half of that or $5 million. However, the cross-margining agreements will also contain provisions permitting further contribution by FCO 1 if FCO 1's net surplus exceeds $5 million and FCO 2 contributes less than $5 million.

GSCC of the residual margin amounts it is making available. GSCC will inform NYCC by 2:00 a.m. how much of these residual margin amounts it will use.

D. GSCC Rule Changes

The rule change adds definitions relating to cross-margining to GSCC Rule 1. These definitions correspond generally to certain terms that will be defined in the cross-margining agreements.

The rule change amends Section 2 of GSCC Rule 4 to provide that the required fund deposit otherwise calculated for a cross-margining participant may be reduced at GSCC's sole discretion in an amount not to exceed the sum of the cross-margining reductions calculated under the various cross-margining agreements. The rule change amends Sections 5 and 6 of Rule 4 to clarify the application of those provisions in the context of the cross-margining arrangements. Specifically, the amendments provide tat GSCC may set off a cross-margining participant's obligation to reimburse GSCC for the payment of a guaranty against any asset of the participant that GSCC holds as collateral and against any amounts due to the participant. Section 6 of Rule 4 is also amended to provide that GSCC may apply a member's clearing fund deposits to satisfy a loss without treating the member as insolvent. The rule change also adds a provision to Section 2 of Rule 22 to specify that GSCC may but is not required to treat a cross-margining participant as insolvent if the member is declared to be insolvent by an FCO.

The rule change adds new Rule 43 to GSCC's rules to set forth How a GSCC netting member may become a cross-margining participant and its obligations as a cross-margining participant. Section 3 of Rule 43 provides that a cross-margining participant has the obligation to reimburse GSCC for any amount that it pays to an FCO on behalf of the participant (or its affiliated member) under a cross-margining guaranty. Rule 43 also cross-references the corresponding provisions of the cross-margining agreement which state that any obligations of a defaulting cross-margining participant to the FCO will be netted against any amounts held by or due to the participant as a result of its positions at GSCC. As a result, a defaulting participant will be entitled to receive from the close out of its positions and margin at GSCC only what remains after netting out the sum of its obligations to GSCC and the FCOs. Section 4 of Rule 43 provides that a cross-margining participant may be treated as insolvent at the discretion of GSCC if (1) the cross-margining participant is determined to be insolvent by an FCO or (2) the cross-margining participant's affiliate is deemed to be insolvent by an FCO and the cross-margining participant does not immediately upon GSCC's demand deposit with GSCC the amount of GSCC's cross-margining guaranty to the FCO.

II. Comment Letters

The Commission received five comment letters from four commenters in response to GSCC's filing.[22]

A. Letters From the Board of Trade Clearing Corporation

The Board of Trade Clearing Corporation (''BOTCC'') submitted two comment letters in response to GSCC's proposal. In its first comment letter, BOTCC stated its specific concerns with GSCC's proposal. BOTCC's second letter responded to some of the statements in GSCC's comment letter (which is described below). In its comment letters, BOTCC expressed concern with the structure of GSCC's proposed cross-margining program and with the legal enforceability of some of the payment mechanisms in the program.

BOTCC noted that GSCC's proposed cross-margining program differs from existing cross-margining programs in that GSCC and participating FCOs will each maintain their own collateral and will not pool cross-margining positions and margin deposits on those positions in a jointly controlled account. BOTCC stated that the primary protection against loss in current cross-margining programs is the fact that participating clearing organizations have a joint first priority lien on and security interest in all positions in cross-margined accounts, all funds and securities deposited to satisfy margin requirements, and all proceeds resulting from the liquidation of the accounts.

BOTCC stated that it believes that the structure of GSCC's proposal does not ensure that GSCC and the FCOs will have sufficient resources to satisfy losses that might result from a default of a cross-margining participant. BOTCC stated that GSCC's proposal does not provide for any limitation on the amount of guaranties that GSCC and the FCOs can extend to each other. In addition, BOTCC stated that under GSCC's proposal, margin reductions would be backed by mutual unsecured promises rather than by a pool of collateral controlled jointly by GSCC and the FCOs.

[22] *Supra* note 3.

BOTCC also expressed concern that certain provisions of GSCC's proposed cross-margining program might not be enforceable under the U.S. Bankruptcy Code against a cross-margining participant that had filed a bankruptcy petition. Specifically, BOTCC stated that if GSCC became obligated to pay an FCO in order to equalize losses resulting from liquidating positions of a defaulting cross-margining participant, it would not be permitted under the Bankruptcy Code to setoff the participant's obligation to reimburse that amount to GSCC against any assets GSCC was holding for the participant.

Section 362(a) of the Bankruptcy Code[23] provides for a stay (known as the ''automatic stay'') of all actions against a debtor that has filed a bankruptcy petition for claims that arose before the petition was filed. However, Section 362(b)(6) of the Bankruptcy Code[24] provides an exception to the automatic stay which permits a clearing agency to setoff a mutual claim against the debtor for a margin payment or a settlement payment arising out of securities contracts against property that is held by or due from the clearing agency to margin or guarantee securities contracts. BOTCC stated that Section 362(b)(6) does not allow a clearing agency to setoff a pre-petition debt against a post-petition claim. BOTCC believes that a claim against the participant for reimbursement of an amount that GSCC paid to an FCO would be a post-petition debt and that GSCC would not be permitted under Section 362(b)(6) to setoff the reimbursement obligation against assets of that participant that GSCC was holding pre-petition (*e.g.*, surplus margin deposits). In addition, BOTCC believes that it is not clear that the reimbursement obligation is a ''margin payment'' or a ''settlement payment'' as defined in the Bankruptcy Code[25] because the obligation (a) is not a specific type of margin payment, (b) would not secure the cross-margining participant's already liquidated positions at GSCC, and (c) is not closely related to the settlement process.

B. Letter from GSCC

GSCC submitted a comment letter in response to BOTCC's first comment letter. With respect to BOTCC's statements on the structure of its proposed cross-margining program,

[23] 11 U.S.C. 362(a).

[24] 11 U.S.C. 362(b)(6).

[25] The term ''margin payment'' is defined in Sections 101, 741, and 761 of the Bankruptcy Code, 11 U.S.C. 101, 741, and 761. The term ''settlement payment'' is defined in Sections 101 and 741 of the Bankruptcy Code, 11 U.S.C. 101 and 741.

GSCC stated that all cross-margining arrangements rely to some extent on unsecured promises between clearing agencies. GSCC noted that it and the FCOs can decide to reduce or eliminate the cross-margining reduction for a particular member or for all members. In addition, GSCC stated that it can increase the amount of collateral that a cross-margining participant is required to deposit to support its obligation to GSCC including GSCC's guaranty obligations to the FCOs. GSCC further stated that it believes that the structure of its cross-margining program has an advantage over traditional cross-margining programs in that the total possible liability of GSCC to another clearing agency can be precisely calculated at any given point in time.

With respect to BOTCC's statements regarding the enforceability under the Bankruptcy Code of a cross-margining participant's obligation to reimburse GSCC's payment of a guaranty to an FCO, GSCC stated that the reimbursement obligation would be a pre-petition claim because it would be a contingent contractual obligation that would arise at the time the cross-margining participant becomes subject to the cross-margin agreement. In addition, GSCC stated that it believes that the reimbursement obligation is a margin payment or a settlement payment because (a) it would be made in settlement of a debt owed to GSCC and (b) because it would represent a reimbursement to GSCC of a payment made to an FCO to meet variation margin and settlement obligations. GSCC further stated that in the alternative the cross-margining agreement is a ''netting contract'' under the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA'')[26] and therefore is not subject to automatic stay provisions of Section 362 of the Bankruptcy Code.[27]

C. Letter From NYCC

NYCC stated that it supports GSCC's proposal and that the GSCC structure allows each clearing organization to use its own systems to monitor risk without having to set up a different system to monitor cross-margined positions. In addition, NYCC stated that all cross-margining arrangements rely on the risk systems, default protections, and the ability of a clearing organization to be able to fulfill its obligations.

D. Letter From the Bond Market Association

The Bond Market Association (''BMA'') stated that it strongly supports cross-margining arrangements like the one proposed by GSCC. In addition, the BMA stated that it agrees with GSCC's conclusion that the cross-margining program will benefit cross-margining participants by lowering their margin requirements and thereby allowing them more efficient use of collateral and reduced operational costs. Moreover, the BMA stated that it ''is comfortable expressing its agreement with GSCC's analysis of the FDICIA netting provisions and the Bankruptcy Code as they relate to its proposed cross-margining arrangement.''

III. Discussion

Under Section 19(b) of the Act,[28] the Commission is directed to approve a proposed rule change of a clearing agency if it finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Act[29] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii) of the Act[30] directs the Commission to use its authority under the Act to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.

The comment letters that the Commission received from BOTCC raised questions about the structure of GSCC's proposed cross-margining program and about the legal enforceability of certain provisions of the program. GSCC stated in response that it believes that its cross-margining program will be safe and prudent from a risk management perspective and that its payment mechanisms will be enforceable against a defaulting cross-margining participant.

The Commission believes that GSCC's proposal should adequately limit GSCC's potential financial exposure to a defaulting cross-margining participant.[31] In particular, the Commission notes that GSCC may reduce or eliminate the cross-margining reduction to any cross-margining participant and that GSCC will be able to calculate precisely its potential liability to FCOs with respect to each cross-margining participant. Furthermore, the Commission has always viewed properly structured cross-margining programs as a significant risk reduction method because they reduce the extent to which clearing organizations have to independently manage the risk associated with some but not all of the components (*ie.*, the futures or government securities component) of a member's total portfolio. Therefore, the cross-margining program is structured so that GSCC will continue to be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

GSCC's proposal will also enable it to coordinate with the FCOs in the management of risks associated with their members' (or affiliated members') positions in government securities and in related futures contracts. The cross-margining program should also result in increased and better information sharing regarding the financial condition of participating joint and affiliated members. Therefore, GSCC's proposal should facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in government securities and in futures contracts.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–98–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22118 Filed 8–25–99 8:45 am]

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[26] 12 U.S.C. 4401–4407.

[27] In its second comment letter, BOTCC responded to GSCC's statements and reiterated its statements regarding the structure of the proposed cross-margining program and the effect of the Bankruptcy Code an a cross-margining participant's reimbursement obligation. In addition, BOTCC stated that it believes that FDICIA only permits the enforcement of a netting contract against a bankrupt party if there is an applicable exception from the automatic stay.

[28] 15 U.S.C. 78s(b).

[29] 15 U.S.C. 78q-1(b)(3)(F).

[30] 15 U.S.C. 78q-1(a)(2)(A)(ii).

[31] The Commission believes that the arguments in GSCC's comment letter are persuasive. However, the Commission recognizes that in a bankruptcy proceeding a court could reach a different result.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41768; File No. SR–NSCC–99–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Policies

August 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 19, 1999, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. 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, NSCC will not activate any new or additional participant accounts or provide new services to participants after September 15, 1999, and until reasonably practicable in January 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

The proposed rule change provides that, NSCC will not activate any new or additional participant accounts or provide new services to participants after September 15, 1999, and until reasonably practicable in January, 2000. Among other things, NSCC announced in its July 19, 1999, Important Notice that after September 15, 1999, and for the remainder of the calendar year, NSCC will not: (1) Permit new participants to utilize NSCC's services; (2) allow current participants to utilize new NSCC services; and (3) assign additional participant numbers to current participants.

NSCC's Rule 2 provides in part that:

> The Corporation may deny an application to become a Member or to use one or more additional services of the Corporation upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at such time to perform its services for the applicant or Member without impairing the ability of the Corporation to provide services for its existing Settling Members, to assure the prompt, accurate and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit.

NSCC believes that continuing to activate numerous new or additional participant accounts or to provide new services to participants after September 15th could potentially be disruptive to the rest of its Year 2000 efforts. Specifically, NSCC will be devoting a great deal of resources to confirming the Year 2000 readiness of its systems and applications in October and November of 1999. Additionally, NSCC would like to ensure that it has enough time to deal with any unanticipated issues that arise before the end of the calendar year.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC advised members of the Year 2000 policy modifications in an Important Notice, dated July 19, 1999. No written comments relating to the Important Notice or proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] 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 proposed modifications to NSCC's Year 2000 policies will permit NSCC sufficient time before year end to complete its Year 2000 preparations. As a result, NSCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

NSCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow NSCC to better prepare for a smooth Year 2000 transition.

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 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

office of NSCC. All submissions should refer to the File No. SR–NSCC–99–11 and should be submitted by September 16, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–99–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22117 Filed 8–25–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 99–6]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: William Freed, Departmental Director, Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 23, 1999.

Melissa J. Allen,

Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration
Ray Rogers, Associate Administrator for Administration and Finance, Federal Railroad Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
George S. Moore, Associate Administrator for Administration, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Transit Administration

Janet L. Sahaj, Deputy Associate Administrator, Office of Program Management, Federal Transit Administration
Michael Winter, Associate Administrator for Budget and Policy, Federal Transit Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Richard M. Biter, Deputy Director, Office of Intermodalism, Office of the Secretary
Glenda Tate, Assistant Administrator for Human Resource Management, Federal Aviation Administration
Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Office of Inspector General

Joyce N. Fleischman, Deputy Inspector General, Department of Agriculture
John J. Connors, Deputy Inspector General, Department of Housing and Urban Development
Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Administration
Steven A. McNamara, Assistant Inspector General for Audit, Department of Education
Everett Mosley, Deputy Inspector General, Agency for International Development
Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State
Joseph R. Willever, Deputy Inspector General, Office of Personnel Management

United States Coast Guard

RADM F. L. Ames, Assistant Commandant for Human Resources, United States Coast Guard
RADM Ernest R. Riutta, Assistant Commandant for Operations, United States Coast Guard
RADM Joyce M. Johnson, Director, Health and Safety Directorate, United States Coast Guard
RADM R. D. Sirois, Director of Reserve and Training, United States Coast Guard
RADM P. M. Stillman, Assistant Commandant for Congressional and Public Affairs, United States Coast Guard
RADM R. F. Silva, Assistant Commandant for Systems, United States Coast Guard
RADM J. A. Kinghorn, Director, Office of Intelligence and Security, Office of the Secretary
Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration
Patricia D. Parrish, Principal, TASC Customer Service, TASC
Lynn Sahaj, Deputy Associate Administrator for Program Management, Federal Transit Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration

National Highway Traffic Safety Administration

Herman Simms, Associate Administrator for Administration, National Highway Traffic Safety Administration
Rose McMurray, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration
William Walsh, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration
Frank Seales, Chief Counsel, National Highway Traffic Safety Administration,
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Highway Administration

Arthur Hamilton, Program Manager, Federal Lands Highway Program, Federal Highway Administration
Fred Hempel, Director of Corporate Management, Federal Highway Administration
Leon Witman, Western Resource Center Director, Federal Highway Administration
Edward Morris, Jr., Director of Civil Rights, Federal Highway Administration
Walter Sutton, Director of Policy, Federal Highway Administration
Patricia Parrish, Principal, TASC Customer Service, TASC

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Affairs, Maritime Administration
James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration
Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration
John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

James E. Caponiti, Associate Administrator for National Security, Maritime Administration

Bonnie M. Green, Deputy Administrator for Inland Waterways and Great Lakes, Maritime Administration

Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Office of the Secretary, Transportation Administrative Service Center, Bureau of Transportation Statistics

Linda Lawson, Director, Office of Economics, Office of the Secretary

Donald Trilling, Director, Office of Environment, Energy and Safety, Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary

Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Beverly Pheto, Director, Office of Budget and Program Performance, Office of the Secretary

Patricia D. Parrish, Principal, TASC Customer Service, TASC

Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration

Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Research and Special Programs Administration

Vivian Hobbs, Director, Office of Traffic and Operations Management, Research and Special Programs Administration

Robert McGuire, Acting Associate Administrator for Management and Administration, Research and Special Programs Administration

John Murray, Director of Policy and Program Support, Research and Special Programs Administration

Dorrie Aldridge, Associate Administrator for Administration, Federal Transit Administration

John Graykowski, Deputy Administrator, Maritime Administration

Joseph Kanianthra, Director, Office of Vehicle Safety Research, National Highway Traffic Safety Administration

[FR Doc. 99–22211 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA SPECIAL COMMITTEE 195; SPECIAL MEETING; LITHIUM BATTERIES

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–168 meeting to be held September 15–16, starting at 9 a.m. each day. The SC–168 finished their work in 1995 and several attempts to reference RTCA DO–227 in a TSO have been unsuccessful. The RTCA Program Management Committee approved this one time meeting to help resolve the issues identified. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC, 20036.

The agenda will include: September 15 and 16 (1) Welcome and Introductions; (2) Status of Lithium Battery Activities;

(3) Review of TSO–C142, Comments Received and Conclusions;

(4) Recommend and Approve the Process and wording to Resolve the Open Issues Identified; (5) Other Business; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–22221 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Portsmouth & Tiverton, RI

AGENCY: Federal Highway Administration (FHWA), RIDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed rehabilitation or replacement of the Sakonnet River Bridge, carrying RI Route 24 between Portsmouth and Tiverton.

FOR FURTHER INFORMATION CONTACT: Daniel J. Berman, Assistant Division Administrator, Federal Highway Administration, 380 Westminster Mall, Room 547, Providence, RI 02903, Telephone: (401) 528–4560; OR, Edmund T. Parker, Jr., P.E., Chief Design Engineer, Rhode Island Department of Transportation, Two Capitol Hill, Room 231–D, Providence, RI 02903, Telephone: (401) 222–4911.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with RIDOT, will prepare the Environmental Impact Statement (EIS) for the proposed rehabilitation or replacement of the Sakonnet River Bridge carrying RI Route 24 between Portsmouth and Tiverton.

This EIS will investigate scientific and engineering studies and other activities necessary to determine the environmental and socioeconomic impacts of various alternative rehabilitation and replacement scenarios to address the substandard condition of the Sakonnet River Bridge.

Rhode Island Bridge Number 250, known as the Sakonnet River Bridge, was originally constructed between the years 1954–1956. The main bridge structure is comprised of 27 spans with a total length of approximately 2,982 feet. According to the original design plans, the structure was designed in accordance with 1944 A.A.S.H.O Specifications. The Sakonnet River Bridge has been carrying highway traffic for over 43 years. With the exception of limited emergency repairs performed in 1997, and two partial painting contracts, the structure has not undergone any significant rehabilitation in over 20 years.

RIDOT conducted an in-depth field inspection of the bridge during September and October, 1997, and March and April, 1998. The inspection of the bridge found significant deficiencies in the concrete support piers and abutment walls, the steel substructure, and the bridge deck.

The majority of the bridge is supported by either main girders or trusses. These members have been identified as non-redundant and fracture critical; therefore, their deterioration and eventual failure could result in a compromise of the structural integrity of the bridge and possible collapse of the structure.

Due to the extensive nature of the rehabilitation required to address the structural deficiencies of the Sakonnet River Bridge, RIDOT is also considering

potential options to replace the bridge with a new structure. The following paragraphs present a brief discussion of four potential alternatives which may be considered for further evaluation.

Option No. 1—No Build

This potential option consists of maintaining the current bridge, with major rehabilitation to address the deficiencies. Portions of the bridge structure would be replaced, and all elements would be brought to a serviceable condition under this option. This work would occur while the structure is in use, resulting in traffic delays during a continuous two year construction period. The existing bridge and approach rights-of-way would be maintained. The rehabilitated bridge would have a remaining useful life of 25 to 30 years.

Option No. 2—New Bridge on the Existing Alignment

This potential option consists of demolishing the existing bridge, and constructing a new bridge in the same alignment. During the three year construction period, RI Route 24 would be closed at this point, and all traffic between points north and Aquidneck Island would be detoured to alternate routes including the Mt. Hope bridge on RI Route 136. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review of the project and design of the new bridge. The new bridge would have a 75- to 100-year lifespan. This alternative would accommodate a future bridge for commuter rail service along the existing railroad right-of-way.

Option No. 3—New Bridge to the North of the Existing Bridge

This potential option consists of constructing a new bridge on an alignment to the north of the existing bridge. The new alignment would be between the existing bridge and the railroad bridge, and will include provisions to accommodate a future lower bridge for commuter rail service. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review, design and construction of the new bridge. The interim repairs and coincident construction of the new bridge would not involve significant traffic delays. Additional rights-of-way would be required for the new bridge and approach alignments. After the new bridge is in service, the existing bridge would be removed. The new bridge would have a 75- to 100-year lifespan.

Option No. 4—New Bridge to the South of the Existing Bridge

This potential option consists of constructing a new bridge on an alignment to the south of the existing bridge. The alignment would be approximately 30-feet from the existing bridge. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review, design and construction of the new bridge. The interim repairs and coincident construction of the new bridge would not involve significant traffic delays. Additional rights-of-way would be required for the new bridge and approach alignments. After the new bridge is in service, the existing bridge would be removed. The new bridge would have a 75- to 100-year lifespan. This alternative would accommodate a future bridge for commuter rail service along the existing railroad right-of-way.

A scoping meeting to discuss the potential project alternatives and environmental and socioeconomic impacts will be held on October 6, 1999, from 9:00 am to 12:00 pm, at the Rhode Island Department of Administration, One Capitol Hill, Providence, RI 02903 in conference room A on the second floor. Written comments received within 30 days of the scoping meeting date will be incorporated into the record.

In addition to the scoping meeting, public participation will continue throughout the EIS process. Public workshops will be held in both Portsmouth and Tiverton, and potentially in other affected communities, to discuss the proposed project alternatives and issues, and receive public input prior to publishing a Draft EIS. Following publication of the Draft EIS, a formal public hearing will be held to receive comments regarding the proposed project. The Draft EIS will be available for public and agency review and comment prior to the public hearing, and comments will be received for 45-days following the public hearing.

To ensure that a full range of issues relating to this proposed action are addressed and all potential impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions regarding this proposed action and the EIS should be directed to the Rhode Island Department of Transportation at the above address.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on August 18, 1999.

Melisa L. Ridenour,

Division Administrator, Federal Highway Administration.

[FR Doc. 99–22119 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 18]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Wednesday, September 8, 1999.

ADDRESSES: The meeting of the RSAC will be held at The Wyndham Hotel, 1400 M Street NW, Washington, DC. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202)493–6305 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION:.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Wednesday, September 8, 1999. The meeting will be held at The Wyndham Hotel, 1400 M Street, NW, Washington, DC. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual

representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will be briefed on the proposed standard for locomotive sanitary conditions, which has been forwarded to the Locomotive Cab Working Conditions Working Group for consensus approval to become the Working Group's recommendation to the full RSAC.

The RSAC will be requested to vote on the proposed adoption of the Positive Train Control Working Group's, Report on Implementation of Positive Train Control Systems, as the RSAC's report to the Federal Railroad Administrator.

A status report will be provided by the Accident/Incident Working Group, tasked with evaluating the concept of a reportable train accident, specifically the means by which the railroad property damage threshold is calculated. The Locomotive Crashworthiness Working Group will brief the RSAC on the status of proposed recommended standards for freight, passenger and switching locomotives.

A discussion on the issue of qualification and certification of safety-critical employees will be conducted, based on information to be provided to the FRA by the RSAC members.

FRA may request the RSAC to accept a task that would include revising the regulations governing the protection of employees engaged in the inspection, testing, repair and servicing of rolling equipment (49 CFR part 218, subpart B).

Informational briefings will be provided to the RSAC on safety-related issues of general interest.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, D.C. on August 23, 1999.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–22219 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957; Notice 7]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) is publishing this notice seeking public comments on a proposed renewal of an information collection for oil spill response plans prepared by onshore oil pipeline operators. This notice provides the public with 60 days for comment

DATES: Comments on this notice must be received on or before October 25, 1999 to be assured of consideration. U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–001 or e-mail to dms.dot.gov. Please put docket number on all comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW. Washington, DC 20950, (202) 366–6205 or by electronic mail at Marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Renewal of an existing information collection.

Abstract: The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response to minimize the impact of an oil discharge in the case of an accident. These response plans enhance the spill response capability of pipeline operators.

Estimate of Burden: The average burden hours per response is approximately 47 hours.

Respondents: Oil pipeline operators.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden on Respondents: 65,467 hours.

Frequency: Every three years.

Use: To enhance response capability in the event of an oil spill.

Copies of this notice and supporting documents on this information collection renewal can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590, Monday through Friday from 9:00 A.M. to 5:00 P.M. Excluding Federal holidays. This information can also be reviewed electronically over the Internet at dms.dot.gov.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on August 20, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22209 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

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 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before October 25, 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 Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

OMB Number: 1545–1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit or the welfare-to-work credit. The work opportunity credit and the welfare-to-work credit cover individuals who begin work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time Per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 1,596,000.

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: August 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22246 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 99–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99–43, Nonrecognition Exchanges under Section 897.

DATES: Written comments should be received on or before October 25, 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 notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nonrecognition Exchanges under Section 897.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Abstract: Notice 99–43 announces a modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges, and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize gain under Code section 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same dividend rights, voting power, liquidation preferences, and convertibility as the shares exchanged without any additional rights or features.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

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: August 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22247 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Third-Party Disclosure Requirements in IRS Regulations

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 existing regulations, Third-Party Disclosure Requirements in IRS Regulations.

DATES: Written comments should be received on or before October 25, 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 regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Third-Party Disclosure Requirements in IRS Regulations.

OMB Number: 1545–1466.

Abstract: These existing regulations contain third-party disclosure requirements that are subject to the Paperwork Reduction Act of 1995.

Current Actions: Changes to the third-party disclosure requirements include the following:

1. Proposed regulation section 1.131–1 was withdrawn. Therefore, the burden is reduced by 125,000 responses and 20,833 hours.

2. Regulation section 1.468B–5(b)(2) no longer has any effect because the required election statement had to be given to transferors on or before March 15, 1993. Therefore, the burden is reduced by 2,500 responses and 208 hours.

3. Regulation sections 1.1494–1(b)(1), 48.4041–11, and 48.4041–14 were eliminated because of changes in the underlying statutes. Therefore, the burden is reduced by a total of 1,020 responses and 111 hours.

4. Regulation sections 48.4041–15 and 48.4041–17 were affected by changes in the underlying statute regarding aviation gasoline. Therefore, the burden is reduced by a total of 2,000 responses and 200 hours.

5. Regulation section 1.6041–4(a)—As of January 2000, the rules of this regulation will be replaced with a new section that does not have any third-party disclosure requirements. Therefore, the burden is reduced by 1,000 responses and 2,000 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 245,825,890.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 69,927,805.

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: August 16, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22248 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, IA–62–93 (TD 8509), Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (§§ 1.1044(a)–1T, 1.108(c)–1T, 1.163(d)–1T, and 1.6655(e)–1T).

DATES: Written comments should be received on or before October 25, 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 regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93.

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided

immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

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: August 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22249 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–253578–96]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–253578–96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801–3T, 54.9801–4T, 54.9801–5T, and 54.9801–6T).

DATES: Written comments should be received on or before October 25, 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 regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

OMB Number: 1545–1537.

Regulation Project Number: REG–253578–96.

Abstract: These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 1,300,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 591,561.

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: August 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22250 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–32

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 Revenue Procedure 99–32, Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before October 25, 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 98–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

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: August 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22251 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–31

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 Revenue Procedure 99–31, Employee Plans Compliance Programs—Acceptable Methods of Self-Correction and Closing Agreements.

DATES: Written comments should be received on or before October 25, 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Programs—Acceptable Methods of Self-Correction and Closing Agreements.

OMB Number: 1545–1656.

Revenue Procedure Number: Revenue 99–31.

Abstract: The information requested in Revenue Procedure 99–31 is required to enable the Internal Revenue Service to make determinations on the issuance of various closing agreements and compliance statements as well as to verify that plan participants have been notified by their employers. The issuance of these agreements and proper notification allows individual plans to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10.8 hours.

Estimated Total Annual Burden Hours: 10,800.

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: August 19, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22252 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Retirement of IBM Series/1 in IRS E-Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of retirement of IBM Series/1 in IRS E-filing.

SUMMARY: This announcement serves as notice that the Internal Revenue Service plans to retire the IBM Series/1 for IRS e-filing of Forms 1040 series, including the stand-alone Electronic Tax Document Forms, 4868 and Form 9465. The effective date for this is October 20, 1999 at the conclusion of the 1999 filing season.

Beginning with 1999 Participants Acceptance Testing System (PATS) in November 1999, software developers and transmitters will transmit test returns to the Austin Service Center (AUSC) and/or the Tennessee Computing Center (TCC) on the Electronic Management System (EMS) Front End Processing Subsystem (FEPS). Transmitters that would have e-filed returns at the Andover (ANSC) or Ogden Service Centers (OSC) will transmit them to AUSC. Transmitters that would have e-filed returns at the Cincinnati Service Center (CSC) and Memphis Service Center (MSC) will transmit them to TCC. The only difference to the filers is the telephone number they use to transmit returns. The returns will still be owned by the home service center for the taxpayer, either ANSC, AUSC, CSC, MSC, or OSC, so software developers, practitioners, and transmitters will still call the home center for assistance and questions for PATS and production. Each service center will have access to the node that contains their data, and will be able to assist e-filers with any question or problem, including transmission problems.

SUPPLEMENTARY INFORMATION: The EMS has been used at TCC since 1996 and AUSC since 1997. The Trading Partner Interface used in transmitting returns will remain the same. IRS is piloting alternative high-speed protocols, such as TCP/IP and use of ISDN, on the new EMS. The State Retrieval System for CSC will move to TCC and the State Retrieval Systems for ANSC and OSC will move to AUSC.

ADDRESSES: Questions or concerns should be directed to Carolyn E. Davis, Senior Program Analyst, IRS, Electronic Tax Administration, OP:ETA:O:S, 5000 Ellin Road, Room C4–187, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call 202–283–0589 (not a toll-free number) or via email to: *carolyn.e.davis@m1.irs.gov*.

Terence H. Lutes,

National Director, Electronic Program Operations, Electronic Tax Administration.

[FR Doc. 99–22245 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the So.Fla Citizen Advocacy Panel.

SUMMARY: An open meeting of the So.Fla Citizen Advocacy Panel will be held in Sunrise, Fla.

DATES: The meeting will be held Friday, September 10, 1999 and Saturday, September 11, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

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 open meeting of the Citizen Advocacy Panel will be held Friday, September 10, 1999 from 6:00 pm to 9:00 pm and Saturday, September 11, 1999 from 9:00 am to 1:00 pm, in the Citizen Advocacy Panel Office, 7771 W. Oakland Park Blvd #225, Sunrise, Fla. 33351. The public is invited to make comments. 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 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. #225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. In accordance with the American's With Disabilities Act, persons with special needs should contact Nancy Ferree at 954–423–7973 by no later than 09/01/99.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 16, 1999.

Nancy Ferree,

CAP Office Manager.

[FR Doc. 99–22097 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Altered System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed alteration of a Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a major proposed alteration to the Customer Feedback System, (Treasury/lRS 00.003). This proposed alteration is part of the implementation of certain provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, (Pub. L. 105–206, July 22, 1998), in order to achieve the objective of improving IRS customer service.

EFFECTIVE DATES: The proposed alteration will be effective October 5, 1999, unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the National Taxpayer Advocate's Office, (C:TA), 1111 Constitution Avenue, NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth Keller, National Taxpayer Advocate's Office, (202) 622–8808.

SUPPLEMENTARY INFORMATION: The Customer Feedback System is maintained by the Internal Revenue Service to meet the reporting requirement of § 1211 of Public Law 104–168, the Taxpayer Bill of Rights 2 (TBOR2), which provides that the Secretary of the Treasury shall submit an annual report to Congress on the misconduct of IRS employees. A database for the records includes allegations about IRS employee misconduct received from taxpayers and their representatives, as well as the disposition of such complaints by managers.

The IRS will conduct a test to alter the Customer Feedback System. Significant modifications of the current system include: (1) The subject matter will be broadened to include taxpayer complaints, problems, compliments and suggestions about IRS systems, processes. and procedures; (2) Information will be collected by IRS employees through their personal contacts with taxpayers, as well as through direct taxpayer input using a survey form; and (3) The system will be used as a basis for controlling and monitoring the Internal Revenue Service's handling of taxpayer issues to ensure that timely and appropriate responses are provided. In accordance with the requirements of the IRS Restructuring and Reform Act of 1998, the Internal Revenue Service will include in its Customer Feedback System records the identification of individual employees who are cited by taxpayers for inappropriate conduct when such allegations do not involve the mandatory discharge provisions of § 1203 of the Act. Most of these changes will be implemented initially on a test basis in four IRS offices (Pittsburgh, Richmond, Fresno and Atlanta) and expanded subsequently to the remaining IRS offices. During this test period, the original records will continue to exist concurrently with the test records for most offices. In the test offices, the new records will be referred to as ''Customer Service Records,'' while in the remaining offices, the original records will continue to be referred to as the ''Customer Feedback System records.'' For Privacy Act purposes, both kinds of records will continue to fall under the Customer Feedback System of records, IRS/Treasury 00.003.

The IRS published a proposed rule on August 7, 1997, at 62 FR 42443 to exempt the Customer Feedback System pursuant to section (k)(4) of the Act from certain provisions because the records were to be maintained and used solely for statistical purposes. We are withdrawing the proposed rule pursuant to Public Law 105–206, Internal Revenue Service Restructuring and Reform Act, as the records will no longer be used solely for statistical purposes. The document withdrawing the proposed rule is published separately in the **Federal Register**.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996. The proposed alterations to Treasury/lRS 00.003—Customer Feedback System are set forth below.

Dated: July 28, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury/IRS 00.003

SYSTEM NAME:

Customer Feedback System.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of Change: Add the following language at the end of the paragraph:

* * * The system will also capture customer feedback about any aspect of IRS operations and the identification of IRS employees about whom allegations of misconduct are made when such allegations do not involve the mandatory discharge provisions of § 1203 of the IRS Restructuring and Reform Act of 1998, Pub. L. 105–206 (July 22, 1998).

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Description of Change: Add the following at the end of the paragraph:

* * * Section 3701 of the IRS Restructuring and Reform Act of 1998 (Pub. L. 105–206, July 22, 1998).

PURPOSE:

Description of change: Replace the current language with the following:

The purpose of this system is to collect a broad range of information about individual taxpayer issues and how they are resolved by the Internal Revenue Service. The collected records will enable the Service to better respond to individual taxpayer issues and to analyze and improve its operations, products and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Description of change: Insert the following language at the beginning of the paragraph:

Disclosure of tax return and return information may only be made as provided by 26 U.S.C. 6103. * * *

* * * * *

RETRIEVABILITY:

Description of change: Replace the current language with the following:

Documents are stored and retrieved by control numbers; by taxpayer name, taxpayer identification number or person to contact; and by an employee identifier. The control number can be determined by reference to the entries for the taxpayer, taxpayer representative or the IRS employee to whom they relate.

* * * * *

NOTIFICATION PROCEDURE:

Description of change: Replace the current language with the following:

Individuals wishing to be notified if they are named in this system of records, or gain access to the records maintained in this system, must submit a written request in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the office in which the records originate, to the attention of the National Taxpayer Advocate. See Appendix A for addresses of IRS offices.

RECORD ACCESS PROCEDURES:

Description of change: Replace the current language with the following:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Description of change: Replace the current language with the following:

See ''Notification procedure'' above.

EXEMPTION CLAIMED FOR THE SYSTEM:

Description of change: Replace the current language with the following:

None.

[FR Doc. 99–22207 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday
August 26, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1217

Olive Oil Promotion, Research, and Information Order and Referendum Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[FV–99–703–PR1]

Proposed Olive Oil Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for olive oil. A proposed program—the Olive Oil Promotion, Research, and Information Order (Order)—was submitted to USDA by the North American Olive Oil Association. Under the Order, olive oil first handlers and importers would pay an assessment of $0.01 per pound. First handlers would remit the assessment on domestic olive oil to the proposed Olive Oil Council (Council). The assessment on imported olive oil would be collected by the U.S. Customs Service and remitted to the Council. First handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Pub. L. 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for olive oil. A proposal was submitted by the North American Olive Oil Association (proponent). The proponent has proposed that olive oil first handlers and importers approve the program in a referendum in advance of its implementation. Handlers, importers, and at-large members would serve on the 14-member Council that would administer the program under USDA's oversight. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Further, first handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment.

The proponent states that, of a total of 43 domestic first handlers, 13 would be covered by the program. Thirty first handlers would be exempt from paying assessments under the proposed Order because they handle less than 6,000 pounds of olive oil annually. Therefore, the only burden on first handlers of less than 6,000 pounds would be the filing of a request for an exemption and recordkeeping to document their exempt status. The required information would be the minimum necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be kept for at least two years. The exemption form can be

completed with readily available information, and first handlers already keep records as a normal business practice. The added burden to the majority of first handlers for an olive oil promotion, research, and information program is therefore expected to be minimal.

In addition, there is a minimal burden on importers. The import assessments would be collected by the U.S. Customs Service (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the Council or the Secretary when requested. However, it is not anticipated that importers would be required to submit forms to the Council. Importers who seek nomination to serve on the Council would be required to complete one form which would be submitted to the Secretary.

There would be an additional, minimal burden on the first handlers and importers who seek nomination to serve on the Council and who choose to vote in referenda.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, 3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) not later than seven years after assessments began to determine whether olive oil first handlers and importers support continuation of the program, (2) at the request of the Council established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 13 first handlers and 320 importers of olive oil who would be subject to the program. Most of the first handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). The SBA defines small agricultural handlers and importers as those whose annual receipts are less than $5 million.

The United States produces very little olive oil compared to the amount it imports. Assuming a yield of 18 percent from the olives USDA reports as utilized for oil, production was 738 tons in 1998, compared to 648 tons in 1997. Imports, however, were 181,850 tons in 1998 and 180,186 tons in 1997. Italy accounted for 73 percent of imports in 1998, followed by Spain at 11 percent, Turkey at 8 percent, and Greece at 3 percent. A number of countries provided the remaining 5 percent. The total value of imports in 1998 was about $347 million, compared to $432 million in 1997. Exports of oil are significant, but are much smaller than imports. In 1998, the quantity reported was 8,934 tons, worth $6 million. This compares to 10,323 tons exported in 1997, worth $7 million. Exports exceed production because some imports are further processed or repackaged in the United States and then exported.

According to 1996 importer records, over 300 companies import olive oil into the United States; however, most of these companies import a very small quantity of oil with each importing less than 1 percent of the total amount.

Domestic first handlers of olive oil are located primarily in the states of Texas and California. We understand that approximately 70 percent of these first handlers are small companies, handling less than 6,000 pounds of olive oil per year and would fall within the exemption from assessment provided in the proposed Order.

Additionally, according to Nielsen Retail Sales data, the retail sector accounts for 45 percent of the sales of olive oil, the food service sector accounts for approximately 50 percent, and the commercial ingredient sector accounts for about 5 percent of olive oil consumption.

The proposed Order would authorize an initial assessment rate of $0.01 per pound paid by first handlers and importers of 6,000 pounds or more of olive oil annually. The proposed Order authorizes the assessment rate to be raised to a maximum of $0.02 per pound as long as the increase in any one year does not exceed $0.002 per pound.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. As stated above, the proponent recommends that first handlers and importers of less than 6,000 pounds of olive oil annually be exempt from assessment.

At the initial proposed rate of assessment of $0.01 per pound of olive oil, the Council would collect between $3 million and $4 million annually.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

In addition, the olive oil industry would nominate first handlers, importers, and at-large representatives of the olive oil market to serve as members on the Council. The Council would nominate the public member of the Council. The Council would recommend the assessment rate, programs and projects, a budget, and any rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the olive oil industry in accordance with the Act and the proposed Order.

Proposed recordkeeping and reporting requirements for the olive oil promotion, research, and information program would be designed to minimize the burden on first handlers and importers. The olive oil promotion program would be designed to strengthen the position of olive oil in the marketplace, maintain and expand existing markets, and develop new uses and markets for olive oil.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, $3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, others in the marketing chain as appropriate, and importers, if importers are subject to assessment.

This proposal includes provisions for market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible persons voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of the proposed Order. In particular, we are interested in obtaining more information on the number and kind of small and large entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration Date of Approval: July 31, 2001.

OMB Number for other information collections: New Collection.

Expiration Date of Approval: 3 Years from date of approval.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be an additional burden on first handlers and importers who vote in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to submit assessments and reports to the Council. Assessments on imports would be collected by Customs at the time of entry into the United States. Therefore, it is not anticipated that importers who are subject to assessments would be required to file any forms with the Council.

Handlers and importers of less than 6,000 pounds of olive oil annually would be required to file an application in order to receive an exemption from assessments.

In addition, the proposed Order would impose certain recordkeeping requirements on first handlers and importers. However, the information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, $3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The required information is not available from other sources because such information relates specifically to individuals who are covered by the Order. Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated for appointment to the Council. Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each respondent.

Respondents: First handlers, importers, and at-large representatives.

Estimated Number of Respondents: 13 (average of 28 for the initial nominations to the Council and approximately 10 respondents annually thereafter for each 3-year period).

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 14 hours for the initial nominations to the Council and 5 hours annually thereafter.

(2) *An annual report by each first handler of olive oil. Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each handler reporting on olive oil handled.

Respondents: Handlers.

Estimated Number of Respondents: 43.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 21.5 hours.

(3) *An exemption application for first handlers and importers of less than 6,000 pounds of olive oil annually.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response for each exempt first handler and importer.

Respondents: Exempt first handlers and importers.

Estimated Number of Respondents: 70.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 35 hours.

(4) *Importer application for reimbursement of assessment.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per importer requesting a reimbursement.

Respondents: Importers.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 120 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers and importers.

Estimated number of Recordkeepers: 403.

Estimated Total Recordkeeping Hours: 201.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act provides for the submission of proposals for a promotion, research, and information order by industry organizations or any other interested person affected by an order.

Comments concerning the information collection requirements contained in this action should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible first handlers and importers voting in the referendum.

The proponent has requested the establishment of a national promotion, research, and information order for olive oil pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for olive oil. The purpose of the program would be to strengthen the position of olive oil in the marketplace and to develop, maintain, and expand markets for olive oil.

The program would not become effective until approved by first handlers and importers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) Approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the eligible first handlers and importers voting in the referendum.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Order; or (2) at the request of the Council established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted not later than seven years after assessments first begin under the proposed Order to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

According to the proponent, the largest obstacle to successful marketing of olive oil is the widespread lack of awareness of its characteristics and uses. Most consumers are aware that it costs three times as much as other food oils, but do not understand the differences between olive oils (a tree crop product) and vegetable or seed oils

that are an annual crop and are basically a secondary product to the high value oilseed meal that is used for animal feed.

Currently, only 22 percent of U.S. households purchase olive oil. Preliminary research by the proponent indicates that more than 50 percent of those who do not use olive oil say that they do not know how to use it. This indicates the magnitude of the task for the olive oil industry.

Similarly, there is also a need for educating the trade audience, such as chefs and others involved in the food service industry. Such sectors need more accurate information about the characteristics of olive oil and the types of foods and recipes that can be enhanced with olive oil.

Only in recent years has there emerged an awareness of the nutritional benefits of olive oil. A strong marketing program is needed to inform consumers about the nutritional benefits of olive oil and how it can be used within a nutritious diet.

Unlike other oils that are relatively uniform in characteristics, all extra virgin olive oils, virgin olive oils, and pure olive oils have different flavor characteristics. Different varieties and growing regions have a considerable influence on the flavor of oils. An effective promotion program is needed to educate the public and trade sectors on the types of olive oils and their uses in various food preparations.

Currently, no organization in the industry has sufficient resources to mount an effective information and publicity program for olive oil, to educate chefs on the uses of olive oil, and to develop the information that consumers and chefs require.

Most of the companies that market olive oil to the retail sector, food service sector, and commercial ingredient sector do not have the resources to promote the product. They look to the industry to develop the information that consumers and chefs require.

The olive oil industry has attempted to create marketing programs to no avail. These programs lacked adequate funding to reach the domestic audience and impact the marketplace for olive oil. For example, the proponent began a public relations program in 1991 with a budget of $100,000, but the maximum funds it has been able to raise for promotion by voluntary contributions has leveled off at $250,000. The total budget for the proponent is only $325,000. The budget of the California Olive Oil Council is less than $25,000. The Texas Olive Oil Council does not have a fixed budget.

Through the promulgation of a research and promotion order, the industry intends to effectively promote the consumption of olive oil through publicity on its nutritional and health benefits, its unique taste characteristics, and its versatility.

In addition, the Order would provide the necessary structure and budget to support scientific and other forms of research that would benefit the olive oil industry. For example, a wide variety of research projects are needed to further study the health and other potential benefits of olive oil as well as to address issues such as adulteration and botulism.

Members of the industry have already begun discussions regarding the types of programs and projects that should be launched nationally to achieve these objectives. A partial listing of these potential programs and projects include: Developing a publicity program to reach consumers, chefs, food writers, cook book authors, and others; providing representation of the olive oil industry at major food and nutrition shows; conducting food service and retail recipe contests; preparing collateral materials for industry; conducting in-store food demonstrations featuring olive oil; conducting news conferences and issuing news releases; researching the medical benefits of olive oil; and researching how olive oil works with different food applications in the commercial ingredient sector.

Industry support was assessed at a meeting of the Olive Oil Task Force held in December 1997. This task force is a coalition representing members of the North American Olive Oil Council, the California Olive Oil Council, and the Texas Olive Oil Council, as well as companies in the olive oil business. Members of the retail, food service, and commercial ingredient sectors were represented on the task force. These task force members as well as all known companies in the olive oil industry were invited to the meeting to discuss the benefits and usefulness of a research and promotion order for olive oil.

At this meeting and through subsequent discussions, participants agreed that current regional marketing programs will not be successful in boosting the domestic market for olive oil. In addition, participants reached a broad-based and almost unanimous agreement that the olive oil business would substantially benefit from a national research and promotion order.

All of these factors led the olive oil industry to seek a national promotion program to find ways to further increase the consumption of olive oil.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has proposed that imports be assessed.

The assessment levied on domestically produced and imported olive oil would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that an Order may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms ''generic activities'' and ''branded activities'' are not defined in the Order, and credits for assessments would not be made.

First handlers would be required to pay assessments and submit reports to the Council. Importers would be required to pay assessments, which would be collected by Customs at the time of entry into the United States. Both first handlers and importers would be required to keep records under the proposed program. First handlers and importers of less than 6,000 pounds of olive oil annually would be exempt from assessments. However, they would be required to file an exemption request in order to be exempt from assessments and reporting under the Order. First handlers and importers seeking nomination to serve on the Council would be required to complete a confidential questionnaire to determine their eligibility to serve.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Department and of the Council. However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports

or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) no later than seven years after assessments first begin under the Order, (2) at the request of the Council established under the Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provides for a 14-member Olive Oil Council, as stated earlier.

To ensure fair and equitable representation of the olive oil industry on the Council, the Act requires membership on the Council to reflect the geographical distribution of the production of olive oil and the quantity or value of imports. To that end, this proposal provides that three members of the Council would be importers and marketers of consumer brands; one member would be an importer and marketer or packer of a private label; one member would be an importer of bulk olive oil; two members would be importers and marketers to the food service trade; two members would be first handlers of domestic olive oil; and five at-large members would represent one or more of the following segments of the olive oil market: The health community; professional chefs; food service operators; and food media/ consultants.

Upon implementation of the Order and pursuant to the Act, the Council would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of olive oil production in the United States and the quantity of imports and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of Council membership.

Members would serve for three-year terms, except that the members appointed to the initial Council would serve proportionately for two-, three-, and four-year terms. No member would serve more than two consecutive terms.

The proposed Order submitted by the proponent is summarized as follows:

Sections 1217.01 through 1217.22 of the proposed Order define certain terms, such as olive oil, first handler, importer, information, promotion, and research, which are used in the proposed Order.

Sections 1217.30 through 1217.37 include provisions relating to the Council: Establishment and membership, nominations, term of office, vacancies, procedure for conducting meetings, compensation and reimbursements for Council members, the Council's powers and duties, and prohibited activities.

Sections 1217.40 through 1217.41 establish the authority for the Council to develop research, promotion, and information projects and requirements for contracts, subject to oversight of the Secretary.

Sections 1217.50 through 1217.54 cover budget review and approval; financial statements; the collection of assessments; exemption from assessments; the use of assessments, including reimbursement of necessary expenses incurred by the Council for the performance of its duties, which includes expenses incurred for the Department's oversight responsibilities; a late-payment charge on past-due assessments; and an operating reserve.

The proponent recommends an initial assessment rate of $0.01 per pound on domestic and imported olive oil to be paid by handlers of domestic olive oil and importers.

The Council may raise the rate of assessment by no more than $0.002 per pound in any year, up to a maximum rate of $0.02, with approval of the Secretary.

The federal debt collection procedures referenced in § 1217.52(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA (60 FR 12533, March 7, 1995).

Sections 1217.55 through 1217.56 require that the Council perform an independent evaluation of its programs at least once every five years and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1217.60 through 1217.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1217.70 through 1217.78 describe the rights of the Secretary; require an initial referendum before the program is implemented; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; specify effects of termination or amendment; and address personal liability, separability, and amendments.

The Department has modified the proponent's proposal to make it consistent with the Act and other similar national research and promotion programs for consistency throughout the text and for clarity.

In the definitions the following terms were added: ''conflict of interest,'' ''Department,'' ''order,'' ''suspend,'' and ''terminate.'' Additionally, the term ''first handler'' was added to the definitions and replaced ''handler'' throughout the text.

The definition of ''information'' was rewritten to include activities designed to enhance olive oil's image, to add definitions of ''consumer information'' and ''producer information,'' and to conform with the Act. The terms ''marketing'' and ''research'' were also changed to conform with the Act.

Section 1217.37 *Prohibited activities,* § 1217.41 *Contracts,* and § 1217.55 *Independent evaluation* were part of the original proposal but were subsections or cited in the proposal. The Department has expanded each of these for consistency with similar national research and promotion programs. In addition, the following sections and paragraphs were added to the proponent's proposal: § 1217.36 (r) and (s); § 1217.51 *Financial Statements;* § 1217.53(c) and (d); § 1217.70 *Right of the Secretary;* § 1217.71 *Referenda;* and § 1217.72(b) and (c).

Section 1217.16 was changed from *Plans and Projects* to *Programs, Plans, and Projects* and § 1217.35 was changed from *Expenses* to *Compensation and reimbursement* in order to more accurately reflect the subject covered in the section.

Section 1217.50(h) has been added in order to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of section 515 of the Act states that a board ''may not expend for administration (except for reimbursements to the Secretary * * *)'' an amount that exceeds 15 percent of the board's income during any fiscal year. This provision has been added as the proposal submitted did not indicate a limitation for such spending. In this same section, in order to be more

consistent with similar national research and promotion programs, a list of subjects to be covered in the budget was included. In addition, paragraphs (c), (d), and (f), which discuss amendments to the approved budget, authorization to incur expenses for a reasonable reserve, and the acceptance and use of voluntary contributions were added for clarity and for consistency with other similar national research and promotion programs.

Other minor changes which do not materially affect the text were made as appropriate.

The Department has determined that this proposed Order is consistent with and would effectuate the purposes of the Act.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Olive oil promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1217 is added to read as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Olive Oil Promotion, Research, and Information Order

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Olive Oil Council

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1217.40 Research, promotion, and information.
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Authority: 7 U.S.C. 7401–7425.

Subpart A—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Definitions

§ 1217.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

§ 1216.2 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

§ 1217.3 Council.

Council means the administrative body established pursuant to § 1217.30.

§ 1217.4 Department.

Department means the United States Department of Agriculture.

§ 1217.5 First handler.

First handler means the first person (excluding a common or contract carrier) who buys or takes possession of olive oil from a producer for marketing. If a producer markets olive oil directly to consumers, the producer shall be considered to be a first handler with respect to the olive oil produced by the producer.

§ 1217.6 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Council and approved by the Secretary.

§ 1217.7 Handle.

Handle means to process, package, sell, transport, purchase, or in any other way place olive oil, or cause it to be placed, in the current of commerce.

§ 1217.8 Importer.

Importer means any person who imports olive oil into the United States as principal or as an agent, broker, consignee, or representative of any person who produces or handles olive oil outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such olive oil.

§ 1217.9 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of olive oil on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of olive oil; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the olive oil industry, and activities to enhance the image of olive oil.

§ 1217.10 Marketer.

Marketer means any person engaged in the sale or other disposition of olive oil in any channel of commerce.

§ 1217.11 Marketing.

Marketing means the sale or other disposition of olive oil in any channel of commerce.

§ 1217.12 Olive oil.

Olive oil is the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and, for purposes of this Order, includes olive pomace oil.

§ 1217.13 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1217.14 Part and subpart.

Part means the Olive Oil Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the Order shall be a subpart of such part.

§ 1217.15 Person.

Person means any individual, group of individuals, partnership, corporation, cooperative, or any other legal entity.

§ 1217.16 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information plans, studies, or projects established pursuant to § 1217.30.

§ 1217.17 Promotion.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations, to present a favorable image of olive oil to the public for the purpose of improving the competitive position of olive oil in the marketplace and to stimulate sales in the retail, food service, and industrial markets.

§ 1217.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of olive oil.

§ 1217.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1217.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, or part thereof, to temporarily prevent the operation of an order during a particular period of time specified in the rule.

§ 1217.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, or part thereof, to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1217.22 United States.

United States means collectively the 50 states of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Olive Oil Council

§ 1217.30 Establishment and membership.

(a) The Olive Oil Council is hereby established to administer the terms and provisions of the Order. The Council shall consist of 14 members as follows:

(1) Three members shall be importers and marketers of name brands;

(2) One member shall be an importer and marketer or packer of a private label;

(3) One member shall be an importer of bulk olive oil;

(4) Two members shall be importers and marketers to the food service trade;

(5) Two members shall represent the first handlers of domestic olive oil; and

(6) Five members shall be at-large representatives of one or more of the following segments of the olive oil market: the health community; professional chefs; food service operators; retailers; and food media/ consultants.

(b) In accordance with regulations approved by the Secretary, at least every five years and not more than every three years, the Council shall review the geographical distribution of first handlers of domestic olive oil throughout the United States and the volume of imported olive oil and, if warranted, recommend to the Secretary the reapportionment of Council membership or the addition of members to reflect changes in the geographical distribution of the handling of olive oil and the volume of imported olive oil.

§ 1217.31 Nominations.

(a) The Secretary shall solicit nominations for the initial Council from importers, handlers, and other professionals associated with the olive oil industry.

(b) Procedure for subsequent nominations.

(1) The Council shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring and shall solicit nominations for such positions. The announcement shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration in accordance with paragraph (b)(3) of this section.

(2) Importer members shall be nominated by importers, and handler members shall be nominated by handlers. The at-large members may be nominated by other professionals associated with the olive oil industry.

(3) Nominations should be submitted to the Secretary not less than 90 days prior to the expiration of members' terms.

(4) Two nominees must be submitted to the Secretary for each vacancy.

(c) The Secretary shall appoint the members of the Council from nominations made in accordance with paragraph (b) of this section.

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever the industry fails to nominate individuals for appointment to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

§ 1217.32 Term of office.

The members of the Council shall serve for terms of three years, except the members of the initial Council shall be designated for and shall serve terms as follows: Five members shall serve for two-year terms; five shall serve for three-year terms; and four shall serve for four-year terms. No member shall serve more than two consecutive terms.

§ 1217.33 Vacancies.

(a) In the event any member of the Council ceases to be a member of the category of members from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the Secretary shall solicit nominations in the manner set forth in § 1217.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1217.34 Procedure.

(a) At a properly convened meeting of the Council, eight members shall constitute a quorum. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Council, the Council may act upon the concurring votes of a majority of its members by mail, telephone, facsimile, or by other means of communication: *Provided*, that each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Council minutes.

§ 1217.35 Compensation and Reimbursement.

Members of the Council, when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

§ 1217.36 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) With the approval of the Secretary, to invest funds, pending disbursement pursuant to a plan or project, only in: obligations of the United States or any agency thereof; in general obligations of any State or any political subdivision thereof; in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System; or in obligations fully guaranteed as to principal and interest by the United States;

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Council and within the policies determined by the Council;

(d) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(e) To recommend to the Secretary amendments to this part.

(f) To meet and organize and to select from among its members a chairperson, other officers, and committees and subcommittees, as the Council determines to be appropriate;

(g) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Council and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(h) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each;

(i) To prepare and submit to the Secretary for the Secretary's approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(j) To receive and review or on its own develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of promotion, and information;

(k) To maintain minutes, books, and records which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(l) To periodically prepare and make public reports of its activities carried out, and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(n) To give to the Secretary the same notice of meetings of the Council and subcommittees (including those conducted by telephone) as is given to members in order that representatives of the Secretary may attend such meetings;

(o) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

(p) To notify olive oil importers and first handlers of all Council meetings through news releases or other means;

(q) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans, projects, or activities to effectuate the declared purpose of the Act.

(r) To act as intermediary between the Secretary and any producer, first handler, or importer.

(s) To work to achieve an effective, continuous, and coordinated program of promotion, research, information, evaluation, and industry information designed to strengthen the olive oil industry's position in the marketplace; maintain and expand existing markets and uses for olive oil; and to carry out programs, plans, and projects designed to provide maximum benefits to the olive oil industry.

§ 1217.37 Prohibited activities.

(a) The Council may not engage in and shall prohibit the employees and agents of the Council from engaging in:

(1) Any action that would be a conflict of interest; or

(2) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(b) No Council program, plan, or project shall make any false or misleading claims on behalf of olive oil or false, misleading, or disparaging statements with respect to the attributes or use of another agricultural commodity.

Research, Promotion, and Information

§ 1217.40 Research, promotion, and information.

(a) The Council shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for research, promotion, and information designed to strengthen the position of olive oil in the marketplace, to maintain, develop, and expand markets for olive oil, and to encourage further development of the domestic industry; and

(2) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to olive oil or its consumption and use may be encouraged or expanded or to the end that the marketing and utilization of olive oil may be encouraged, expanded, improved, or made more efficient.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion,

research, or information, then the Council shall terminate such program, plan, or project.

§ 1217.41 Contracts.

(a) The Council may enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements, after approval from the Secretary.

(b) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of any contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor.

Expenses and Assessments

§ 1217.50 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order and probable costs of research, promotion, and information. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws, approved by the Secretary, need not have prior approval from the Secretary.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor, and the Council shall retain complete control of their use.

(g) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

§ 1217.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a regular basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1217.52 Assessments.

(a) Each importer and first handler shall pay to the Council, upon demand, the assessment as may be approved by the Secretary. Such assessment shall be the amount established by the Secretary pursuant to paragraph (b) of this section.

(b) Except as otherwise provided, the rate of assessment shall be $0.01 per pound of olive oil imported or produced and handled in the United States. The rate of assessment may be raised to a maximum of $0.02 per pound as recommended by the Council and approved by the Secretary, but it shall not be raised more than $0.002 per year in any fiscal year.

(c) Importers of olive oil shall pay the assessment to the Council through the U.S. Customs Service at the time of entry. The U.S. Customs Service shall remit the assessment to the Council.

(d) The import assessment shall be uniformly applied to imported olive oil identified by the numbers 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.40, and 1510.00.60 in the Harmonized Tariff Schedule of the United States.

(e) Assessments due from a first handler shall be paid to the Council at such time and in such manner as the Council, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different importer or first handler payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(f) The Council shall impose a late payment charge on any person who fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions by the Secretary under federal debt collection procedures.

§ 1217.53 Exemption from assessment.

(a) A domestic first handler who handles less than 6,000 pounds of olive oil per year or an importer who imports less than 6,000 pounds of olive oil per

year shall be eligible for an exemption from the assessment.

(b) To claim such exemption, a first handler or importer shall submit an application to the Council stating the basis on which the person claims the exemption for such year.

(c) If, after a person claims an exemption from assessments for any year under this section, and such person no longer meets the requirements of this paragraph for an exemption, such person shall provide additional information to the Council in the form and manner prescribed by the Council, subject to approval by the Secretary, and pay an assessment on all the olive oil handled or imported by such person during the year for which the person claimed the exemption.

(d) Exempted individuals are subject to such safeguards as prescribed in this part to prevent improper use of this exemption.

§ 1217.54 Operating reserve.

The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided,* That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

§ 1217.55 Independent evaluation.

The Council shall, not less often than every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1217.56 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds collected by the Council under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Council, and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1217.73 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds received by the Council under this subpart and funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by an agreement between the Council and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section, subject to approval by the Secretary.

Reports, Books, and Records

§ 1217.60 Reports.

Each first handler and importer shall be required to report to the administrative staff of the Council, at such times and in such manner as it may prescribe, such information as may be necessary for the Council to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For first handlers, the total quantity of olive oil handled during the reporting period; and a record of assessments paid, including a statement from the handler that the assessment has been paid on all olive oil handled during the reporting period.

(b) For importers, the total quantity of olive oil imported during the reporting period and a record of each importation of olive oil during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1217.53, such information as deemed necessary by the Council, and approved by the Secretary, concerning the exemption including disposition of exempted olive oil.

(d) Information reported to the administrative staff of the Council regarding total quantity, assessments, and other specific information must be kept confidential in accordance with § 1217.62.

§ 1217.61 Books and records.

First handlers and importers shall maintain, and during normal business hours make available for inspection by employees of the Council or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

§ 1217.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained shall be kept confidential by all persons, including employees of the Council and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information, and shall not be made available to Council members, first handlers, or importers. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart, except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of first handlers or importers subject to any order, if such statements do not either expressly or tacitly identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Council shall be considered willful misconduct.

Miscellaneous

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1217.71 Referenda.

(a) *Implementation.* For the purpose of ascertaining whether the persons to be covered by the Order favor the Order going into effect, the Secretary shall conduct an initial referendum among persons to be subject to the assessment under § 1217.52 who, during a representative period determined by the Secretary, engaged in the handling or importation of olive oil. The Order must be approved by a simple majority of those voting.

(b) *Subsequent referenda.* The Secretary shall hold subsequent referenda: Not later than seven years after assessments first begin under the Order; at the request of the Council; or when petitioned by 10 percent or more of the olive oil first handlers and importers eligible to vote to determine if they favor termination or suspension

of this subpart. In addition, the Secretary may hold a referendum at any time.

§ 1217.72 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof at the end of the marketing year whenever the Secretary determines that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that its suspension or termination is approved or favored in a referendum by a simple majority of the persons voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of olive oil.

(b) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1217.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all funds and property owned, in possession of, or under control of the Council, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contracts or agreements entered into by it pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Council or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Council and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be utilized, to the extent practicable, in the interest of continuing one or more of the olive oil research or information programs authorized under the Order.

§ 1217.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or of any person, with respect to any such violation.

§ 1217.75 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1217.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1217.77 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1217.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is yet to be determined. The Council nominee background statement form is assigned OMB control number 0505–0001.

Dated: August 18, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–22107 Filed 8–25–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[FV–99–704–PR]

Olive Oil Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) is favored by the olive oil industry. Approval will be based on a majority of olive oil first handlers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A

copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake or Karen T. Comfort, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW, Washington, DC 20250–0244; telephone (202) 720–9915 or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) (7 CFR part 1217) is favored by a majority of eligible first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104–427, 7 U.S.C. 7401–7425). A proposed Order is being published separately in the **Federal Register**.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The North American Olive Oil Association (proponent), has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those voting in the referendum, and the voters would be non-exempt first handlers and importers of olive oil. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers may vote on whether they want an olive oil promotion, research, and information program to be implemented. First handlers and importers of 6,000 pounds or more of olive oil annually would be eligible to vote. The proposed Order provides for an exemption from assessment for first handlers and importers of less than 6,000 pounds of olive oil. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

The United States produces very little olive oil compared to the amount it imports. Assuming a yield of 18 percent from the olives USDA reports as utilized for oil, production was 738 tons in 1998, compared to 648 tons in 1997. Imports, however, were 181,850 tons in 1998 and 180,186 tons in 1997. Italy accounted for 73 percent of imports in 1998, followed by Spain at 11 percent, Turkey at 8 percent, and Greece at 3 percent. A number of countries provided the remaining 5 percent. The total value of imports in 1998 was about $347 million, compared to $432 million in 1997. Exports of oil are significant but are much smaller than imports. In 1998, the quantity reported was 8,934 tons, worth $6 million. This compares to 10,323 tons exported in 1997, worth $7 million. Exports exceed production because some imports are further processed or repackaged in the United States and then exported.

According to 1996 importer records, over 300 companies import olive oil into the United States; however, most of these companies import a very small quantity of oil, with each importing less than 1 percent of the total amount.

Domestic first handlers of olive oil are located primarily in the states of Texas and California. We understand that an estimated 70 percent of these first handlers are small entities, handling less than 6,000 pounds of olive oil per year, and would fall within the exemption from assessment provided in the proposed Order.

Additionally, according to Nielsen Retail Sales data, the retail sector accounts for 45 percent of the sales of olive oil, the food service sector accounts for approximately 50 percent, and the commercial ingredient sector accounts for about 5 percent of olive oil consumption.

This proposed rule provides the procedures under which olive oil first handlers and importers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply.

Of the 43 first handlers, approximately 13 would be eligible to vote in the first referendum. Of the 360 importers, approximately 320 would be eligible to vote in the first referendum.

There are approximately 13 first handlers and 320 importers of olive oil who would be subject to the program. Most of the first handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). The SBA defines small agricultural handlers and importers as those whose annual receipts are less than $5 million.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers in voting in the referendum. The estimated annual cost of providing the information by an estimated 13 first handlers who would be eligible to vote would be $6.50 or $0.50 per first handler and, for the estimated 320 importers who would be eligible to vote, the annual cost would be $160.00 or $0.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department would provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. In particular, we are interested in obtaining more information on the number and kind of small and large entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: New collection.

Expiration Date of Approval: November 28, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 333.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 16.65 hours.

The estimated annual cost of providing the information by an estimated 13 first handlers would be $6.50 or $0.50 per first handler and for an estimated 320 importers would be $160.00 or $0.50 per importer.

The ballot will be added to the other information collections approved for use under a OMB Number yet to be determined.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The North American Olive Oil Association (proponent) has requested the establishment of an Olive Oil Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for olive oil. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at a rate of $0.01 per pound. In the proposed Order, olive oil is defined as the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and for the purposes of these referendum rules and the Order, includes olive pomace oil.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Olive Oil Council; and expenses incurred by the Secretary in

implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible olive oil first handlers and importers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved during the initial referendum, which will be held before the program is implemented. Approval will be based on a majority of the olive oil first handlers and importers voting in the referendum. First handlers and importers of 6,000 pounds or more of olive oil annually would be eligible to vote.

This proposed rule establishes the procedures under which first handlers and importers may vote on whether they want the olive oil promotion, research, and information program to be implemented. There are approximately 333 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the olive oil industry.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Olive Oil, Consumer Information, Marketing agreements, Olive Oil promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER—[PROPOSED]

1. The authority citation for proposed part 1217 published elsewhere in this **Federal Register** continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart B is added to proposed part 1217 to read as follows:

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

Sec.

1217.100 General.
1217.101 Definitions.
1217.102 Voting.
1217.103 Instructions.
1217.104 Subagents.
1217.105 Ballots.
1217.106 Referendum report.
1217.107 Confidential information.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

§ 1217.100 General.

Referenda to determine whether eligible olive oil first handlers and importers favor the issuance, amendment, suspension, or termination of the Olive Oil Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1217.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Olive oil* means the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and for the purposes of these regulations, includes pomace oil.

(c) *Eligible importer* means any person who imported 6,000 pounds or more of olive oil, that is identified by the numbers 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.40, and 1510.00.60 in the Harmonized Tariff Schedule of the United States. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced olive oil immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of olive oil from the U.S. Customs Service when such olive oil is entered or withdrawn for consumption in the United States.

(d) *Eligible first handler* means any person who buys or takes possession of 6,000 pounds or more of olive oil from a producer for marketing. If a producer markets the olive oil directly to consumers, the producer shall be considered to be the first handler with respect to olive oil produced by the producer.

(e) *Order* means the Olive Oil Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.102 Voting.

(a) Each person who is an eligible first handler or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity, may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Secretary.

§ 1217.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized by the Administrator to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1217.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1217.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom, the reasons therefore, the results of any investigations made with respect thereto, if any, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1217.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: August 18, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22106 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Thursday
August 26, 1999

Part III

Environmental Protection Agency

40 CFR Part 710

TSCA Inventory Update Rule Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPTS–82053; FRL–6097–4]

RIN 2070–AC61

TSCA Inventory Update Rule Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The TSCA Inventory Update Rule (IUR) Amendments will help both EPA and the public better identify and mitigate potential exposures and risks associated with TSCA chemicals. Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA currently requires manufacturers (including importers) of certain chemical substances and mixtures on the TSCA Chemical Substances Inventory to report current data regarding production volume, plant site information, and site-limited status. EPA is proposing to require the reporting of additional data that would assist EPA in evaluating potential exposures and risks resulting from industrial chemical operations and commercial and consumer uses of chemical substances. EPA is also proposing to modify reporting and recordkeeping requirements, to remove one reporting exemption and to create others, and to modify its Confidential Business Information (CBI) reporting procedures.

DATES: Comments on this proposed rule must be received no later than October 25, 1999. A public meeting to allow the opportunity for oral comment on this proposed rule will be held on Monday, October 4, 1999, from 9 a.m. to noon at the EPA Auditorium, 401 M St., SW., Washington, DC 20460.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION'' section of this document.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Susan Krueger, Project Manager, Economics, Exposure and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260-1713, fax: (202) 260-1661; e-mail: krueger.susan@epa.gov.

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.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or import chemical substances and mixtures currently subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710 or manufacture or import inorganic chemical substances. In the past, processors of chemical substances have not been required to comply with the requirements at 40 CFR part 710. These proposed amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of Potentially Regulated Persons
Chemical manufacturers and importers	325, 32411	Chemical manufacturers (including importers) currently subject to IUR reporting Chemical manufacturers (including importers) of inorganic chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. To determine whether you or your business is affected by this action, carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR), part 710. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed in the preceding ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document and various support documents from 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/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–82053. 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 TSCA Nonconfidential Information Center, Rm. NE-B607, Waterside Mall, 401 M St., SW., Washington, DC, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Nonconfidential Information Center telephone number is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropiate docket number (i.e., OPPTS–82053) in your correspondence.

1. *By mail*. Submit your comments to: Document Control Office (DCO) (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 your comments to: OPPT Document Control Office (DCO) in the East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC 20460. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is 202–260–7099.

3. *Electronically*. You may submit your comments electronically by e-mail

to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPPTS–82053. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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?

EPA invites you to provide your views on the various options proposed, new approaches EPA has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this proposal.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), you must properly identify the document you are commenting on by providing the docket control number assigned to the proposal. You may also provide the name, date, and **Federal Register** citation, and the appropriate EPA or OMB ICR number.

II. Authority

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances in commerce. In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances. In 1986, EPA promulgated the IUR (51 FR 21447, June 12, 1986), also under TSCA section 8(a), to facilitate the periodic updating of the inventory and to support activities associated with the implementation of TSCA.

This document proposes amendments to 40 CFR part 710, which currently contains the Inventory Update Reporting Regulations. Failure to comply fully with any provision of a final rule would be a violation of TSCA section 15 and would subject the violator to the penalties of TSCA sections 16 and 17.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers (including importers) and processors of chemical substances and mixtures (referred to hereafter as ''chemical substances'') must maintain such records and submit such information as the Administrator may reasonably require. Under TSCA section 8(a), the Agency may collect information, insofar as it is known to, or reasonably ascertainable by the submitter, on the manufacture (including import) and processing of chemical substances. EPA possesses broad discretion in determining the information to be reported under TSCA section 8(a). Some of the types of information which can be required under TSCA section 8(a)(2) include: categories of use for each chemical substance, estimates of the amount manufactured or processed for each category of use, a description of the byproducts resulting from the manufacture, processing, use, or disposal of each chemical substance, an estimate of the number of individuals exposed, and the duration of such exposure. TSCA section 8(a) excludes, with certain exceptions, small manufacturers (including small importers), and processors of chemical substances from reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers (including importers) and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA sections 5 or 7. For purposes of the IUR, the standards for determining whether a business qualifies as a ''small manufacturer or importer'' are defined at 40 CFR 704.3. For additional information, see TSCA sections 2 and 8; H. Rep. 1341, 94th Cong., 2d Sess. 6-7 (July 14, 1976); Sen. Rep. 698, 94th Cong. 2d Sess. 3-5 (March 16, 1976).

III. Summary of the Amendments

In this document, EPA is proposing several changes to the current IUR reporting requirements. First, EPA is proposing to amend 40 CFR 710.32 in order to add exposure-related information to the reporting requirements for chemical substances covered by the IUR. Specifically, the Agency is proposing that manufacturers (including importers) subject to the proposed rule report, in ranges, the number of workers reasonably likely to be exposed to the chemical substance at the site of manufacture or import, and the physical form, average concentration, and maximum concentration of the chemical substance as it leaves the submitter's possession.

Second, EPA is proposing to amend 40 CFR 710.32 in order to require chemical manufacturers (including importers) (''submitters'') of larger-volume chemical substances to report information concerning the processing and use of each reportable chemical substance that is conducted at sites controlled by the submitter and at ''downstream'' sites that receive the reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Specifically, manufacturers (including importers) of these larger-volume chemical substances would be required to report:

1. The type of industrial processing or use operation at each site, including downstream sites.

2. The five-digit North American Industrial Classification System (''NAICS'') codes that best describe the industrial activities conducted by the facilities that use or process the substance.

3. The ''industrial functions'' of the chemical substances.

4. The approximate number of processing and use sites.

5. The estimated number of workers reasonably likely to be exposed to each chemical substance at each site at which the chemical is used or processed.

6. The commercial and consumer uses of reportable chemical substances.

7. The estimated percentages of the submitter's production volume in each industrial function category and commercial and consumer product category.

8. The maximum concentration of the reportable chemical substance in each commercial and consumer product category.

Third, EPA is proposing to revoke the current full exemption from IUR reporting at 40 CFR 710.26(a) for inorganic chemical substances, and instead require partial reporting for these substances. EPA is also proposing to amend 40 CFR 710.26 to create a partial reporting exemption for petroleum process streams.

Fourth, EPA is proposing to amend 40 CFR 710.26 to provide an exemption from IUR reporting for certain forms of natural gas.

Fifth, EPA is proposing to amend 40 CFR 710.32 to require the reporting of additional information to assist in the identification of plant sites reporting under IUR.

Sixth, EPA is proposing to amend 40 CFR 710.28, 710.32, and 710.33 to change the period for which reporting is required from a corporate fiscal year to a calendar year basis.

Seventh, EPA is proposing to amend 40 CFR 710.32 to include two separate confidentiality boxes on the reporting form (Form U) for production volume in exact amounts and in ranges (see Unit VI. of this preamble for a copy of the proposed reporting form). These confidentiality boxes would enable submitters to assert a confidentiality claim for specific production volume information while releasing the more general production volume range as public information.

Eighth, EPA is proposing to amend 40 CFR 710.38 to require upfront substantiation of plant site confidentiality claims made in IUR submissions to EPA.

Ninth, EPA is proposing to add a new section, 40 CFR 710.39, to require submitters to reassert CBI claims made in past IUR reports during each reporting cycle.

Finally, EPA is proposing to amend 40 CFR 710.28 and 710.32 to raise the production volume reporting threshold from the current 10,000 pounds (lbs.) per year threshold to 25,000 lbs. per year, and to add a new larger-volume reporting threshold of 300,000 lbs. per year for the reporting of processing and use information.

Units VI. through VIII. of this preamble provide a discussion regarding changes to the current IUR that would occur upon promulgation of these proposed amendments. The discussion includes the current reporting requirements only to the extent that they would be modified in this proposal. EPA is not reopening the existing requirements for comment where they would not be modified in this proposal. CBI issues are discussed in Unit VIII. of this preamble, although certain of these issues are mentioned briefly in Unit VI. of this preamble.

IV. Background

A. Establishment of the Inventory Update Rule

In the **Federal Register** of June 12, 1986 (51 FR 21447), EPA published the Inventory Update Rule (IUR), which requires chemical manufacturers (including importers) to report to EPA every 4 years the identity of chemical substances manufactured (including imported) annually in quantities over 10,000 lbs. per year at each plant site they own or control. The current IUR excludes several categories of substances, including polymers, inorganic substances, microorganisms, and naturally occurring chemical substances. Plant sites subject to the rule are currently required to report information such as company name, plant site location, plant site Dun and Bradstreet number(s), identity of the reportable chemical substance, and production volume of the reportable chemical substance.

The data reported under IUR are used to update the information collected on the TSCA Inventory, which is a listing of chemical substances in commerce. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities (See Unit IV.B. of this preamble for further explanation of some of these activities).

B. EPA's TSCA-Related Chemical Screening and Assessment Activities

Congress enacted TSCA to establish a number of new requirements and authorities for identifying and controlling toxic chemical risks to human health and the environment (See TSCA section 2). To implement its responsibilities under TSCA, EPA must identify potential chemical risks, assess the magnitude of the identified risks and, where necessary, manage risks determined to be unreasonable. TSCA provides EPA with the authority to gather data, such as chemical toxicity data, chemical exposure data, and other related data, to determine whether a chemical substance may present an unreasonable risk of injury to human health or the environment, and to institute control actions when risks are determined to be unreasonable. As part of the implementation of this authority, EPA has established the IUR and other regulations to collect information on chemical substances.

Identification of chemical substances, plant sites, and exposures of greatest potential concern and setting priorities for more detailed risk assessment and potential risk management actions are important elements in a successful chemical risk management program. The TSCA Inventory includes more than 75,000 chemical substances. Approximately 8,300 of these chemical substances are non-polymer organic chemical substances manufactured or imported in quantities of 10,000 lbs. per year, as reported under the 1994 IUR data collection. See ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' available in the public record for this proposal and listed at Unit X.A.2.f. of this preamble.

Once a chemical substance has been identified for risk screening under EPA's Existing Chemicals Program, EPA completes an initial review of the chemical. This initial review is designed to select the chemical substances that raise particular concern regarding the risks they present to human health and the environment. At the close of the initial review, three possible outcomes may occur: a testing recommendation, a recommendation for further evaluation, or closure. ''Closure'' may include referrals to other programs or agencies, dissemination of initial review results, or a decision to discontinue further review based on the chemical's low hazard, low risk potential, or because it will be considered for regulatory control as part of a broader cluster of chemical substances. This process is described in more detail in the document entitled, ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' which is available in the public record for this rulemaking and listed at Unit X.A.2.f. of this preamble.

Between 1990 and 1994, 1,924 chemical substances were screened for inclusion in the risk management (RM) program. Of these candidate chemical substances, 561 were selected for more detailed review based on potential risks. Of the 561 chemicals evaluated, 125

(22%) were recommended for testing; 156 (28%) were recommended for further risk management; and 280 (50%) were recommended for closure. The Existing Chemicals Program represents a significant outlay in EPA resources, and is an important component in EPA's ability to manage unreasonable risks presented by chemical substances in commerce.

Effective risk screening and risk management are dependent upon both exposure information and hazard information. The exposure-related information reported under the IUR amendments, in combination with hazard information such as that developed under TSCA section 4 test rules, would allow the Agency to effectively screen and prioritize chemicals. In order to meet the directives put forth by Vice President Gore in his April 21, 1998 announcement (Ref. 1), EPA recently undertook the drafting of a significant proposed test rule for certain high production volume chemicals. The test rule would collect baseline hazard information which, in conjunction with the exposure-related information that would be reported under these IUR amendments, would be critical for chemical screening purposes.

EPA's Existing Chemicals Program is currently evaluating risks from indoor air pollutants, high release chemical substances listed on the Toxics Release Inventory (TRI) (established under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. sections 11001 to 11050), persistent bioaccumulators, and high production volume chemicals. While past approaches to priority setting have been primarily based on relative chemical hazards and production volume as a simple surrogate for exposure, EPA has increased its emphasis on the exposure component of risk screening and assessment. An example of this increased emphasis is reflected in the voluntary effort within EPA called the Use and Exposure Information Project (UEIP), undertaken by EPA and the Chemical Manufacturers Association (CMA), the Chemical Specialty Manufacturers Association (CSMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the American Petroleum Institute (API) (Ref. 2). The UEIP was undertaken cooperatively by government and industry in recognition of the difficulties encountered in obtaining current exposure information on TSCA chemicals. The UEIP, however, provided one-time reporting of information on a small number of selected high production volume chemicals. Given these efforts, the limitations of the data available from past and current information collections that are described in detail in Unit IV.B. of this preamble, and the amount of time it would take to acquire screening-level data for all of the chemical substances on the Inventory otherwise, EPA believes it is appropriate to develop a more systematic and comprehensive approach to the prioritization process. The new exposure-related information that would be reported under this proposed rule is necessary to allow more efficient and effective chemical risk screening.

V. Development of this Proposed Rule

A. Need for Change in the Inventory Update Rule

EPA is proposing to amend the Inventory Update Rule (IUR) for three primary reasons: (1) To tailor the chemical substance reporting requirements to more closely match the Agency's overall information needs; (2) to obtain new and updated information relating to potential exposures to a subset of chemical substances listed on the TSCA Chemical Substances Inventory (''the TSCA Inventory''); and (3) to improve the utility of the information reported. Changes to the information collected through the IUR, the chemicals covered by the rule, and CBI requirements accomplish these three goals.

These goals are supported by a primary policy underlying TSCA, which is that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures'' (TSCA section 2(b)(1)). EPA believes that, for basic risk screening purposes, the data currently available are inadequate (See Unit IV.B. of this preamble). TSCA section 8(a)(2) authorizes EPA to require manufacturers and processors of chemical substances to report a wide variety of data, including the exposure-related information which would be reported under these amendments to IUR. These amendments would remove certain reporting requirements and add others in an effort by EPA to focus the information reported under IUR on information that is most needed so that EPA and other Federal agencies are better able to screen for risk, and consequently assess and manage risk, and so that public awareness of basic information about a large number of chemical substances is improved.

As discussed in Unit IV.B. of this preamble, any determination of ''risk'' is based on some amount of hazard information in combination with some amount of exposure information. EPA relies on risk screening to indicate which chemical substances may present a risk, and thus warrant a resource-intensive risk assessment. The EPA Science Advisory Board's ''Reducing Risk: Setting Priorities and Strategies for Environmental Protection'' report (Ref. 3) and the National Academy of Public Administration's ''Setting Priorities, Getting Results, A New Direction for EPA'' report (Ref. 4) recognize that EPA's ability to set priorities through risk screening and EPA's ability to allocate its limited resources has been significantly impeded by a lack of exposure data. Screening the potential risks posed by the chemical substances included in the Inventory and setting priorities for more detailed risk assessment and possible risk management is an enormous challenge. The manufacturing, processing, and use of Inventory chemicals result in a wide array of exposure scenarios. By collecting the exposure-related data included in this proposed amendment to the IUR, the Agency would acquire information that would greatly improve EPA's ability to identify, through risk screening, the chemical substances that could pose a risk to human health and to the environment.

1. *Exposure-related data needed for chemical risk screening.* As discussed in Unit IV. of this preamble, EPA must screen thousands of chemical substances for potential risk to determine priorities for follow-up risk assessment and management among the chemical substances included on the TSCA Inventory. Because so many chemical substances and exposure scenarios are involved, it is not practical to devote the extensive resources that would be required to develop more precise exposure data, such as occupational and environmental monitoring data. Instead, EPA must identify and rely on exposure-related data that are more accessible and that are reasonably accurate and useful for identifying potential chemical risks.

EPA has had access to certain types of exposure-related information which it has found to be extremely useful. For example, EPA's New Chemicals Program requires the submission of exposure-related information in Premanufacture Notice (PMN) submissions. This information is used in developing risk estimates to determine the status of the chemical

under evaluation within the New Chemicals Program. Under section 5 of TSCA, companies must submit a PMN to EPA at least 90 days before initiating the manufacture for commercial purposes (including import) of chemical substances that are not included on the TSCA Inventory. Chemical substances included on the TSCA Inventory are often referred to as ''existing chemicals'' and those not included on the TSCA Inventory are often referred to as ''new chemicals.'' EPA reviews the potential risks of new chemicals for which it has received a PMN and may act to restrict certain aspects of the chemicals' manufacture, processing or use. For example, for chemical substances that pose potential risks to workers based on estimates of inhalation exposures, the Agency often requires the use of respiratory protection by workers. EPA requires companies to include information in their PMN submissions that will provide an accurate review of potential exposures and risks. Exposure-related data included in the PMN include estimates of production volume, categories of use, percent production volume in categories of use, releases during manufacture, processing and use, maximum number of workers exposed, and physical form of the chemical. Since the creation of the New Chemicals Program, EPA has successfully reviewed the potential risks of approximately 32,000 chemicals.

The exposure-related information submitted in PMNs is typically developed prior to the manufacture of the chemical and prior to the addition of the chemical to the TSCA Inventory; information submitted through the New Chemicals Program is not sufficient for the future screening of new chemicals once they have been added to the TSCA Inventory (i.e., once they have become existing chemicals). The exposure-related information submitted in a PMN is not necessarily reflective of exposures once a chemical substance is added to the Inventory and is produced commercially by the company that originally submitted the PMN and/or any number of additional companies. Production volume information, for example, is provided only once during the PMN process, whereas production volume information is tracked over time under the IUR. EPA's analysis of the PMN data base is provided in a document entitled, ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' found in the record for this proposal and listed at Unit X.A.2.a. of this preamble.

Another example of EPA's use of available exposure-related information is in the evaluation of chemical risks and establishment of hazard testing priorities in the Agency's New Chemicals and Chemical Testing Programs. These programs rely upon data that are similar to data that would be collected under this proposal. EPA's New Chemicals Program, under the authority of TSCA section 5(e)(1)(A)(ii)(II), has established an exposure-based policy which utilizes various exposure criteria to guide its decisions regarding the issuance of consent orders. These criteria include estimates of production volume, releases, potential dose rates, numbers of potentially exposed workers and consumers, and the size of the potentially exposed general population and are used to determine whether an exposure concern exists (Ref. 5). These decisions are based on the expected use of the new chemical.

Similarly, the Chemical Testing Program relies upon exposure-related information to require testing under TSCA section 4. In order to require testing, EPA must initially make either risk-based findings under TSCA section 4(a)(1)(A) or exposure-based findings under TSCA section 4(a)(1)(B). Risk-based findings are partially based on exposure-related information. Because exposure is a component of risk (see Unit IV.B. of this preamble), risk-based findings require a demonstration that there is some possibility of exposure to a chemical substance. The possibility of exposure must be based on more than theoretical scenarios; some amount of factual information must be demonstrated by EPA. *Chemical Manufacturers Association* v. *EPA*, 859 F.2d 977, 991 (D.C. Cir. 1988). Exposure-based findings, on the other hand, are based entirely on exposure-related information. Generally, EPA relies upon production volume information in addition to chemical release information or human exposure information (i.e., for general population exposure, consumer exposure, or worker exposure) to make exposure-based findings. EPA's interpretation of its legal authority to make the findings necessary to require testing under TSCA section 4(a)(1)(B) is articulated in a Statement of Policy (''B Policy'') (58 FR 28736, May 14, 1993). Many of the exposure data elements included in these proposed amendments to IUR are specifically relevant to the exposure-related findings contained in the B Policy. As a result, the exposure information submitted under the IUR amendments would be integral to the identification of candidate chemicals for inclusion in test rules. For example, the use information reported under the IUR amendments would assist in the selection of chemicals for inclusion in a planned test rule that would collect hazard information on chemicals to which children may be exposed, many of which are present in consumer products.

Other organizations recognize that exposure-related data is useful for screening chemical risks. The Chemical Manufacturers Association (CMA), in a letter to EPA (Ref. 6), noted that data on chemical use volumes, numbers of exposed workers, magnitudes of chemical usage per worker, number of use sites, and environmental releases can supplement production volume data in chemical risk screening. In addition, the exposure-related information that would be reported under these amendments to IUR would support chemical screening by the Consumer Product Safety Commission (CPSC). CPSC has stated that, ''[a]t present, there is no comprehensive source of information on the ingredients of household chemicals and CPSC does not have the authority to obtain this information. The [IUR amendments] would be a first step in obtaining information on product ingredients and provide a more efficient means of screening household chemicals for emerging hazards under the Chemical Hazard Program'' (Ref. 7).

Certain international organizations collect and utilize exposure-related information. The European Union (EU), in a regulation enacted in 1993 regarding the evaluation and control of existing substances (Ref. 8), requires chemical manufacturers and importers to report a variety of hazard and exposure information for the chemical substances they manufacture or import so that the EU can undertake preliminary risk evaluations and identify lists of priority substances which require special attention. Information on reasonably foreseeable uses of chemical substances is included in these reports. The types of use data collected under the EU regulation are similar to the types of use data that would be reported under this proposed rule.

The Organization for Economic Cooperation and Development (OECD) also recognizes the utility of exposure-related information. OECD sponsors an international cooperative effort designed to share the costs of chemical testing among its more than 20 member countries. This effort, called the Screening Information Data Set (SIDS) Program, has focused on securing

ecological and human hazard data for high production volume chemical substances. As this Program has evolved, the member countries have become more aware of the need to consider the contribution of exposure to estimates of potential chemical risks. At times, decisions to pursue followup risk management have been delayed until exposure information could be developed. Without exposure information for use in risk screening and risk assessment, sufficient information did not exist to determine potential risk. To ensure a consistent and accurate evaluation of potential exposures by the various member countries, OECD organized a meeting of designated national experts in occupational and environmental exposure assessment, including experts from the chemical industry and international agencies, to define the exposure-related data needed to support screening level prioritization decisions for chemical testing and risk assessment. The exposure data that are recognized as needed for SIDS screening-level determinations are very similar to the exposure data that would be reported under these amendments to the existing IUR (Ref. 9).

The successful use of exposure-related information in the development of risk estimates in EPA's New Chemicals Program (described in this unit) illustrates that the data reported under this proposed amendment to IUR would support EPA's risk screening of existing chemicals in commerce. EPA is proposing to collect readily obtainable exposure-related data that can be used to better establish priorities for its Existing Chemicals Program. The new IUR data elements included in this proposed rule are related to or are indicative of three components of exposure: The number of ecosystems or size of human populations potentially exposed (for example, data elements regarding number of sites, number of workers, and use in consumer products); the potential routes, magnitudes, and concentrations of exposures experienced by the environment or by humans (for example, data elements regarding function of chemical substances in industrial processes, physical form of chemical substances, industrial sectors where chemical substances are manufactured and used, average concentration, and maximum concentration); and the frequency and duration of potential exposures (for example, data elements regarding industrial function categories and commercial and consumer use categories). EPA intends to supplement the current data collected under IUR with additional data elements that would improve the Agency's ability to evaluate each of these components of exposure.

2. *Need to screen risks of inorganic chemical substances.* In this action, EPA is proposing to remove the IUR reporting exemption for inorganic chemical substances which currently exists at 40 CFR 710.26(a). The exemption exists because EPA believed in the past that the hazard potential of many inorganics was ''relatively well-established'' (50 FR 9944, 9947, March 12, 1985) and that information about these hazards was a sufficient basis for prioritization within inorganic chemical substance risk assessment. EPA now intends to increase the consideration given to exposure, another component of risk, in screening chemicals and in setting priorities for risk assessment and risk management activities due to its belief that chemical hazard information alone is an insufficient basis for prioritization for these purposes. EPA therefore believes that the basis for this exemption is no longer applicable. However, during interagency review it was suggested that EPA first collect the IUR information in Parts I., II., and IV. of the revised Form U on these substances before collecting processing and use information in Part III. of the revised Form U.

The need for additional basic information regarding production volume and other exposure-related data on the ongoing uses of inorganic chemical substances has been shown in a variety of ways. For example, the use of asbestos building materials led to the exposure of workers and other building occupants to asbestos. EPA has worked toward controlling and mitigating this exposure to asbestos. However, there is evidence that builders have unknowingly been incorporating new materials containing asbestos into buildings (Ref. 10). By including inorganic chemicals under the IUR, information needed to control exposure to asbestos in buildings would be made available to EPA. Such examples highlight the importance not only of production volume data, but of the use and other exposure-related data EPA may propose to collect through the IUR in the future.

At this time, EPA is proposing that inorganic chemicals would be subject to only partial IUR reporting. Partial reporting consists of the information in Parts I, II, and IV of revised reporting Form U, whereas full reporting consists of all information on the reporting form (see Unit VI. of this preamble). EPA is choosing to only require partial reporting on inorganic chemicals to allow the Agency to become familiar with information on inorganics; EPA does not generally require reporting of information on inorganics under the existing IUR. Partial reporting would identify inorganic chemicals that are produced in quantities large enough to report to IUR, and would allow EPA to generally become familiar with the production volumes of inorganic chemicals. In addition, limiting IUR reporting for inorganic chemicals to a partial report would allow manufacturers (including importers) of these chemicals, who may never have reported to IUR before, to familiarize themselves with the most basic IUR reporting requirements.

Because EPA and other IUR data users have a need for processing and use information on inorganic substances, EPA will review the need for full IUR reporting, i.e., all parts of revised reporting Form U, from manufacturers (including importers) of inorganic chemicals in the future. Based on EPA's review of the information submitted on inorganic chemicals in the first reporting period under these IUR amendments, EPA may propose to require full IUR reporting on inorganic chemicals by the second reporting period.

3. *Need for procedural reforms to IUR*—a. *Linking IUR data to other reporting.* EPA is undertaking a comprehensive facility identification initiative to improve coordination and comparability among different information reporting mechanisms. To facilitate this effort, EPA is establishing the Facility Registry System (FRS) as a central information resource of definitive facility information, which will link all facilities represented in EPA program data bases through common facility identification data elements. As part of the program, the FRS will include implementation of a new facility numbering system identifying each facility with a unique Facility Registration Identifier (FRI) which will be used for electronic and integrated reporting and central receiving. EPA and the States will develop the business rules for assigning the FRI to each facility and will determine how the number will be used in reporting. EPA anticipates releasing the first version of the FRS and the new numbering system in the fall of 1999.

In line with the FRS initiative, EPA is proposing to amend IUR so that future data collections include the reporting of the submitting plant site's FRI, as well as the county in which the plant site is located. Use of the new FRI number is

important to EPA and others in linking IUR information with information from other data bases, such as the Toxics Release Inventory (TRI).

In the alternative, should the FRS initiative not be underway at the time this proposed rule becomes final, EPA will require submitters to report the plant site's EPA identification number (ID), if it has one. The EPA ID is the 12-character number assigned to sites covered by the hazardous waste regulations under RCRA (40 CFR 262.12). For sites that have not been assigned an EPA ID, submitters would report this item as ''not applicable.'' Section 262.12 states that plant sites that generate hazardous waste can obtain an EPA ID by applying to the EPA Administrator using Form 8700-12 ''Notification of Regulated Activity.'' Upon receipt of such a request, the Administrator assigns an EPA ID number. Plant sites are required to report the EPA ID on RCRA manifests and biennial reports.

EPA also is proposing to amend the reporting basis from a corporate fiscal year basis to a calendar year basis. This amendment would make the information submitted under these amendments more consistent than the information submitted under the existing IUR because all submitters would refer to the same period of time when gathering reportable information. In addition, this amendment would make the IUR reporting schedule more comparable with other EPA reporting requirements, such as TRI, thereby increasing EPA's ability to link information from various data bases.

b. *Improving the process by which CBI claims are made.* IUR submitters currently have the ability to claim much of the information they report under the IUR as CBI. The ability to make CBI claims would continue under these amendments; however, EPA is proposing certain modifications to existing CBI policies in order to ensure that CBI claims are justified, and to facilitate the submission and subsequent release of non-confidential data.

TSCA section 14 provides that certain information may be claimed as confidential. The impact of a confidentiality claim on information is that the information may only be made available to properly trained Federal government employees and contractor employees. Accordingly, under most circumstances, non-Federal entities cannot be authorized for access to CBI data for independent assessment or other purposes. In addition to significantly increasing transaction costs, CBI claims can impact EPA's ability to use IUR data, because it is more difficult to justify risk screening, assessment and management decisions when data driving those decisions are CBI and cannot be publicly shared. While legitimate CBI claims protect valuable proprietary information, invalid claims thwart the Agency's goal of using TSCA data to support a wide variety of chemical management activities as intended by Congress.

Since the enactment of TSCA in 1976, the Agency has grappled with its related, but somewhat conflicting, obligations to protect CBI but also to make information available to the public. In 1990, the Agency initiated a program by which industry's TSCA CBI claims practices were examined and assessed (Refs. 11 and 12). The program revealed that the Agency's transaction costs are increased with CBI claims, the Agency's ability to use CBI data is limited, and CBI claims make it difficult to describe with specificity the facts necessary to justify chemical risk assessment and management decisions. The program also demonstrated that CBI claims prevent state governments engaging in chemical management activities from benefiting from access to TSCA CBI information (Ref. 13).

EPA's review of CBI claims practices also revealed that some CBI claims appeared to be unjustified. In some cases, certain information was claimed as confidential when the same information was available in a variety of publicly available sources such as newspapers, advertisements, and Internet websites. For example, site identity was at times claimed as CBI in IUR filings when that information was available in a variety of public documents. While it was widely accepted that the need for CBI protection for certain information expired over time, there was no mechanism which ensured that older CBI claims would be reviewed by the information submitter. The public increasingly questioned the validity of CBI claims over time as the overall credibility of industry's initial CBI claims was diminished.

One of the purposes of the CBI-specific IUR amendments is to ensure that CBI claims are valid at the time they are filed. Another purpose is to ensure that certain critical information, such as production volume information, is submitted in a way that generally enables the Agency to characterize industry-wide production volume, but that protects the specific CBI information involved. Finally, the new CBI amendments are intended to act as a mechanism that ensures that submitters periodically review older CBI claims and declassify information as their need for confidentiality ends.

Specifically, in an effort to increase the public availability of data and reduce transaction costs, EPA is proposing requirements in addition to those currently in place to require that submitters assert a separate CBI claim for production volume data reported in ranges; submitters substantiate CBI claims for plant site identity at the time the claims are made; and submitters reassert CBI claims for information claimed as CBI in past IUR filings. A detailed discussion of confidentiality issues is included in Unit VIII. of this preamble.

4. *Creating an exemption from IUR reporting for certain forms of natural gas.* EPA is proposing to add an exemption from IUR reporting to 40 CFR 710.26 for certain forms of natural gas. The six chemical substances that would be subject to this exemption are as follows: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

EPA currently believes that additional IUR information on these chemical substances would be of limited value in the execution of various assessment and testing programs because EPA believes that adequate IUR information on these chemical substances is available to fulfill EPA's current needs, and the current needs of other IUR information users.

B. Consideration of Alternative Data Sources

TSCA section 8(a)(2) states that, to the extent feasible, the Administrator of EPA shall not impose reporting requirements under TSCA section 8(a)(1) which are unnecessary or duplicative. In order to ensure that the reporting requirements proposed in these amendments are not unnecessary or duplicative, EPA considered the extent to which the data that would be gathered as a result of this rulemaking are available to EPA through existing public data collections.

The data collections considered by EPA include EPA sources such as the current IUR, the TSCA Preliminary Assessment Information Reporting (PAIR) rule (40 CFR part 712), the TRI, and the Use and Exposure Information Project (UEIP), as well as other Federal sources such as the National Occupational Exposure Survey (NOES). EPA has used these sources to support its chemical review program. Although

the sources can provide useful information, EPA has been unable to perform the large-scale screening necessary to screen the chemicals on the TSCA Inventory based on risk because of limitations in the existing data. Some sources are dated, others are narrow in coverage of data elements or limited to certain chemical substances, while others entail procedural complications which limit their effectiveness in meeting EPA's needs. Based on this review, EPA has concluded that these information sources, considered individually or in the aggregate, do not adequately substitute for the information EPA is proposing to collect in this rulemaking. A detailed description of the basis for this conclusion is provided in the several documents provided in the public record for this proposal. These documents are: ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' and ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA.'' These documents are listed at Unit X.A.2.a., Unit X.A.2.f., and Unit X.A.2.i. of this preamble respectively.

The following is a brief description of the extent to which each of these data collections includes exposure-related information (e.g., number of plant sites and workers, industrial and consumer uses, etc.), and whether they are sufficient for the risk-based screening of chemical substances listed on the TSCA Inventory. The documents mentioned in the preceding paragraph provide a more comprehensive and detailed discussion of existing exposure information data sources.

1. *The current IUR*. Although certain provisions in the current IUR would be amended by this action, many of its requirements would remain unchanged under these amendments. The existing IUR requires chemical manufacturers (including importers) to provide to EPA every four years the identity of chemical substances manufactured (including imported) in annual quantities of 10,000 lbs. or more at each plant site they own or control. The information required includes company name, plant site location, plant site Dun and Bradstreet number, the identity of the chemical substance, and the production volume of the chemical substance. The IUR has been a reliable source of production volume and site location data for organic chemical substances. Inorganic chemical substances are currently excluded from reporting.

Past approaches to the risk screening of chemical substances have been primarily based on relative chemical substance hazard, coupled with IUR production volume data. EPA has determined that production volume information alone is not typically adequate as a proxy for exposure information for purposes of risk assessment and risk screening (Ref. 14). In the past, the absence in IUR of exposure-related data beyond production volume data has severely limited the utility of IUR in a comprehensive screening program for chemicals in commerce.

2. *PAIR rule*. PAIR, which was promulgated under TSCA section 8(a), requires any person who manufactures (including imports) a particular chemical substance during the indicated reporting year to complete and submit a form that requests a variety of information pertaining to the manufacture and processing of TSCA chemicals. In some ways this information is similar to the information that would be reported under these amendments to IUR, while in other ways the information reported under PAIR is different.

Information reported under PAIR includes, but is not limited to, the following: chemical and company identity, plant site location, annual volume manufactured (including imported), plant site and customer activities (i.e., whether the substance is manufactured or used as a reactant or nonreactant, and whether operations are enclosed, controlled release or open), workers and worker hours, and types of industrial products (i.e., whether the substance is produced in pure form or incorporated into a mixture or article), and whether environmental releases occur (see 40 CFR 712.28). This information, on a per report basis, is both broader and narrower than the proposed IUR amendments information. For instance, release information is collected under PAIR, but would not be collected under the proposed IUR amendments. At the same time, PAIR reporting does not include information which can identify uses by specific consumer groups or NAICS codes, whereas the proposed IUR amendments would require the reporting of such information by certain entities. Duplicative reporting under both PAIR and IUR is avoided under the existing IUR regulations at 40 CFR 710.35, and would be avoided under the proposed IUR amendments as well.

The TSCA Interagency Testing Committee (ITC) determines which chemical substances are included on the TSCA section 4(e) Priority Testing List. PAIR rules are primarily used to collect information on those chemicals the ITC is considering designating for testing under TSCA section 4 (40 CFR 712.30). PAIR reporting is done on a one-time basis in response to the publication of a chemical-specific rule amendment, as opposed to the IUR which, in a single rule, requires recurring reporting for a large group of chemicals. About 458 chemicals have been subject to PAIR reporting as of September 1996, and 360 companies have submitted 1,668 reports (See ''Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/ Production Quantity Analysis,'' available in the public record for this proposal, and listed at Unit X.A.2.b. of this preamble). Other features of PAIR include a reporting threshold of 500 kg/ yr/site and reporting based on a corporate fiscal year.

Both PAIR and IUR could potentially be utilized to require the reporting of data regarding a greater number of chemical substances than the IUR currently covers. For example, the current IUR exemption for polymers and low volume chemicals could be eliminated, or a PAIR rule could be used to collect information for these exempted chemicals.

There are two major differences between reporting under IUR and PAIR other than differences in specific data elements. One of the differences is that IUR requires the reporting of information every 4 years, while PAIR requires the reporting of information on a one-time basis. However, the chemical industry is dynamic, and 30% of the chemicals for which IUR information was reported in 1990 were not reported in 1994. Because the industry is dynamic, the information it would report under the IUR amendments could change from reporting year to reporting year. Therefore, the information collected under these amendments would present a view of exposure to chemical substances that recognizes chemical industry dynamics which PAIR rules are not able to reveal. The other major difference between IUR and PAIR is that IUR requires the reporting of information on a large number of chemical substances during each reporting period, whereas each PAIR rule typically covers only one or a much more limited group of chemical substances. As discussed above, information on a large number of chemicals is necessary for the effective implementation of a chemical screening program.

3. *Toxics Release Inventory (TRI).* EPCRA section 313 and section 6607 of the Pollution Prevention Act (42 U.S.C. 13106(b)) require certain facilities that manufacture, import, process, or ''otherwise use'' EPCRA section 313 listed toxic chemicals at or above specified thresholds to annually report their releases and other waste management activities regarding such substances. The reporting thresholds are generally 25,000 lbs. per year for chemicals that are manufactured (including imported) and processed, and 10,000 lbs. per year for chemicals that are otherwise used. Included in the report is the following information: Chemical identity, facility identity, parent company identity, certain general activities and uses of the chemical at the reporting facility, the maximum amount on-site, releases on-site and quantities sent off-site for disposal, quantities combusted for energy recovery and recycled both on-site and off-site, and on-site waste treatment methods and efficiencies.

Only about 650 chemicals and chemical categories are currently reportable, including chemicals excluded from TSCA jurisdiction such as pesticides, and chemicals currently exempt from the IUR, such as inorganics. This list consists of fewer than 1% of the chemicals listed on the TSCA Inventory. In addition, facilities subject to the reporting requirements of EPCRA section 313 are limited to specific SIC codes and Federal facilities. Only facilities with 10 or more full-time employees are currently required to report. About 22,000 facilities report to TRI.

TRI data are useful for screening and assessing releases from industrial facilities for site-specific assessments of potential general population or environmental exposures to populations near facilities that manufacture, process or use EPCRA section 313 listed toxic chemicals. However, the TRI universe of chemicals is limited to a small portion of the chemicals on the TSCA Inventory. Also, TRI does not contain worker exposure and use data. These data, along with a larger universe of chemicals than is included in the TRI, are needed to accomplish the type of broad based chemical screening process that would be possible under the proposed IUR amendments.

4. *National Occupational Exposure Survey (NOES).* In 1983, NIOSH completed a systematic effort to collect data on potential occupational chemical, physical, and biological exposure agents in a representative sample of businesses. The sample was designed to be representative of virtually all of the non-agricultural, non-mining, and non-governmental businesses covered under the Occupational Safety and Health Act (OSH Act) of 1970. The survey consisted of observational data collected at 4,490 establishments by NIOSH surveyors through field visits, which included walk-through surveys and interviews of employees at the establishments. To develop nationwide samples from the data, the survey results were multiplied by a weighting factor. A description of the survey and the data base can be found in the public record for this proposal (Ref. 15).

The NOES data base includes information on plant site location, plant site SIC code, plant site occupational safety and health programs, occupational titles of workers potentially exposed, number of employees per occupational title, process steps, and product trade names. EPA has frequently used the NOES survey to estimate the total number of workers potentially exposed per chemical per SIC code; to estimate the number of chemical manufacturing, processing, and use sites; to rank potential exposures; and to develop exposure assessments.

Now over 15 years old, the NOES data have become progressively dated, and as a consequence, less representative of current exposure situations. In light of this shortcoming, EPA believes that the NOES data base cannot substitute for the up-to-date data base that EPA would develop with the proposed IUR amendments.

5. *Use and Exposure Information Project (UEIP).* The UEIP is a program developed jointly by EPA and chemical manufacturers. It provides a method for chemical manufacturers to voluntarily send readily obtainable use and exposure information to EPA for chemical substances entering the Existing Chemicals Program's screening assessment process. A sample UEIP data submittal package is included in the public record for this rulemaking (Ref. 2). The program started in the fall of 1992 and was developed after CMA and SOCMA asked EPA what the chemical industry could do to help strengthen EPA's Existing Chemicals Program. EPA explained that accurate use and exposure information was not available and that better information in this area was a key need. A joint industry/EPA workgroup was formed to address this need, to define relevant exposure data, and to develop a data transfer process for industry to effectively transmit data to EPA. More recently, the API and CSMA have endorsed and participated in further development of this project.

In the UEIP, manufacturers (including importers) voluntarily report production volume, site location, environmental releases, number of potentially exposed workers, monitoring data, industrial and consumer uses, and percent of production volume attributed to a given use. For any given chemical substance, the data transmitted to EPA via UEIP are more detailed than the data EPA would receive as a result of these IUR amendments. Upon receipt of UEIP data from manufacturers and importers, EPA prepares an exposure profile. The UEIP program is limited by agreement among the parties to obtaining data on no more than 40 chemical substances per year. The screening information that would be generated by this proposal would assist with the selection of chemical substances for inclusion in the UEIP program.

The UEIP program has yielded important advances for EPA's risk assessment and risk management efforts for several chemical substances. For example, exposure assessments based on the UEIP data have in some instances obviated the need for additional testing or followup risk management action for certain chemical substances under the SIDS program. However, the proposed amendments to IUR would include a wider range of chemicals than the UEIP and therefore would address the need for exposure-related data from across a wider segment of the chemical industry.

6. *Use Cluster Scoring System (UCSS).* EPA has developed the UCSS to identify potential risks of, and to establish regulatory review priorities for, chemical substances used in similar applications, or ''use clusters'' (Ref. 16). For example, instead of evaluating a single chemical used as a paint stripper, the UCSS evaluates the exposures and risks posed by the entire set of chemical substances that are used as paint strippers.

The UCSS evaluates exposure based on information from several sources. Although the UCSS has proven to be a valuable tool in conducting screening level exposure assessments, some of the sources of UCSS data are dated and some of the methods used to further develop the data are not yet validated for accuracy. Some of these data are discussed briefly below.

Use volume estimates are obtained from past EPA studies and commercial market reports. These sources are very limited in the number of uses covered and the detail of use information. Only large volume uses (100,000 kilograms/year or more) of chemical substances are usually captured in commercial market studies. These studies are further discussed in the document entitled, ''A

Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA,'' available in the public record for this rulemaking and listed at Unit X.A.2.i. of this preamble.

Consumer use data are obtained from internal data bases (such as EPA's Indoor Air Chemical Database) and the Hazardous Substances Data Bank (HSDB), a database of Department of Transportation (DOT) information compiled by the National Library of Medicine. Each of these data bases, however, contains limited consumer use information for a small number of chemicals. These data bases are further discussed in the document entitled, ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' and in ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA,'' both of which can be found in the public record for this proposal and which are listed at Unit X.A.2.f. and Unit X.A.2.i. of this preamble.

Environmental release estimates are obtained from the TRI. The UCSS is not limited to TRI chemicals; however, no comprehensive sources of release data are available for non-TRI chemical substances. While the UCSS contains data from the Biennial Reporting System (BRS), these data are not used by UCSS to rank potential exposures. BRS, a data base maintained by EPA's Office of Solid Waste, is a collection of information on the quantity, management, and minimization of hazardous solid or liquid wastes from facilities that generate and/or manage these wastes. Information is identified by the RCRA waste codes. These waste codes identify the type of waste and frequently describe mixtures of chemicals; they do not provide information on the waste stream composition. This lack of composition information makes it difficult to determine the quantity of an individual chemical substance in the waste. Therefore, there is little information to use to determine potential exposures.

Estimates of the number of potentially exposed workers and the number of chemical processing and use sites are obtained from the NOES and the Bureau of Census' Census of Manufacturers. As in Unit V.B.4. of this preamble, the NOES data (developed by NIOSH) are over 15 years old and contain uncertainties due to the age of the data as well as sampling errors and systematic biases. The Census of Manufacturers data are not chemical-specific; chemical-specific or use-specific conclusions are therefore based upon data provided by four-and six-digit SIC codes when Census of Manufacturers data are used.

A recent review of the UCSS by EPA's Science Advisory Board (Ref. 17) found that ''the cluster scoring system heavily weights exposure data. . . Unfortunately, there are no easily accessible data on exposure.'' The proposed amendments to the IUR would create a data source that would be used to augment the information in the UCSS, giving EPA a tool for use in prioritizing chemical clusters in a way that is consistent with the Science Advisory Board's suggestions (Ref. 16). Because the exposure information sources used to support many of EPA's existing chemical assessments are essentially the same as those relied upon by the UCSS, this comment is generally applicable to most of EPA's efforts to assess exposure to existing chemical substances.

7. *Other data sources.* Other data sources that have been considered are listed in the ''Inventory of Exposure-Related Data Systems Sponsored by Federal Agencies'' (Ref. 18). This document is a compilation of information on federally managed data systems that contain exposure information. These systems access collections of analytical results that assess environmental media such as air, soil, or water as well as analytical results from food, human samples, or bulk chemicals.

Each of the data bases described in the document is of limited utility due to a small or specialized sample size, the limited number of chemicals, or the age of the data. None of the data bases, either alone or combined, provide the Agency with the full array of screening level data on chemical substances that would be collected by the proposed amendments to IUR.

The information in available data systems does not provide a sufficiently clear picture of the potential for chemical exposure. Some of the systems are regional, rather than national in scope. Several systems cover only a very limited set of chemical substances, or a limited number of chemical uses, or only specific industry sectors. Several systems collect information on categories of pollutants or on waste streams rather than on specific chemical substances, making it difficult to use the data in chemical risk screening. Many of these systems collect monitoring data which are frequently media-specific (e.g., air or water), but do not collect information on the potential sources of chemical releases to the environment. This proposed rule would provide the exposure information needed for screening the chemical substances included on the TSCA Inventory for potential risk.

VI. Amendments Affecting All Manufacturers (Including Importers)

As discussed in detail in Unit VI.B. of this preamble, plant sites that manufacture (including import) a chemical substance in annual quantities of 25,000 lbs. or more would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. This information relates to basic site identification, manufacturing information, and CBI reassertion. Sites that manufacture (including import) a chemical substance in annual quantities of 300,000 lbs. or more would be required to report the information in Part III. of Reporting Form U in addition to the information in Parts I., II., and IV. This additional information relates to the processing and use of chemical substances.

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(IMPORTANT: Type only, read instructions before completing from) PAGE 1 of ___

EPA

FORM U 2001

U.S. Environmental Protection Agency

Washington, DC 20460
Partial Updating of TSCA Inventory Data Base
Production and Site Report
(Section 8(a) Toxic Substances Control Act, 15 U.S.C. 2607)

REPORT NUMBER

Mark "X" here if this is a revision to a previous report

Previous Report Number

PART I. FACILITY IDENTIFICATION INFORMATION

SECTION I. CERTIFICATION

Certification Statement: I hereby certify to the best of my knowledge and belief that (1) all information entered on this from is complete and accurate; and (2) the confidentiality statements on the back of this form are true and correct as to that information for which I have asserted a confidentiality claim.

1.1 Signature | 1.2 Date | 1.3 Name | 1.4 Title

SECTION II. COMPANY INFORMATION

2.1 Company Name | 2.2 Company Dun & Bradstreet

2.3 Technical Contact Name | 2.4 Telephone (with Area Code)

Company Street Address		Company Mailing Address Check if Same	
2.5 Address (Line 1)		2.10 Address (Line 1)	
2.6 Address (Line 2)		2.11 Address (Line 2)	
2.7 Company City		2.12 City	
2.8 State	2.9 Zip Code	2.13 State	2.14 Zip Code

SECTION III. PLANT SITE IDENTIFICATION

3.1 Plant Site Name | 3.2 EPA Facility Identification Number | 3.3 Plant Site Dun & Bradstreet

Plant Site Street Address		Plant Site Mailing Address Check if Same	
3.4 Address (Line 1)		3.10 Address (Line1)	
3.5 Address (Line 2)		3.11 Address (Line 2)	
3.6 City	3.7 County	3.12 Address City	
3.8 State	3.9 Zip Code	3.13 State	3.14 Zip Code

EPA Form Number <XXXX-X> (Rev 6/28/99) - Previous editions are obsolete
Form Approved OMB Number: XX/X-XXXX

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REPORT NUMBER

PART II. MANUFACTURING INFORMATION

SECTION I. CHEMICAL IDENTIFICATION		CBI
1.1 Chemical Identifying Number	1.2 Id Code	
1.3 Chemical Name		

SECTION II. BASIC MANUFACTURING INFORMATION							
2.1 Company Information	CBI						
2.2 Plant Site CBI	CBI	2.3 Site limited (Y/N)		CBI	2.4 Activity (M or I)		CBI
2.5 Production Volume (LB)				CBI	2.6 Production Volume range		CBI

SECTION III. MANUFACTURING EXPOSURE RELATED DATA									
3.1 Number of workers (code)		CBI	3.2 Physical Form (code)		CBI	3.3 Maximum Concentration (code)		CBI	3.4 Average Concentration (code)		CBI

PART III. PROCESSING AND USE INFORMATION

Complete Part III, section I and II only if the production volume noted in Part II, Section II 2.5 is greater than or equal to 100,000 lb/year

SECTION I. INDUSTRIAL PROCESSING AND USE EXPOSURE RELATED DATA												N/A
	a. Process or Use (code)	CBI	b. 5-digit NAICS Code	CBI	c. Industrial Function Category (code)	CBI	d. % Production Volume	CBI	e. Number of Sites (code)	CBI	f. Number of Workers (code)	CBI
1.1												
1.2												
1.3												
1.4												
1.5												
1.6												
1.7												
1.8												
1.9												
1.10												

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REPORT NUMBER

SECTION II. CONSUMER AND COMMERCIAL END-USE EXPOSURE RELATED DATA								N/A
	a. Consumer and Commercial Product Category (code) CBI	b. % Production Volume CBI	c. Maximum Concentration (code) CBI		a. Consumer and Commercial Product Category (code) CBI	b. % Production Volume CBI	c. Maximum Concentration (code) CBI	
2.1				2.2				
2.3				2.4				
2.5				2.6				
2.7				2.8				
2.9				2.10				

PART IV. REASSERTION OF PAST CBI CLAIMS

1.1 If an IUR report was submitted to EPA for the last reporting cycle for the chemical identified in Part II, Section I, Item 1.1 from the plant site listed in Part I, Section III, enter that report number in the space provided.	Last IUR Report Number

1.2 Do you wish to reassert CBI claims made on your last IUR report?

☐	NO	If you check "**NO,**" all the information you have previously claimed CBI on IUR's for this chemical will be **DECLASSIFIED AND PUBLICLY RELEASED WITHOUT FURTHER NOTICE.** This includes any reassertions made on your last IUR report.
☐	YES, all	***SEE BELOW**
☐	YES, some	If you check "**YES, some,**" include with this report an amended IUR report indicating the specific changes you wish to make in your CBI claims. ***SEE BELOW**

*** If you checked either of the "YES" boxes above, any data which you continue to claim CBI must qualify for this protection per 40 CFR 710.38. If any of your answers to the substantiation questions listed in 40 CFR 710.38 and submitted with your original CBI claim (which you now wish to re-assert) have changed, please submit amended answers together with this Part IV.**

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EPA will make available detailed instructions for completing the reporting form before the effective date of the final rule. EPA also intends to encourage electronic submissions of the final form. The procedures for electronic submissions will be made available before the effective date of the final reporting rule.

A. Amendments to Substances Covered by IUR

1. *Inorganics.* EPA is proposing to require partial reporting for inorganic chemical substances (i.e., Parts I., II., and IV. of revised Reporting Form U, but not Part III.), most of which are presently excluded under the current IUR regulations at 40 CFR 710.26(a). As discussed in Unit V.A.2. of this preamble, EPA intends to screen potential risks associated with inorganic chemical substances to set priorities for testing, more detailed risk assessment and potential risk management. The removal of the IUR reporting exemption for inorganic chemical substances would allow EPA to gather information important for effective risk screening and priority setting.

2. *Petroleum process streams.* EPA is proposing to exempt as a class certain chemical substances termed ''petroleum process streams'' from a portion of the amended IUR's reporting requirements. For purposes of this proposed rule, the petroleum process streams included in the exemption would be the multi-component complex chemical substances listed by Chemical Abstracts Service (CAS) Registry Number in the proposed regulatory text at § 710.26(d). The reporting excluded by this exemption would be the exposure-related data contained in Part III. of Revised Reporting Form U. The chemical substances listed as petroleum process streams in the proposed regulatory text were derived from the 1983 publication of the API entitled ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)'' (Ref. 19). Chemical substances listed in the API document consisting of a single component chemical, except for water, would not be considered petroleum process streams for IUR reporting purposes.

This exemption is not being proposed because these streams are of known low toxicity. In fact, EPA believes that several petroleum process streams are toxicologically active; however, EPA believes that it, as well as other IUR information users, will not have a need in the near future for full IUR reporting on petroleum process streams. EPA will take action to revoke this exemption if its needs change. About 5,850 of the about 24,000 IUR reports submitted to EPA during the 1994 reporting period were for chemical substances that fit the definition of petroleum process streams. Therefore, this proposed exemption is expected to significantly reduce submitters' reporting burdens from the burden that would exist without the exemption.

3. *Natural gas.* EPA is proposing to exempt certain forms of natural gas from IUR reporting. The chemical substances that would be covered by this exemption are the following: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

EPA believes that adequate IUR information collected on these chemical substances to date is available to fulfill EPA's current needs, and the current needs of other IUR information users. EPA specifically requests comment on whether IUR reporting for these six natural gas substances should be required in upcoming reporting periods, and whether the six CAS numbers identified are the appropriate natural gas substances for inclusion in this exemption. EPA will take action to revoke this exemption if its needs change in the future. Approximately 1,225 of the 24,000 IUR reports submitted to EPA during the 1994 reporting period were for the six chemical substances included in this proposed exemption. Therefore, this proposed exemption would likely result in a beneficial burden reduction for IUR submitters.

B. Amendments to Reporting Thresholds

EPA is proposing to raise the IUR reporting threshold from a production volume of 10,000 lbs. per year to 25,000 lbs. per year. Every person manufacturing (including importing) a non-excluded substance at or above the threshold would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. The increased IUR reporting threshold would make the IUR and TRI reporting thresholds equivalent at 25,000 lbs. per year for manufacturers (including importers). These thresholds are also approximately equal to the recently amended PMN low volume exemption threshold of 10,000 kg (approximately 22,000 lbs.). EPA is proposing to raise this reporting threshold in order to reduce the number of reports filed, thus reducing industry burden. The new reporting threshold does not represent a finding of low exposure or low risk.

EPA is also proposing a second, higher-volume threshold of 300,000 lbs. per year. Persons who manufacture (including import) a non-excluded substance at or above this level would be required to report the information in Part III. of Revised Reporting Form U in addition to the information in Parts I., II., and IV. The information reported under Part III. relates to the processing and use of chemical substances. EPA recognizes that the requirement that processing and use information be reported would impose a burden on industry. EPA originally considered proposing a higher-volume threshold of 100,000 lbs. per year; however, in the interest of further reducing the paperwork burden imposed on industry, EPA is proposing a higher-volume threshold of 300,000 lbs. per year. EPA is proposing this separate threshold to limit exposure data reporting to a subset of a few thousand IUR reportable chemicals.

The new, higher thresholds proposed in this action are consistent with a report from the General Accounting Office (Ref. 20), which recommended that, ''. . .the inventory could be more useful to EPA and other interested parties if it initially focused on a smaller number of the highest-priority chemicals known to present risks to health and the environment and was expanded as necessary.'' EPA considered a number of different thresholds between 10,000 lbs. and 50,000 lbs. for basic IUR information and between 10,000 lbs. and 10,000,000 lbs. for processing and use information (See ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' available in the public record for this rulemaking and listed in this preamble at Unit X.A.2.f.). EPA examined each of these options in light of the benefits that would be obtained from the information collected, EPA's ability to utilize that information, and the burden imposed on the public to provide the information. EPA concluded that processing and use information would be highly valuable (see Ref. 14), but that EPA would likely focus initially on larger volume chemical substances.

In order to retain information on potential substitutes for the larger volume chemical substances, but at the same time reduce the public reporting burden, EPA initially considered proposing a 100,000 lb. higher-volume reporting threshold for processing and use information to reduce the paperwork burden on industry. Although EPA believes a 100,000 lbs.

higher-volume threshold would provide valuable information, EPA is proposing that this threshold be set at 300,000 lbs. in an attempt to further reduce paperwork burden on submitters. EPA believes that this effort to further reduce the paperwork burden, as well as the Agency's other efforts to minimize burden in this proposed rule, is consistent with the Paperwork Reduction Act. EPA seeks public comment on the proposed threshold and on the other alternative thresholds analyzed in the Economic Analysis (listed in Unit X.A.2.f. of this preamble).

EPA still believes that information concerning lower production volume chemical substances is valuable, especially for identifying trends and additional substitute chemicals, but EPA also recognizes the importance of limiting the reporting burden when the need for the data is generally less great. In the future, EPA may find it necessary to collect information on chemicals at reporting thresholds below the thresholds proposed in this action. Although both proposed thresholds are significantly higher than the current IUR 10,000 lbs. threshold, EPA believes that the enhanced information it would receive under this rule at the proposed thresholds would enable the Agency to more efficiently identify those chemical substances warranting further, more in-depth regulatory review (see Ref. 14).

The new, higher reporting thresholds would result in a reduction in the number of currently reportable chemicals. However, this reduction would be partially offset by the elimination of the exemption for inorganic chemical substances. Under the current IUR, EPA receives reports on about 8,900 chemical substances. The Agency estimates that raising the reporting threshold from 10,000 lbs. to 25,000 lbs. reduces the number of reportable chemicals to about 7,800, while deleting the exemption for inorganic chemical substances would increase the number of reportable chemicals by about 1,200. Of the approximately 8,900 reportable chemical substances expected under the IUR amendments, about 4,050 would likely be produced in volumes of 300,000 lbs. or more and would require the completion of the entire revised reporting form.

C. Amendments to Reporting Period and Frequency

Under the current IUR regulations at 40 CFR 710.33(b), submitters are required to report on a recurring basis between August 25 and December 23 every 4 years (''the reporting period''). EPA is not proposing to change this requirement. However, the current IUR regulations indicate that the information reported during each reporting period is from the submitter's latest complete corporate fiscal year prior to the reporting period. In order to standardize reporting time frames across IUR submitters and across various other reporting programs, such as the TRI program, the Agency is proposing to change this IUR reporting scheme from a fiscal year reporting basis to a calendar year reporting basis. This would mean, for example, that the information that would be reported during the reporting period from August 25 to December 23 in the year 2002 would be from calendar year 2001.

D. Amendments to Recordkeeping Requirements

Currently, the Inventory regulations at 40 CFR 710.37 require submitters to retain records on IUR reports for 4 years. In these amendments to IUR, EPA is proposing that persons subject to the rule be required to retain records that document information reported for 5 years after the end of the relevant reporting period. For example, if a person submits an IUR report in the reporting year 2002, that person would be required to retain the records on which the report is based until December 31, 2007. This change, which would assist EPA's enforcement of the IUR, would result in the requirement that submitters maintain records that span successive reporting periods, which would continue to occur every 4 years as under the existing IUR.

Persons who are not required to report under the existing IUR because they manufacture less than the 10,000 lb. reporting threshold are required to retain volume records as evidence to support a decision not to submit a report. In this rulemaking, EPA is proposing that this provision be eliminated because EPA believes that this information is of the type that companies would routinely retain in the normal course of business.

E. Amendments to Reportable Data Elements

The new and revised data elements that would be reported under the rule are discussed in this section. Data elements that are currently reported under IUR but that would not be revised by these amendments (such as company information, Part I., Section II. of Revised Reporting Form U; site-limited activity, Part II., Section II.; and manufacturer/importer activity, Part II., Section II.) are not generally discussed because EPA is not reopening these data elements for comment. Although certain CBI issues are mentioned in this section (see Unit VI.E.3. of this preamble, for example), changes to CBI procedures are discussed more completely in Unit VIII. of this preamble.

1. *Plant site identification (Part I., Section III. of Revised Reporting Form U).* EPA currently requires the following information to be reported for each plant site at which a reportable chemical substance is manufactured (including imported) in amounts greater than the reporting threshold: the plant site name, Dun and Bradstreet number, street address, city, state, and zip code. The site for a chemical substance importer is the site of the operating unit within the importer's organization that is directly responsible for importing the substance and that controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.

EPA believes additional plant site identifiers would allow for full integration of IUR data with other ''place-based'' environmental data collected by EPA or states under other regulatory authorities into multi-source and function data bases. By facilitating this integration, the Agency would be better able to address its obligations under TSCA section 10, and would thereby achieve the intended TSCA goal that information collected under the Act be made easily accessible to a wide variety of governmental and nongovernmental entities. With data integrations, TSCA data could be fully utilized as a ''feedstock'' for a wide variety of chemical management activities.

Providing linkages and achieving integration for environmental data across various data bases are important EPA goals under TSCA. While it was always intended that TSCA data be made available to chemical managers, until relatively recently, the primary user of TSCA data has been OPPT and the TSCA data systems were designed with this user in mind. Over the last several years, however, TSCA data has been sought by a wide variety of Federal, State and private organizations. For example, several States routinely contact the Agency to gain access to TSCA data that might be useful for their implementation of both State laws and Federally delegated laws. As demand has increased, EPA has recognized that the existing TSCA data systems do not always efficiently address the needs of the non-OPPT user.

Another benefit associated with fully integrating TSCA data into multi-source and function data bases is that duplicative information collections would be more easily identified and

eliminated. Finally, improved linkages among data bases would provide the public with access to additional information at little or no burden to the regulated community.

EPA is proposing to require the reporting of two identifiers for each plant site reporting under IUR:

a. The Facility Registration Identifier (FRI) (if the plant site has one).

b. The county or parish (or other jurisdictional indicator) in which the plant site is located.

EPA is establishing the Facility Registry System (FRS) as a central resource of facility information, which will link all facilities represented in EPA program data bases through common facility identification data elements. The FRS will include a new facility numbering system identifying each facility with a unique Facility Registration Identifier (FRI) which will be used for electronic and integrated reporting and central receiving. The business rules for assigning an FRI to each facility will be developed by EPA and the States. EPA anticipates releasing the first version of the FRS and the new numbering system in the fall of 1999. The first reporting year under the final IUR amendments should occur after this system is in effect. For sites that have not been assigned an FRI, submitters would report this item as ''not applicable.''

In the alternative, should the FRS initiative not be underway at the time this rule becomes final, EPA will require submitters to report the plant site's EPA identification number (ID), if it has one. The EPA ID is described by the 12-character number assigned to sites covered by the hazardous waste regulations under RCRA (40 CFR 262.12). This number is further described in Unit V.A.3.a. of this preamble. For sites that have not been assigned an EPA ID, submitters would report this item as ''not applicable.''

The TRI program has demonstrated that many public and private sector organizations find it useful to aggregate release data by county or parish of reporting plant sites when evaluating chemical risks. EPA believes that there is merit to including similar geographic identifiers in future IUR reporting so that similar aggregations of IUR data can be generated. The two proposed plant site identifiers will facilitate improved linkages of the IUR information to other data bases, enabling the Agency to perform more comprehensive risk screening, assessment, and management activities.

2. *Chemical identification (Part II., Section I. of Revised Reporting Form U).* The IUR currently requires manufacturers (including importers) to report both the specific chemical substance name and the Chemical Abstracts Service (CAS) Registry Number of each reportable chemical substance manufactured (including imported) in amounts over 10,000 lbs. per year. EPA is proposing to require that chemicals be identified only by EPA Accession Number, PMN case number or Inventory reporting form number when the CAS Registry Number is unknown to the submitter. Other previously used substitute identifying numbers (such as EPA-assigned numbers for Test Market Exemption applications) would not be allowed because they cannot be efficiently cross-referenced to CAS Registry Numbers.

3. *Confidentiality of production volume range.* In addition to the requirement that specific production volume be reported, EPA is proposing to amend the IUR to allow submitters to claim a pre-determined production volume range corresponding to the reported production volume number as CBI. This claim would be separate from a CBI claim for the specific production volume. Production volume range reporting is included in these amendments because EPA believes that the availability of range information is less likely to raise CBI concerns than the availability of specific production volume figures. Accordingly, EPA expects that the confidentiality claim rates will be roughly 50% lower for the reporting of volume ranges than for the reporting of specific volumes. EPA's expectation of reduced CBI claims for production volume ranges is based on the CBI claim statistics associated with the development of the original TSCA Inventory (See ''Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information,'' available in the public record for this rulemaking and listed at Unit X.A.2.g. of this preamble) as well as comments received from industry (Ref. 21). If this expectation is correct, the public would have greater access to data on chemical production volumes, and the Agency would be better equipped to publicly release more data relevant to its risk screening decisions.

EPA is proposing to use the following production volume ranges for future CBI determinations:

- At least 25,000 but less than 100,000 lbs.
- At least 100,000 but less than 1,000,000 lbs.
- At least 1,000,000 but less than 10,000,000 lbs.
- At least 10,000,000 but less than 50,000,000 lbs.
- At least 50,000,000 but less than 100,000,000 lbs.
- At least 100,000,000 but less than 500,000,000 lbs.
- At least 500,000,000 but less than 1,000,000,000 lbs.
- At least 1,000,000,000 lbs.

These ranges were first used in the development of the original TSCA Inventory, except that the proposed ranges start at the proposed IUR reporting threshold of 25,000 lbs. rather than the existing 10,000 lb. threshold.

4. *Number of potentially exposed workers (Part II., Section III. of Revised Reporting Form U).* Workers involved in chemical manufacturing (including importing), processing and use are a subpopulation of concern to EPA, the Occupational Safety and Health Administration (OSHA) (Ref. 22), the National Institute of Occupational Safety and Health (NIOSH) (Ref. 23), and other organizations. Workers may often be exposed to chemical substances in higher doses and with greater frequency than the general population, and so are potentially at greater risk of adverse health effects. Accordingly, EPA and other organizations believe that it is important to be able to estimate the number of workers potentially exposed to specific chemical substances when developing priorities for testing, more detailed risk assessment, and risk management.

EPA is proposing to use ranges for the reporting of certain quantitative estimates, including number of workers and number of processing sites (see Unit VII.A. of this preamble), instead of requiring the reporting of specific values. In general, EPA believes that reporting these estimates in ranges has two advantages over requiring the reporting of specific values:

a. Range reporting would reduce the potential burden to submitters of developing a precise point estimate for the data element.

b. Range reporting should reduce CBI claims because ranges tend to reveal less sensitive information than specific estimates while still conveying information useful to more effectively screen chemical risks.

Submitters would be permitted to claim the reported ranges as confidential if even revealing this general information would disclose CBI.

EPA is proposing to require reporting of the range code that corresponds to the submitter's estimate of the total number of workers reasonably likely to be exposed to each reportable chemical substance at each reporting plant site. EPA is proposing to define ''reasonably

likely to be exposed'' as an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than to not occur. Such exposures would normally include, but not be limited to, exposure during activities such as charging reactor vessels; drumming; bulk loading; cleaning equipment; maintenance operations; materials handling and transfers; and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact or absorption, contact with personal protective equipment, etc.), but excludes accidental or theoretical exposures. The use of protective equipment or engineering controls to minimize worker exposures cannot be used by submitters as a rationale for lowering their estimates of the total number of exposed workers.

EPA has considered using the OSHA hazard communication standard's (29 CFR 1910.1200) definition of exposed worker for amended IUR reporting. The Hazard Communication Standard defines ''employee'' as a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered. The Standard also defines ''exposure'' or ''exposed'' as the subjection of an employee to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g. accidental or possible) exposure. In EPA's view, this definition is overly broad for IUR purposes and for use in exposure assessments. The definition, for OSHA's purposes, was intended to be protective in order to ensure that all workers that could conceivably be exposed to a chemical substance would receive hazard communication. EPA solicits comment on the definition of ''reasonably likely to be exposed'' that the Agency has selected for this proposed rule.

The proposed ranges for reporting the estimated number of potentially exposed workers are as follows:

- Less than 10.
- At least 10 but less than 25.
- At least 25 but less than 50.
- At least 50 but less than 100.
- At least 100 but less than 250.
- At least 250 but less than 500.
- At least 500 but less than 1,000.
- At least 1,000 but less than 10,000
- At least 10,000.

5. *Physical Form (Part II., Section III. of Revised Reporting Form U).* EPA is proposing to require submitters to report the physical form of each reportable chemical substance as it leaves their sites. EPA believes that the physical form of a chemical is an important factor to consider when estimating magnitudes and concentrations of potential exposures. Two technical documents that support this proposed rule, entitled, ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' and ''Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/ Production Quantity Analysis,'' both available in the public record for this proposal (listed at Unit X.A.2.a. and Unit X.A.2.b. of this preamble), state that an EPA data analysis demonstrated that information regarding the physical form of chemical substances provides an indication of potential chemical exposures to the environment or to humans. EPA is proposing that submitters would select the category that best describes the physical form of the chemical as it leaves their site. In the event the submitter ships a chemical in more than one physical form, the submitter must report the code corresponding to the physical form of the majority of the chemical manufactured (including imported). The proposed categories for reporting the physical form are as follows:

- Dry powder.
- Pellets or large crystals.
- Water- or solvent-wet solid.
- Other solid.
- Gas or vapor.
- Liquid.

The Agency recognizes that, for some chemical substances, the physical form of the substance at the time it leaves the submitter's site may not be the same physical form of the substance during processing and use; the Agency believes that such substances constitute a minority of all reportable chemical substances, and that it can, based on its knowledge of work practices in many industrial sectors, successfully identify many of the substances that undergo changes in physical form during processing and use. Therefore, to limit submitters' reporting burdens, EPA is proposing that physical form reporting be limited to the physical form of the substance at the time it leaves a submitter's site. Comments are invited on this proposed approach.

6. *Average and maximum concentration in commercial products (Part II., Section III. of Revised Reporting Form U).* EPA is proposing to require submitters to report the average and maximum concentration, measured by weight, of the reportable chemical substance as it leaves their sites in a commercial product. EPA believes that concentration is an important factor to consider when estimating magnitudes of potential exposures. Information related to average concentration is valuable when estimating the potential for concerns due to chronic exposures, while information related to maximum concentration is useful when estimating the potential for concerns due to acute exposures. EPA frequently uses models to estimate potential human inhalation and dermal exposures (Ref. 24). In the absence of concentration data, EPA often assumes that human inhalation and dermal exposures are the result of exposures to undiluted chemicals. Chemical substance concentration data would allow EPA to generate less conservative exposure estimates for chemicals that are diluted prior to processing or use.

Information about the average and maximum concentration of a chemical substance present at processing and use sites is used in chemical risk screening in EPA's New Chemicals Program. Estimates of maximum concentration assist EPA in establishing the maximum concentrations to which the environment and workers might be exposed by releases from industrial settings. For example, EPA has developed standard methods to estimate dermal exposures that workers may experience while performing common industrial operations such as sampling and loading chemicals into drums. If EPA is aware that a chemical substance is not processed or used at concentrations above a certain level, exposure estimates may be adjusted accordingly.

The following is the list of proposed concentration codes for use in IUR reporting under the proposed rule:

- Less than 1% by weight.
- 1 - 30% by weight.
- 31 - 60% by weight.
- 61 - 90% by weight.
- Greater than 90% by weight.

The Agency is proposing that reporting on concentrations be limited to concentrations at the time the chemical substance leaves the submitter's site, for the reasons discussed in Unit V.E.6. of this preamble.

VII. Amendments Affecting Larger Volume Manufacturers (Including Larger Volume Importers)

As discussed in Unit VI.B. of this preamble, EPA is proposing to replace

the current IUR reporting threshold of 10,000 lbs. per year with two new reporting thresholds of 25,000 lbs. per year and 300,000 lbs. per year. Every person manufacturing (including importing) a reportable substance at or above the 25,000 lbs. threshold would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. Persons who manufacture (including import) a reportable substance at or above the 300,000 lbs. threshold would be required to report the information in Part III. of Revised Reporting Form U in addition to the information in Parts I., II., and IV. Part III. relates to the processing and use of chemical substances.

Process is defined in 40 CFR 710.2 as ''the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.''

Process for commercial purposes means ''to process (1) for distribution in commerce, including for test marketing purposes, or (2) for use as an intermediate.''

Based on these definitions, processing includes incorporating a reportable chemical substance into a formulation, an article, or a product. EPA is proposing to define ''use'' as ''any utilization of a chemical substance or mixture that is not otherwise covered by the terms manufacture or process. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.''

TSCA section 8(a) authorizes EPA to require persons to report information that is ''known to or reasonably ascertainable by'' them (see proposed regulatory text § 710.2). Under the proposed amendment, the submitter would be required to report processing and use information only to the extent that such information is ''readily obtainable'' by the submitter's management and supervisory employees responsible for manufacturing, processing, distributing, technical services, and marketing (see proposed regulatory text § 710.2). Extensive file searches would not be required. The ''readily obtainable'' standard proposed for processing and use information requires less effort on the part of the submitter than the ''known to or reasonably ascertainable by'' standard that applies to all other IUR reporting. The Agency believes that the ''readily obtainable'' reporting standard would provide processing and use information of a sufficient precision for use in screening level reviews. Reducing the precision to ''readily obtainable'' from ''known to or reasonably ascertainable by'' for processing and use information also lowers the reporting burdens for many submitters. Moreover, the proposed reporting standard for processing and use information under these IUR amendments is the same standard currently in effect under PAIR (See 40 CFR 712.7).

Much of the additional information required under Part III. of Revised Reporting Form U would be provided in ranges, rather than discrete values, as described in more detail in this unit. EPA preliminarily determined that the planned use of information such as percent production volume, number of sites, number of potentially exposed workers, average concentration, and maximum concentration does not warrant the reporting of discrete values. In addition, the use of ranges for certain data elements would reduce reporting burdens, yet provide sufficient information for screening level analyses. EPA also believes that the use of ranges would greatly diminish CBI claims for information reported.

EPA considered the option of requiring processing and use reporting by larger volume manufacturers (i.e., those manufacturers that reach the 300,000 lbs. threshold) based upon submitter owned or controlled sites alone versus customer owned or controlled sites in addition to submitter owned or controlled sites. EPA preliminarily determined that manufacture, processing, and end use of the chemical substance were important to examining the potential exposure scenarios for a chemical substance, but that it did not matter if the processing or use site was submitter controlled or not. In addition, restricting the reporting of this information to submitter owned or controlled sites alone would not capture much of the information needed regarding the processing and use of reportable chemicals. Therefore, EPA decided to require the reporting of processing and use information readily obtainable by the submitter, including information based upon submitters' sites as well as their customers' sites.

The two general types of information that would be reported under Part III. of Revised Reporting Form U are industrial processing and use information and commercial and consumer use information.

A. Processing and Use Information (Part III. of Revised Reporting Form U)

EPA is proposing to require submitters to report the information described in Unit VII.A.1-5. of this preamble concerning the processing and use of each reportable chemical substance that are conducted both at sites the submitter controls and at sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.).

1. *Industrial process or use code (Part III., Section I.a. of Revised Reporting Form U).* The first item of reportable information under this proposed section is the industrial process or use code. The proposed categories for reporting the industrial processing and use are:

- Processing - as a reactant.
- Processing - incorporation into a formulation or mixture.
- Processing - incorporation into an article.
- Processing - repackaging.
- Use - non-incorporative activities.

Repackaging would be defined for purposes of IUR reporting under the proposed rule as the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce. This definition, therefore, would not include sites which only relabel or redistribute the reportable chemical substance without removing the chemical substance from the container in which it is received or purchased.

2. *The North American Industrial Classification System (NAICS) Code and Industrial Function Category (Part III., Section I.b. and c. of Revised Reporting Form U).* EPA is proposing to require submitters to report the five-digit NAICS code(s) that best describe(s) the industrial activities at the sites under the control of the submitter, as well as at the sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), and that process and use the reportable chemical substance (Ref. 25). The NAICS codes, published by the Office of Management and Budget (OMB), have superseded OMB's prior system of Standard Industrial Classification (SIC) Codes. EPA is proposing that, to the extent the information is readily obtainable, submitters will report on industrial processing and use of chemical substances they manufacture after the chemical substances have passed

through distributors or other distribution or shipping systems. EPA does not intend for manufacturers (including importers) to survey their customers or distributors to precisely identify the appropriate NAICS codes at their ''downstream'' sites.

The NAICS code classification system is being used in this application solely to describe the industrial setting in which there may be chemical exposures associated with the industrial processing or use of a chemical substance. The submitter would be required to report all known and readily obtainable NAICS codes for the reportable chemical substances it manufactures (including imports). If the submitter is aware of more than 10 NAICS codes that describe the industrial activities at sites that process and use the reportable chemical substance, the submitter would be required under this proposed rule to report only the 10 NAICS codes that cumulatively represent the largest percentage of production volume, measured by weight. This limitation on reporting is intended to minimize submitters' reporting burdens.

EPA is also proposing to require submitters to report the industrial function categories associated with each NAICS code for each reportable chemical substance that is processed or used for industrial purposes. EPA believes that a NAICS code and industrial function category combination sufficiently define a potential exposure scenario for risk screening and priority-setting purposes. Two technical documents that support this proposed rule, entitled ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' and ''Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis,'' both found in the public record for this rulemaking (listed at Unit X.A.2.a and X.A.2.b. of this preamble), describe studies that demonstrate that information regarding the industrial sectors where a chemical substance is produced and used and information regarding the function that a chemical substance performs within industrial processes provide indications of the route, magnitude, and concentration of potential chemical exposures to the environment and to humans.

Industrial function categories are helpful in estimating the frequency and duration of chemical substance exposures. For example, EPA has found that the relationship between industrial function categories and the frequency and duration of exposure to chemical substances is particularly useful in developing exposure assessments for the New Chemicals Program. Similarly, data elements such as the number of sites and the number of workers enable the Agency to better estimate the scope of potential exposure. These data elements are important pieces in developing the most accurate exposure scenarios possible. In the absence of this data, EPA often assumes, for chemical risk screening purposes, that workers are exposed to chemical substances for full 8–hour work days for the duration of their careers. The data that would be obtained under these proposed amendments to IUR would enable EPA to make more realistic characterizations of exposure, instead of ''worst case'' assumptions.

Industrial function categories would be reported by selecting from the following list of proposed industrial function category codes for chemical processing and use:

- Adhesives and binding agents.
- Adsorbents and absorbents.
- Aerosol propellants.
- Agricultural chemicals (non-pesticidal).
- Anti-adhesive agents.
- Bleaching agents.
- Coloring agents, dyes.
- Coloring agents, pigments.
- Corrosion inhibitors and anti-scaling agents.
- Fillers.
- Fixing agents.
- Flame retardants.
- Flotation agents.
- Fuels.
- Functional fluids.
- Intermediates.
- Lubricants.
- Odor agents.
- Oxidizing agents.
- pH-regulating agents.
- Photosensitive chemicals.
- Plating agents and metal surface treating agents.
- Process regulators, used in vulcanization or polymerization processes.
- Process regulators, other than polymerization or vulcanization processes.
- Processing aid, not otherwise listed.
- Reducing agents.
- Solvents (for chemical manufacture and processing and are not part of the end product at greater than one percent by weight).
- Solvents (for cleaning or degreasing).
- Solvents (that become part of product formulation or mixture).
- Stabilizers.
- Surface active agents.
- Viscosity adjustors.
- Other.

As described in the document entitled, ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening'' (listed at Unit X.A.2.a. of this preamble), these industrial function categories have been developed and defined based on a review of different chemical function classification systems (including the systems used in the Premanufacture Notification, UCSS, UEIP, and EU programs), as well as development of data pertinent to the potential media of releases, potential quantities released, potential worker exposures, and potential incorporation into commercial and consumer products for each industrial function category. This list of specific categories is not meant to be exhaustive, therefore, an ''other'' category is provided for miscellaneous uses not captured in the listed categories. These categories address a wide range of industrial chemical processing and use functions, and are likely to be revised as analysis of reported IUR data is further refined over time.

3. *Percentage of production volume attributable to each combination of NAICS code and industrial function category (Part III., Section I.d. of Revised Reporting Form U).* EPA is proposing to require submitters to estimate the percentage of production volume that is attributable to each reported combination of NAICS code estimate and industrial function category, to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, under the proposed rule, a particular NAICS code/industrial function category (NAICS/IFC) combination which accounts for 5% or less of the total production volume of a reportable chemical substance would not be permitted to be rounded off to zero if the production volume attributable to that NAICS/IFC combination is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that NAICS/IFC combination to the nearest 1% of production volume. This exception to the general rounding off rule is being proposed to ensure that adequate use information is reported for the very large production volume chemical substances. The 300,000 lbs. level was selected for consistency with the proposed threshold for reporting exposure and use data.

4. *Number of sites (Part III., Section I.e. of Revised Reporting Form U).* For risk screening purposes, the number of sites at which chemical substances are manufactured (including imported), processed and used is a useful indicator of the number of ecosystems and the size of the general population potentially exposed to the chemical substances. EPA is proposing to require submitters to report an estimate of the total number of industrial sites, including those beyond the submitter's control, that process or use each reported chemical substance manufactured (including imported) by the submitter, as described by each combination of NAICS code estimate and industrial function category.

The ranges that would be used for reporting the number of sites are as follows:

- Less than 10.
- At least 10 but less than 25.
- At least 25 but less than 100.
- At least 100 but less than 250.
- At least 250 but less than 1,000.
- At least 1,000 but less than 10,000.
- At least 10,000.

EPA recognizes that there is a possibility of double-counting sites, for example, where two or more submitters manufacture (including import) the same reportable chemical substance and each sends the chemical substance to the same industrial processing or use site. However, because the Agency is proposing that the number of sites be reported in the specified ranges, it believes the impact of double-counting sites will not significantly affect the use of these estimates for screening purposes. In the event a submitter both manufactures (including imports) and processes or uses the same reportable chemical substance at the reporting plant site, the site should be counted as both a manufacturing site in Part II. of Revised Reporting Form U, and as a processing or use site reported in Part III. of Revised Reporting Form U.

5. *Number of workers (Part III., Section I.f. of Revised Reporting Form U).* As discussed in Unit V.A. of this preamble, information related to the exposure of workers to chemical substances is of particular interest to EPA and other organizations. EPA is proposing to require submitters to report an estimate of the total number of workers reasonably likely to be exposed while processing or using the reportable chemical substance as described by each combination of NAICS code estimate and industrial function category. These combinations relate to sites under the control of the submitter as well as sites that receive a reportable chemical substance from the submitter either directly or indirectly (see Unit VII.A.2. of this preamble). The approximate number of workers reasonably likely to be exposed during processing and use would be reported using the same definitions and codes described under Unit VI.E.4. of this preamble. The only difference in reporting worker exposure information under this section is that such information need be reported only to the extent that it is readily obtainable.

EPA recognizes that there is also a possibility of double-counting workers at industrial processing and use sites, for example, when two or more submitters manufacture the same reportable chemical substance and each ships the chemical substance to the same processing or use site. Because EPA is proposing that the number of workers be reported through the use of broad ranges, EPA believes the impact of double-counting workers will not significantly affect the use of the estimates for risk screening purposes. In addition, it will be possible to estimate the maximum potential magnitude of double counted workers at processing and use sites because the total number of manufacturers (including importers) will be known to EPA.

B. Commercial and Consumer Use Information (Part III., Section II. of Revised Reporting Form U)

EPA is proposing to require submitters to report the information described in Unit VII.B.1-3. of this preamble concerning the commercial and consumer uses of each reportable chemical substance that is manufactured (including imported) at sites the submitter controls and at sites controlled by persons to whom the submitter has either directly or indirectly (including through a broker/distributor or from a customer of the submitter, etc.) distributed the reportable chemical substance. As with the industrial processing and use information described in Unit VII.A. of this preamble, this requirement would apply only to each chemical substance manufactured (including imported) in annual quantities of 300,000 lbs. or more and submitters would only be required to report information to the extent that it is readily obtainable.

For purposes of IUR reporting, a commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or a service, such as painting contractors using paint products. A consumer use, on the other hand, means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas. Exposures to commercial and consumer products are similar for risk screening purposes because existing assessment methods are not sophisticated enough to distinguish between these exposures.

Consumers comprise a subpopulation of particular concern to EPA, the Consumer Products Safety Commission (CPSC), and other organizations. Information from submitters on whether the chemical substances they manufacture (including import) are used in consumer products is useful in estimating the potential risks to consumers that result from chemical exposures. EPA often assumes, for risk screening purposes, that large, unprotected populations may potentially be exposed to the chemical substances in consumer products. EPA plans to propose a test rule to develop hazard data regarding chemicals in consumer products to which children are exposed. The consumer product information that would be reported under these IUR amendments would be used by EPA in the identification of chemicals that might be included in the test rule.

1. *Commercial and consumer product categories (Part III., Section II.a. of Revised Reporting Form U).* Commercial and consumer product categories are helpful in estimating the frequency and duration of chemical substance exposures. In the absence of other information, consumers are often assumed to experience less controlled, but less frequent exposures than workers. The data that would be obtained under these proposed amendments to IUR would enable EPA to make more realistic characterizations of exposure, instead of ''worst case,'' overly conservative assumptions.

The proposed commercial and consumer product categories were developed based on a review of various data sources including national usage surveys of consumer products, product emissions testing, and exposure monitoring data (See ''Technical Support Document: Technical Approach for the Selection of Consumer End-Use Categories for the Inventory Update Rule,'' available in the public record for this proposal and listed at Unit X.A.2.h. of this preamble). This review identified an extensive list of consumer products and provided subsequent categorization of these products by common characteristics, such as use scenarios, into major groupings of commercial and consumer products. The list is not meant to be comprehensive, therefore, an ''other'' category is provided for

miscellaneous commercial and consumer products not captured in the categorization system. Further details about the categories, including their development and definitions, are provided in the technical support document described in this paragraph.

The proposed categories for reporting commercial and consumer products are:

- Adhesives and sealants.
- Artists' supplies.
- Automotive care products.
- Electrical and electronic products.
- Fabrics, textiles and apparel.
- Glass and ceramic products.
- Lawn and garden products (non-pesticidal).
- Leather products.
- Lubricants, greases and fuel additives.
- Metal products.
- Paints and coatings.
- Paper products.
- Photographic chemicals.
- Polishes and sanitation goods.
- Rubber and plastic products.
- Soaps and detergents.
- Transportation products.
- Wood and wood furniture.
- Other.

2. *Percentage of production volume attributable to each commercial and consumer product category (Part III., Section II.b. of Revised Reporting Form U).* EPA is proposing to require submitters to estimate the percentage of their production volume for each reportable chemical substance that is attributable to each specific commercial and consumer end-use carried out at sites under the control of the submitter, as well as at sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, under the proposed rule, a commercial and consumer product (CCP) category which accounts for 5% or less of the total production volume of a reportable chemical substance would not be permitted to be rounded off to zero if the production volume attributable to that CCP category is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that CCP category to the nearest 1% of production volume. This exception to the general rounding off rule is being proposed to ensure that adequate use information is reported for the very large production volume chemical substances. The 300,000 lbs. level was selected for consistency with the proposed threshold for reporting processing and use data (see Unit VI.B. of this preamble).

3. *Maximum concentration, measured by weight in commercial and consumer products (Part III., Section II.c. of Revised Reporting Form U).* EPA is proposing to require each submitter to report estimates, in ranges, of the maximum concentration (measured by weight) of each reportable chemical substance likely to be present in commercial and consumer products manufactured (including imported) at sites under the submitter's control and at sites where the submitter's commercial and consumer products are distributed directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). As with the other information in this section, such information would be required only to the extent that it is readily obtainable by the submitter. The proposed reporting range codes are the same as those listed in Unit VI.E.6. of this preamble.

VIII. Confidentiality

A. Asserting Claims

Submitters are able to claim certain information submitted to EPA under this proposed rule as confidential if they have reason to believe that release of the information would reveal trade secrets or confidential commercial or financial information, as provided by section 14 of TSCA and 40 CFR part 2. Claims of confidentiality must be asserted at the time information is submitted to EPA. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, subpart B. EPA strongly encourages submitters to review confidentiality claims carefully to ensure that the information in question falls within the protection of TSCA section 14 and to limit confidentiality claims as much as possible.

To claim information as confidential, a submitter must check the appropriate box and sign the certification statement on the reporting form. If a submitter failed to do so, EPA could release the information to the public without further notice to the submitter. As in the last three TSCA Inventory Update collections and the initial TSCA Inventory collection and as reflected in the regulations, by signing the certification statement the submitter certifies that its claims of confidentiality are made in good faith. Procedures for claiming information submitted electronically (such as a submission on diskette) as confidential will be specified in the reporting rule instruction manual. CBI should not be submitted by e-mail. A discussion on proposed procedures and policies for making CBI claims in the context of this proposed rule is provided in this unit.

B. Chemical Identity

Under the existing IUR, confidentiality claims for chemical identity can only be made for those chemicals listed on the confidential portion of the Inventory. A submitter must currently assert a separate claim of confidentiality for specific chemical identity when submitting an IUR report. To assert a claim of confidentiality for the identity of a chemical substance which is confidential on the TSCA Inventory, submitters are currently, and would continue to be, required to indicate the claim on the IUR reporting form and provide a detailed substantiation of the claim as specified in 40 CFR 710.38. If a submitter fails to substantiate the chemical identity CBI claims in accordance with the applicable regulations, EPA may make the information available to the public without further notice to the submitter. EPA is not proposing to change these requirements.

C. Manufacturing Plant and Plant Site Information

Under IUR, a submitter may assert a claim of confidentiality for the specific manufacturing plant and plant site information if it is believed that release of that identity would reveal trade secrets or confidential commercial or financial information as provided by TSCA section 14. In past IUR information collections, in excess of 15% of IUR information submitters have claimed plant site name as CBI. While the Agency does not question the occasional need for this claim, it believes that these claims should be limited to only those circumstances in which it is absolutely necessary. The Agency has identified instances in which submitters have claimed plant site name as confidential yet this same information was found in such public filings as material safety data sheets and State and Federal permits. Overall, approximately 20% of the 1994 IUR reports contained CBI claims for plant site information. The IUR does not currently require upfront substantiation of CBI claims for plant site information. In these amendments to IUR, EPA is proposing a new upfront substantiation requirement for CBI claims for plant site information.

EPA has observed that, on occasion, plant site information has been claimed as confidential even though it was revealed in filings required under

sections 311, 312 and 313 of EPCRA. EPA believes that many of these CBI claims are inappropriate and that the new substantiation requirement would reduce the occurrence of inappropriate claims. A decrease in the number of CBI claims under the new substantiation requirement would facilitate EPA's ability to make current plant site information available to other Federal agencies and the public because more information submitted under IUR could be released publicly.

Under this proposed rule, in order to assert a claim of confidentiality for plant site information, the submitter would be required to both check the appropriate box on the reporting form indicating a confidentiality claim for plant site information, and to substantiate the claim in writing by answering certain questions provided in § 710.38(d)(1) of the proposed rule. If a submitter fails to substantiate the plant site CBI claim in accordance with the applicable regulations, EPA may make the information available to the public without further notice to the submitter.

D. Chemical Production Volume Information

Under IUR, a submitter may assert a claim of confidentiality for production volume information if the release of that information would reveal trade secrets or confidential commercial or financial information as provided by section 14 of TSCA. EPA is not proposing to change this.

EPA observed that, in the last three IUR reporting periods when EPA sought actual production volume information, over 65% of the information was claimed as confidential. In contrast, overall CBI claims for production volume information in the original TSCA Inventory collection were 35%; this information, however, was collected in ranges. This high proportion of CBI claims in IUR reports has limited EPA's ability to convey to the public plant site production volume information. Because over 95% of the chemicals reported under IUR are manufactured at three plant sites or less, these CBI claims also greatly hinder EPA's ability to create national aggregate statistics on overall chemical production for specific chemical substances. For example, if EPA publishes a national aggregate production volume for a chemical substance that is manufactured at three plant sites and one site claims its production volume CBI and the other two do not, it might be possible to calculate the CBI production volume by difference. In such a case, EPA would not release aggregate data because of its responsibility to protect the CBI claim of the one submitter. However, EPA needs to be able to convey chemical substance production volume information to the public to explain its chemical risk assessment and risk management decisions. Effective communication of this information is vital to EPA's overall mission. To address this problem and yet acknowledge industry's legitimate concerns about this data element, EPA is proposing to require submitters to report both actual plant site chemical production volume information and a corresponding production volume range. Separate CBI claims could be made for each.

EPA is proposing to use the production volume ranges that are similar to those that were successfully used in the implementation of the original TSCA Inventory collection. Proposed production volume ranges for use in this action are listed in Unit VI.E.3. of this preamble. EPA anticipates that the CBI claim rates will be around 50% lower for the reporting of volume ranges than for the reporting of specific claims (See ''Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information,'' available in the public record for this proposal and listed at Unit X.A.2.g. of this preamble).

EPA is seeking to develop and use ranged chemical production volume information at the suggestion of industry representatives following a dialogue with the public about TSCA CBI claims. In correspondence, an industry representative noted that manufacturers were less sensitive about ranged production volume information than specific numbers (Ref. 21). The representative suggested that collecting information on ranges similar to those used under the original TSCA Inventory might reduce the incidence of CBI claims for production volume information and facilitate EPA information dissemination goals. In this proposed rule, EPA would seek chemical production volume information and would use that information to make a production volume range assignment. EPA intends to use the production volume information in the creation of national statistics, whereas the ranged production volume data may be most useful in the creation of information products conveying site-specific chemical information.

E. Reasserting Claims

Submitters would use Part IV. of Revised Reporting Form U to reassert CBI claims made in their previous IUR reporting. CBI claims made in IUR submissions prior to 2002 (the first IUR reporting year under these amendments) would be not be subject to this reassertion requirement.

Since 1990, EPA has been engaged in a dialogue with the public on issues associated with TSCA CBI. During this dialogue, industry has confirmed EPA understanding that the need for certain confidentiality claims is reduced or eliminated over time. What was considered CBI to a submitter during one reporting cycle may not be considered CBI in subsequent years. Some information submitted to EPA with CBI claims is subsequently released by the submitter to the public because the submitter no longer believes that the claims are necessary. The result is that some information submitted to EPA is withheld by EPA from the public for long periods, at additional cost to the Agency and with no appreciable advantage to the submitter. This situation complicates EPA's efforts to make information available to potential users, including other Federal agencies, State and local chemical management authorities and local communities, secure the participation of the public in EPA's chemical management efforts, and in other ways allow for the effective EPA implementation of TSCA.

EPA is proposing new procedures to ensure that there is an ongoing need by the submitter for continued CBI protection. Under the proposed procedures, manufacturers (including importers) would be required, in subsequent reporting periods, to affirmatively represent the need for the continued CBI protection of the claims made in previous IUR reporting periods. To illustrate, for data submitted to EPA in the year 2010, a manufacturer (including importer) would be required to affirmatively represent on the reporting form that: (1) The specific CBI claims made for the first time in reporting year 2006 and (2) the specific CBI claims reasserted in reporting year 2006 continue to be necessary in order to protect trade secrets or confidential commercial or financial information as provided by TSCA section 14. The CBI certification statements would be contained in Part IV. of Revised Reporting Form U for the convenience of the submitter. If either certification is not provided by the submitter, EPA would assume that the submitter is waiving those claims of confidentiality to the underlying information contained in the earlier filings and the information would be subject to public disclosure without further notice.

This policy would be applied even if the submitter is not required to report in the present reporting period due to low production volume or other applicable exclusions. In other words, if a submitter who asserts a CBI claim in a prior reporting period is not required to report under the current IUR reporting period, that submitter must file a certification regarding its prior CBI claim during the current reporting period if it wishes to retain the claim. Again, CBI claims made in IUR submissions prior to 2002 (the first IUR reporting year under these amendments) would not be subject to this reassertion requirement.

EPA will undertake certain precautions in order to ensure that persons that make CBI claims in IUR submissions in the 2002 reporting period and subsequent reporting periods are aware of the requirement that these claims be reasserted, as appropriate, in subsequent reporting periods in order to retain CBI protections. Prior to each IUR reporting period, EPA will send an IUR reporting package to each person who submitted an IUR report or CBI reassertion in the previous reporting period. This package will contain a cover letter which will: (1) Remind the submitters of the reassertion requirements and (2) advise that failure to affirmatively reassert prior CBI claims will result in the removal of CBI protections for this information. The package will also contain a reporting form and reporting instructions which will reiterate these reminders. In addition, EPA will publish a **Federal Register** notice at least 2 weeks before the end of each reporting period which will remind members of the public who have not reasserted their prior CBI claims of the pending declassification of these claims if they do not reassert by the end of the reporting period.

In addition to the reminders related to CBI reassertion that are specifically proposed in this document, EPA also intends to publicize the need to reexamine and reassert past CBI claims via the EPA/OPPT Homepage on the Internet, and in communications with trade association publications.

It has been suggested that EPA additionally send a followup certified letter to persons who were sent IUR reporting packages, but who fail to indicate their intention to reassert/not reassert previous CBI claims by the end of the reporting period. The intent of the letter would be to further notify submitters that they need to reevaluate their past CBI claims and reassert them, as appropriate. EPA believes that this additional step would be costly and would result in an inefficient use of Agency resources. For example, if a submitter does not receive the reporting package mailed by EPA because the submitter's address was changed between the last IUR reporting period and the current reporting period (EPA sends packages to the addresses submitted during the previous reporting period), the submitter likewise would not receive a followup letter from EPA sent to the same incorrect address. As discussed above, before each reporting period ends, EPA is proposing to publish a **Federal Register** notice which EPA believes would reach a far broader audience than individual letters would. EPA seeks comment on the issue of whether means beyond those proposed in this action are needed to better inform submitters of the requirement that they reexamine their past CBI claims and reassert them, as appropriate, in order to retain CBI protections.

IX. Request for Comment and Notice of Public Meeting

The comment period for this proposed rule will extend until October 25, 1999. EPA will hold a public meeting on Monday, October 4, 1999, from 9 a.m. to noon at the EPA Auditorium, 401 M St., SW., Washington, DC 20460 to provide an opportunity for the public to present oral comments.

The following is a list of issues on which the Agency is specifically requesting public comment. EPA encourages all interested persons to submit comments on these issues, and to identify any other relevant issues as well. This input will assist the Agency in developing a rule that successfully addresses information needs while minimizing potential reporting burdens associated with the rule. EPA requests that commenters making specific recommendations include supporting documentation where appropriate.

1. What (if any) specific mechanisms or sources of data could EPA use to acquire the exposure-related information sought in this proposed rule with greater ease and less burden to industry?

2. EPA initially considered proposing a larger-volume threshold for the reporting of processing and use information of 100,000 lbs. per year per site, rather than the 300,000 lbs. per year per site threshold proposed in this document. EPA analyzed a number of alternative thresholds in the Economic Analysis (listed in Unit X.A.2.f. of this preamble). EPA is specifically seeking comment on the question of whether this threshold should be modified.

3. During the interagency review process, it was suggested that EPA consider proposing a partial reporting exemption for ''low priority'' chemicals. Manufacturers of these chemicals could be exempt from reporting the exposure-related data contained in Part III. of the reporting form. At one point during the development of this proposal, EPA considered developing such an exemption, but was unable to develop a satisfactory rationale for the exemption. Therefore, EPA seeks comment on the criteria the Agency might use to establish such an exemption. EPA also solicits comment on the specific chemicals that would qualify for such an exemption.

During the interagency review process, various lists of chemicals were suggested as candidates for such a ''low priority'' partial exemption. EPA would be interested in comments on the alternative lists described below, as well as any other suggested set of chemicals.

One set consists of those chemical substances that: (1) EPA has previously determined to be of low concern under the Existing Chemicals Program and (2) for which EPA has a minimum set of hazard and exposure data. This could include chemicals for which the following exist: (1) A complete set of basic test data as specified in the OECD's Screening Information Data Set (SIDS) Manual; (2) the UEIP data set (submitted by at least two-thirds of the manufacturers of the subject chemical substance based on the most recent IUR report); and (3) a determination by EPA's Existing Chemicals Program that the chemical substance is a ''low priority.''

An alternative set is the list of chemical substances that the European Union exempted from its reporting requirements for existing substances (Ref. 8, Annex II).

A third option for a ''low priority substances'' partial exemption is the list of high production volume chemical substances that are not considered candidates for testing under the HPV Challenge Program (Ref. 26). This list currently consists of the following 41 chemicals:

CAS Number	Chemical Name
50–70–4	Glucitol, D-
50–99–7	D-Glucose
56–81–5	Glycerol
57–50–1	Sucrose
69–65–8	Mannitol, D-
124–38–9	Carbon dioxide
1592–23–0	Stearic acid, calcium salt
7440–44–0	Carbon
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–26–1	Linseed oil
8001–29–4	Cottonseed oil
8001–30–7	Corn oil
8001–31–8	Coconut oil
8001–78–3	Castor oil, hydrogenated
8001–79–4	Castor oil
8002–03–7	Peanut oil
8002–75–3	Palm oil
8006–54–0	Lanolin
8016–28–2	Lard oil
8016–70–4	Soybean oil, hydrogenated
8021–99–6	Charcoal, bone
8029–43–4	Syrups, hydrolyzed starch
9050–36–6	Maltodextrin
16291–96–6	Charcoal
61788–61–2	Fatty acids, tallow, Me esters
61789–97–7	Tallow
61789–99–9	Lard
64147–40–6	Castor oil, dehydrated
64755–01–7	Fatty acids, tallow, calcium salts
68188–81–8	Grease, poultry
68334–00–9	Cottonseed oil, hydrogenated
68409–76–7	Bone meal, steamed
68425–17–2	Syrups, hydrolyzed starch, hydrogenated
68439–86–1	Bone, ash
68476–78–8	Molasses
68514–27–2	Grease, catch basin
68514–74–9	Palm oil, hydrogenated
68525–87–1	Corn oil, hydrogenated
68952–94–3	Soaps, stocks, vegetable-oil
73138–67–7	Lard, hydrogenated

Alternatively, it was suggested that EPA create a ''low priority chemicals'' list by identifying chemicals that are present on both the European Union list and the HPV Challenge Program list. Currently, the following chemicals are included on both of these lists:

CAS Number	Chemical Name
50–70–4	Glucitol, D-
50–99–7	D-Glucose
57–50–1	Sucrose
69–65–8	Mannitol, D-
124–38–9	Carbon dioxide
1592–23–0	Stearic acid, calcium salt
7440–44–0	Carbon
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–26–1	Linseed oil
8001–30–7	Corn oil
8001–79–4	Castor oil

CAS Number	Chemical Name
9050–36–6 61788–61–2	Maltodextrin Fatty acids, tallow, Me esters

4. During the interagency review process, it was suggested that the information the Agency would collect under the IUR amendments might be duplicative of existing reporting for manufacturers and importers of petroleum chemicals, who may also be required to report to the Department of Energy's (DOE) Energy Information Administration. Under the existing IUR 4 year reporting cycle, if a manufacturer or importer of a petroleum chemical meets the 10,000 lbs. reporting threshold, they must complete EPA Form U to report to EPA. Under the proposed IUR amendments, if a manufacturer or importer of a petroleum chemical meets the proposed 25,000 lbs. reporting threshold, they must complete Parts I., II., and IV. of Revised Reporting Form U. The proposed IUR amendments exempt these entities from reporting the proposed processing and use information in Part III. of revised reporting Form U (see Unit VI.A.2. of this preamble). In addition, EPA is proposing to fully exempt certain forms of natural gas from IUR reporting (see Unit VI.A.3. of this preamble).

It has been suggested that information provided to DOE in forms EIA 810, EIA 816, and EIA 64A might duplicate the information that would be provided to EPA under the proposed IUR amendments. Operators of domestic natural gas processing plants must complete form EIA 64A to provide an annual report of the origin of natural gas liquids production to DOE. Operators of all operating and idle petroleum refineries, blending plants or blending terminals must complete form EIA 810 to provide a monthly refinery report on their operations to DOE. Operators that extract liquid hydrocarbons from a natural gas stream and/or separate a liquid hydrocarbon stream into its component products must complete form EIA 816 to provide a monthly natural gas liquids report to DOE.

EPA is concerned about potential reporting duplication and is specifically requesting comments on whether such duplication exists, what specific information may be duplicated, and whether the information collected by DOE would satisfy the proposed IUR reporting requirements. EPA will also work with DOE to identify potential duplication, and investigate the potential utility of the information reporting to DOE in fulfilling EPA's statutory obligations under TSCA. Your comments will further inform EPA's evaluation of this issue.

5. EPA is proposing to require only partial IUR reporting for inorganic chemicals, i.e. only the information in Parts I., II., and IV. of Form U would be reported by manufacturers of inorganic chemicals. Full IUR reporting for inorganic chemicals, i.e. all parts of Form U, including the processing and use-related data elements in Part III., would be considered for a future amendments to the IUR regulations. Alternatively, EPA could adopt a phased-in approach to full reporting for inorganics, e.g., partial reporting for inorganic chemicals could be required in the first reporting year, followed by full reporting in subsequent reporting years. EPA solicits public comment on the proposed and alternate approaches.

6. During the interagency review process, it was suggested that the Agency limit the reporting of processing and use information on Part III. of Revised Reporting Form U to manufacturers and importers of high production volume (HPV) chemicals in the U.S. (i.e., are produced in amounts equal to or greater than 1 million pounds), chemicals that are currently subject to testing under TSCA section 4 (i.e., test rules and enforceable consent agreements (ECAs)), chemicals identified for voluntary testing, chemicals designated for testing by the ITC, and chemicals listed in the Agency's Master Testing List (the current edition is available at http://www.epa.gov/opptintr/chemtest/mtl.htm). This would mean that, for example, in order to determine whether or not a chemical is an HPV chemical, a manufacturer or importer would not only need to know their own production volume, but also whether the chemical is produced nationally in amounts equal to or greater than 1 million pounds. In order to determine whether a chemical is subject to testing under TSCA section 4, identified for voluntary testing, or designated for testing by the ITC during a particular reporting period, a manufacturer or importer would be required to review the regulations and the most recent Master Testing List. Therefore, EPA is specifically requesting comment on whether manufacturers and importers will be able to make these determinations for the universe of chemicals potentially subject to IUR reporting, including any suggestions for ways in which to make these determinations.

EPA believes that for an HPV determination procedure to be effective, it must be able to accommodate the frequency with which individual chemicals may rise above or fall below the HPV threshold criteria of a U.S. aggregate production volume of 1 million lbs. or more per year. For example, 17% of the chemicals which were HPVs according to data submitted under the 1990 IUR were not HPVs according to data submitted under the 1994 IUR. To address this issue, EPA is proposing in these IUR amendments to use a submitter-specific processing and use production volume threshold of 300,000 lbs. or more per site per year to ensure that reporting is captured for a great majority of HPVs (as defined on the basis of national aggregate production volume). EPA seeks comments on alternative approaches for identifying HPVs for IUR reporting purposes that similarly account for the dynamic nature of the set of HPV chemicals.

EPA is also specifically interested in receiving comments on the additional burden imposed on manufacturers and importers associated with the reporting of processing and use information under the IUR amendments to manufacturers and imports of HPV chemicals. Under EPA's current proposal, in order to determine whether a chemical is subject to IUR reporting during a particular reporting period, a manufacturer or importer would first determine the production volume of the chemicals they produced during the year for which reporting is required (i.e., was the chemical produced in an amount of 25,000 lbs. or more, or in an amount of 300,000 lbs. or more for processing and use information). They would then determine if the chemical is otherwise exempt from IUR reporting. The Agency is concerned that limiting reporting to the HPV chemicals would require a manufacturer or importer to make additional determinations, as described in the beginning of this request for

comment, in order to ascertain whether they must report under IUR.

In addition, EPA is interested in receiving comment on whether this suggestion would limit the utility of the information that would be collected, because it would change the focus and purpose of the proposed IUR amendments related to the collection of processing and use information. As discussed previously, EPA believes that the basic processing and use information that EPA is proposing to collect on less than 3,500 of the 76,000 chemicals on the TSCA Inventory, is critical for EPA to more effectively and efficiently fulfill its obligations under TSCA, e.g., to assess the risks of chemicals in commerce, and to promote pollution prevention by encouraging the development of safer substitutes and alternatives. In developing its proposal, the Agency has taken steps to minimize burden and costs, and believes that the information that the Agency is proposing to collect is essential to the Agency's chemical screening process. The basic processing and use information that EPA is proposing to collect will allow the Agency and other users of IUR information to better prioritize their efforts based on a chemical's potential risks. The Agency therefore believes that the burden and costs associated with providing the information proposed in this document will assist the Agency and others to avoid the imposition of additional burden and costs related to further actions, such as more in-depth assessments and regulations.

7. Are the industrial function categories listed in this proposed rule the most appropriate ones?

8. Are the commercial and consumer product categories in this proposed rule the most appropriate ones?

9. Are there better alternatives to the definition of ''potentially exposed worker'' contained in this proposed rule (i.e., § 710.2), ''reasonably likely to be exposed'')? Is the OSHA hazard communication standard's definition (i.e., 29 CFR 1910.1200(c), ''employee'') more appropriate for this proposed rule?

10. Should EPA require the reporting of TRI facility identification numbers, where available?

11. Is the reporting of production volume ranges, as proposed, likely to result in fewer confidentiality claims than when specific production volumes are reported? What else could be done to the reporting process and data elements included in the final rule to reduce CBI claims of submitters to allow better public access to data?

12. Should the Agency collect information on the use of personal protective equipment during the manufacture or import of chemicals reported on the IUR? During the interagency review process, it was suggested that the Agency consider collecting information on the use of personal protective equipment (PPE). Generic PPE recommendations exist from Material Safety Data Sheets (MSDS), and may be available from other sources. As described in this preamble, EPA plans to use the information collected through these proposed amendments mainly for initial screening level assessments. EPA is interested in receiving comment on whether the Agency should collect information on PPE, what kind of specific PPE information should be collected, and whether such additional data reporting requirements would result in a significant burden increase to industry.

13. Are the data sought in this proposed rule related to industrial processing and use and commercial and consumer products ''readily obtainable'' by those who are required to report?

14. What alternatives are available to the procedures proposed in this document that will protect submitters' right to reassert their CBI claims? Can you identify means other than those discussed in this proposed rule which the Agency might use to better inform submitters of the requirement to reexamine past CBI claims and to reassert CBI claims, as appropriate, in order to retain CBI protections?

15. Should EPA require data to be reported using the metric system?

X. Materials in the Public Docket

The official record for this rulemaking has been established under docket control number OPPTS–82053. The following is a listing of the documents that have already been placed in the official record for this proposal.

A. Supporting Documentation

1. **Federal Register** notices/EPA documents/court opinions pertaining to this proposed rule consisting of:

a. ''TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure,'' (58 FR 28736, May 14, 1993).

b. 29 CFR 1910.1200 (OSHA hazard communication standards for toxic and hazardous substances).

c. *Chemical Manufacturers Association* v. *EPA*, 859 F.2d 977, 991 (D.C. Cir. 1988).

2. Technical support documents and studies consisting of:

a. EPA/OPPT, ''Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening,'' Volumes 1 and 2, July 19, 1996.

b. Eastern Research Group, Inc., ''Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis,'' prepared for EPA/OPPT, September 26, 1996.

c. Environmental Business Strategies, ''U.S. Chemical Production, Use, and Exposure Data: A Study of Existing Information Sources,'' on behalf of Chemical Manufacturers Association, October 1997.

d. GE Plastics, ''IUR Reporting Frequency and EPA's Existing Chemicals Program,'' 1996.

e. NIOSH, National Occupational Exposure Survey (NOES), 1981.

f. EPA/OPPT/EETD/EPAB, ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' March 1, 1999.

g. EPA/OPPT, ''Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information,'' Final Draft, August 26, 1996.

h. EPA/OPPT, ''Technical Support Document: Technical Approach for the Selection of Consumer End-Use Categories for the Inventory Update Rule,'' 1996.

i. EPA/OPPT, ''A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA,'' March 1999.

3. Minutes or summaries of public meetings:

a. American Chemical Society Roundtable Forum, ''A Pollution Prevention Strategy for Toxic Chemicals,'' July 28, 1993.

b. EPA, ''Chemical Use Inventory (CUI) Meeting With Environmental and Right-to-Know Groups,'' September 29, 1993.

c. EPA, ''The EPA Office of Pollution Prevention and Toxics (OPPT) Meeting on the Chemical Use Inventory,''' October 6, 1993.

d. EPA, ''Chemical Use Inventory (CUI) Meeting With Industry,'' October 12, 1993.

e. EPA, ''OPPT's Chemical Use Inventory Project: Presentation to FOSTTA Chemical Management and Chemical Information Project Members,'' October 19, 1993.

f. EPA, ''Meeting with Labor Constituents,'' November 10, 1993.

g. EPA, ''CUI Multi-stakeholder Meeting,'' January 5, 1994.

h. EPA, ''Statement of Lynn R. Goldman, M.D. Before the

Subcommittee on Toxic Substances, Research and Development, Committee on Environment and Public Works, U.S. Senate,'' May 17, 1994.

i. U.S. Senate Committee on Environment and Public Works, Subcommittee on Toxic Substances, Research and Development, ''Hearing to discuss reauthorization of the Toxic Substances and Control Act (TSCA),'' July 13, 1994.

j. Clean Sites, ''CUI/IUR Amendments Workshop, Meeting Summary,'' April 13, 1995.

k. EPA, ''Discussion Paper [for April 13, 1995 meeting], Amendments to the TSCA Inventory Update Rule Needed to Create A Chemical Use Inventory,'' April 1995.

l. Mary Ellen Weber, EPA, ''TSCA Chemical Use Inventory, Inventory Update Rule Amendments,'' presented to Chemical Manufacturers Association, TSCA Information Forum, May 15, 1996.

m. Mary Ellen Weber, EPA, ''Chemical Use Inventory, TSCA Inventory Update Rule Amendments,'' presented to Organization Resources Counselors, Inc., Environmental Group, June 26, 1996.

4. Communications consisting of:

a. Memorandum from Mark V. Stanga and Patricia A. Franco, Electronic Industries Association to EPA, May 5, 1993.

b. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, September 8, 1993.

c. Letter from Albert K. Langley, Jr., Georgia Department of Natural Resources to Wardner G. Penberthy, EPA, October 25, 1993.

d. Letter from Michael A. Babich, Consumer Product Safety Commission to Wardner G. Penberthy, EPA, October 26, 1993.

e. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Mark Greenwood, EPA, October 29, 1993.

f. Letter from Stephen D. Hanna, California EPA to Mary Ellen Weber, EPA, November 8, 1993.

g. Letter from Public Interest Groups to Mark Greenwood, EPA, November 17, 1993 (with attachments).

h. Letter from Hillel Gray, National Environmental Law Center, to Wardner G. Penberthy, EPA, November 22, 1993.

i. Letter from Roger A. Kanerva, State of Illinois EPA to Wardner G. Penberthy, EPA, November 22, 1993.

j. Letter from F. David Petke, Eastman Chemical Co. to Mary Ellen Weber, EPA, November 23, 1993.

k. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Tim Hunt, OMB, November 30, 1993.

l. Letter from Andy Opperman, New Jersey Dept. of Environmental Protection and Energy to Wardner G. Penberthy, December 6, 1993.

m. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, December 7, 1993.

n. Letter from Cheryl O. Morton, SOCMA to Mark A. Greenwood, EPA, December 10, 1993.

o. Letter from Jeanne Herb, State of New Jersey Department of Environmental Protection and Energy, to Wardner G. Penberthy, EPA, December 8, 1993.

p. Letter from Robert D. Bullard, University of California, Los Angeles, to Wardner G. Penberthy, EPA, December 14, 1993.

q. Letter from Stephen R. Sides and H. Allen Irish, National Paint Coatings Association to Wardner G. Penberthy, EPA, January 11, 1994.

r. Letter from Mark V. Stanga, Litton Corporate, to Wardner G. Penberthy, EPA, January 17, 1994.

s. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Lynn R. Goldman, EPA, January 19, 1994.

t. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, January 25, 1994.

u. Letter from Hillel Gray, National Environmental Law Center to Lynn R. Goldman, EPA, February 11, 1994.

v. Letter from Richard I. Sedlak, The Soap and Detergent Association to Wardner G. Penberthy, EPA, February 24, 1994.

w. Letter from Lawrence E. Slimak, American Automobile Manufacturers Association to Mark Greenwood, EPA, March 8, 1994.

x. Letter from Mark A. Greenwood, EPA to Lawrence E. Slimak, American Automobile Manufacturers Association, March 28, 1994.

y. Letter from Sarah Doelp, CMA to Mark Greenwood, EPA, June 20, 1994.

z. Report from Ken Geiser, Toxics Use Reduction Institute, University of Massachussetts, October 1994.

aa. Letter from Sarah Doelp, CMA to Wardner G. Penberthy, EPA, February 2, 1995.

bb. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Tim Hunt, OMB, March 23, 1995.

cc. Letter from Walter L. McLeod, API to Allan Abramson, EPA, April 21, 1995.

dd. Letter from Lynn R. Goldman, EPA to Steve Tiber, Office of Administration and Resources Management, August 18, 1995.

ee. Letter from Donald D. Helin, Chemical Manufacturers Association to William H. Sanders III, EPA, March 26, 1997.

ff. Letter from Larry Rampy, Chemical Manufacturers Association to Arthur G. Fraas, Office of Management and Budget, May 26, 1999.

gg. Letter from Pamela Gilbert, Consumer Product Safety Commission, to Donald R. Arbuckle, Office of Management and Budget, June 14, 1999.

hh. Letter from John D. Walter, TSCA Interagency Testing Committee, to Mary Ellen Weber, EPA, June 15, 1999.

B. References

1. Vice President Albert Gore, ''EPA Right-to-Know Announcement,'' April 21, 1998.

2. Chemical Manufacturers Association, Synthetic Organic Chemical Manufacturers Association, U.S. EPA, Chemical Specialties Manufacturing Association, American Petroleum Institute, ''Round 3 of the UEIP (Use and Exposure Information Project),'' June 3, 1996.

3. U.S. EPA, ''Reducing Risk: Setting Priorities and Strategies for Environmental Protection,'' Science Advisory Board, (SAB-EC-90-021), 1990.

4. National Academy of Public Administration, ''Setting Priorities, Getting Results - A New Direction for EPA,'' 1995.

5. U.S. EPA, ''Decision Guidelines Manual,'' OPPT/CCD/NCB, December 1992.

6. Letter from M.L. Mullins, Chemical Manufacturers Association, to EPA, ''Proposed Alternative to Anticipated Rule to Amend TSCA for the Creation of a Chemical Use Inventory,'' May 20, 1996.

7. Letter from Michael A. Babich, U.S. Consumer Product Safety Commission, to Wardner G. Penberthy, EPA, June 24, 1996.

8. Official Journal of the European Communities, ''Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances,'' L84, Volume 36, April 5, 1993.

9. Organization of Economic Cooperation and Development, ''SIDS Manual (Second Revision) Screening Information Data Set Manual of the OECD Programme on the Co-operative Investigation of High Production Volume Chemicals,'' May 1996.

10. Memorandum from Norman R. Niedergang, EPA to Dr. Lynn R. Goldman, EPA, ''Continuing Sources of Asbestos Exposure,'' June 26, 1998.

11. U.S. EPA, ''Influence of CBI Requirements on TSCA Implementation,'' OPPT, March 1992.

12. U.S. EPA, ''Final Action Plan: TSCA Confidential Business

Information Reform,'' OPPT, June 20, 1994.

13. U.S. EPA, ''TSCA CBI Reform Program: State Access to TSCA Data, Including CBI, Project; Forum on State, Tribal Toxics Action Meeting'' OPPT/IMD, June 24, 1996.

14. U.S. EPA, ''EPA Needs Exposure-Related Data: A Discussion of the Justification for Collecting Exposure-Related Data Through the IUR Amendments,'' OPPT/EETD/EPAB, 1998.

15. Griefe, A. et al., ''National Institute for Occupational Safety and Health General Industry Occupational Exposure Databases: Their Structure, Capabilities and Limitations,'' Applied Occupational and Environmental Hygiene 10(4), April 1995.

16. U.S. EPA, ''Chemical Use Clusters Scoring Methodology,'' Draft Report, OPPT/EETD/CEB, July 23, 1994.

17. U.S. EPA, ''An SAB Report: Improving the Use Cluster Scoring System, Recommendations for the Use Cluster Scoring System Prepared by the Environmental Engineering Committee,'' Science Advisory Board, SAB-EEC-95-017, September 1995.

18. U.S. EPA, ''Inventory of Exposure-Related Data Systems Sponsored by Federal Agencies,'' EPA/600/R-92/078, http://www.epa.gov/ncepihom/nepishom/index.html, 1992.

19. American Petroleum Institute, ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA),'' Health and Safety Regulation Committee Task Force on Toxic Substances Control, February 1985.

20. General Accounting Office, ''EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances,'' GAO/RCED-95-165, July 7, 1995.

21. Letter from Mark N. Duvall, Union Carbide, to EPA, ''Additional Comments of Union Carbide Corporation on EPA's Preliminary Actions to Reform TSCA Confidential Business Information, Docket No. OPPTS-00125,'' August 31, 1993.

22. Letter from Stephen A. Newell, Occupational Safety and Health Administration, to Wardner G. Penberthy, EPA, October 15, 1996.

23. Letter from Paul A. Schulte, National Institute for Occupational Safety and Health, to Wardner G. Penberthy, EPA, October 8, 1996.

24. U.S. EPA, ''Preparation of Engineering Assessments,'' Vol. 1, Ch. 4, pp. 1-33, OPPT/EETD/CEB, February 28, 1991.

25. U.S. Census Bureau, North American Industrial Classification System (NAICS), http://www.census.gov/epcd/www/naics.html, 1999.

26. U.S. EPA, ''Chemical Right-to-Know Initiative,'' http://www.epa.gov/chemrtk/index.htm, June 8, 1999.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), entitled ''Regulatory Planning and Review,'' the Office of Management and Budget (OMB) has determined that this is a ''significant regulatory action'' because this action may raise novel policy issues related to the collection of information. This action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public record.

In addition, the Agency has prepared an economic assessment of the estimated costs and benefits attributable to this proposed rule. This document, entitled ''Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule,'' is available in the public version of the official record for this proposal, at the address listed in Unit I.B.2. of this preamble. EPA estimates the proposed amendments would cost between $36 to $51 million for the first year of reporting and $27 to $41 million for future years of reporting, resulting in an annualized cost of $10 to $14 million over the next 20 years.

Under the proposed amendments, approximately 8,900 chemicals would be subject to reporting, and the Agency expects that it would receive approximately 25,500 submissions during the first reporting cycle. Approximately 10,000 of those submissions (providing information on about 4,000 chemicals) would be full reports which include information found in Part III. of Revised Reporting Form U, with the remainder reporting only company, site and chemical identification and manufacturing information (Parts I., II., and IV. of Revised Reporting Form U). In order to keep the reporting burden as low as possible, EPA is proposing to require that certain information be reported in ranges, that only the top 10 NAICS codes be accounted for when reporting industrial processing and use information, and that only readily obtainable information in Part III be reported.

EPA analyzed the effects of a number of different alternatives for the proposed rule, including variations in exemptions, different thresholds for both partial- (i.e. Parts I., II., and IV. of Revised Reporting Form U) and full-form (i.e. all parts of Revised Reporting Form U), and various frequencies of collection. These options are explored further in the Economic Analysis.

In addition to the proposed option, EPA considered continuing the exemption from IUR reporting for inorganic chemicals and adding an exemption for site-limited petroleum streams. EPA examined the effects of keeping the partial-form threshold at 10,000 pounds and considered full-form thresholds of 10,000, 25,000, 100,000, 500,000, 1,000,000 and 10,000,000 pounds, as well as a phased-in 100,000/500,000 full-form threshold. EPA also considered changes in the reporting cycle, such as a one-time collection, a 2-year cycle, and an option that would have collected partial forms every 2 years and full forms every 4 years.

During the interagency review process, EPA also considered a 50,000 lb. threshold for the partial form (see Addendum to the economic analysis referenced in Unit X.A.2.f. of this preamble). While this threshold would indeed reduce industry burden by $2-3 million when compared to the proposed 25,000 lb. threshold, EPA feels that the benefit of the information obtained on chemicals produced between 25,000 and 50,000 lbs. yearly, far outweighs the costs. By increasing the threshold from 25,000 to 50,000 lbs., EPA would lose data on roughly 880 discrete chemicals from roughly 1,750 reports. Forgoing this information would exclude a large portion of the chemical industry from oversight under TSCA, which requires EPA to regulate the entire industry. In addition, EPA feels that the data collected at a 50,000 lb. threshold would be insufficient to meet the TSCA statutory requirement to update and keep current the TSCA Inventory of Chemical Substances.

During the interagency review process, EPA altered its proposal to include a natural gas exemption, an inorganics partial exemption, and an upper threshold of 300,000 lbs. These options are also analyzed in the addendum to the economic analysis referenced in Unit X.A.2.f. of this preamble. While the natural gas exemption affects only six chemicals, it reduces the number of reports by over 1,200. The inorganics partial exemption reduces the number of chemicals requiring full reports by about 1,200. The increase in the upper threshold from 100,000 to 300,000 pounds reduces the number of chemicals reporting processing and use information (Part III. of Form U) to about 3,400.

The costs of the proposed amendments would be borne by two groups: the chemical industry and EPA. Industry costs are associated with complying with the regulation, while EPA costs are associated with administering the regulation and maintaining the collected data. In this rulemaking effort, EPA has made every attempt to balance data needs with collection costs and burden. Wherever possible, EPA has used exemptions or partial exemptions to reduce the number of reports filed by industry. EPA has provided an upper threshold for reporting use information required in Part III of Revised Reporting Form U, reducing the per report burden for submitters. Recognizing that this information would be used for screening-level purposes, EPA has reduced the specificity of the information that would be required in three ways:

- By requiring the reporting of only readily obtainable information for the use and non-manufacturing exposure-related data.
- By requiring that submitters report much of the information in ranges, reducing the need to generate precise estimates.
- By requiring processing and use-related information on only the top 10 NAICS codes, as determined by percent of the chemical's volume.

These steps limit the amount of information required, reducing the time and effort spent by the chemical industry in complying with the amendments.

First-year costs of the proposed rule are estimated to be between $36 million and $51 million, with subsequent annual costs in future reporting years of $27 to $41 million. This results in an annualized cost of between $10 million and $14 million over the first 20 years. EPA assumes that the burden associated with reporting under the IUR amendments would decrease over time as the industry's familiarity with the reporting rule increases and to the extent that the information being reported remains somewhat constant from one reporting period to the next. Projected costs to EPA are relatively small and are estimated to be $525,000 in the first reporting year, and $275,000 in subsequent reporting years.

During the interagency review process, EPA added the collection of the data element for average concentration (not included in the Economic Analysis) to Part II. of the revised Reporting Form U. EPA expects the addition of this data element to result in only a negligible increase in burden because similar information is needed in order to report both the maximum concentration as well as the average concentration. EPA therefore did not find a reason to adjust the Economic Analysis to reflect this change.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this proposed rule, if promulgated as proposed, will not have a significant impact on a substantial number of small entities. This certification is based on the Agency's analysis of potential impacts on small entities, which is included in the Economic Analysis summarized in section A. of this Unit.

Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions (5 U.S.C. 601(6)). Because not-for-profit organizations and governmental jurisdictions will not be affected by this proposed rule, ''small entity'' for purposes of this proposed rule is synonymous with ''small business.''

Section 601(3) of the RFA establishes as the default definition of small business the definition used in section 3 of the Small Business Act (15 U.S.C. 632) under which the SBA establishes small business size standards (13 CFR 121.201). The RFA recognizes, however, that it may be appropriate at times for Federal agencies to use an alternate definition of small business. As a result, RFA section 601(3) provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. EPA established a different definition of small business, found in the existing IUR at 40 CFR 704.3, in accordance with these requirements. Manufacturers and importers who meet the 40 CFR 704.3 definition of small business are generally exempted from IUR reporting in 40 CFR 710.29. This exemption is retained under these amendments and is not being reopened for comment.

Despite the fact that small manufacturers and importers that fully meet the 40 CFR 704.3 definition of small manufacturers and importers are generally exempt from reporting under IUR, and thus are not significantly impacted by these amendments to IUR, EPA conducted an analysis of the potential impact for submitters that meet only part of the 40 CFR 704.3 definition. Specifically, an analysis of the potential impact was conducted only for those submitters that meet the first criterion in the 40 CFR 704.3 definition of ''small manufacturer or importer,'' i.e. total annual sales of less than $40 million, but that do not meet the second criterion, i.e. production or import volume of less than 100,000 pounds at all sites.

For small entities manufacturing (including importing) organic chemicals subject to reporting, the Agency estimates the impact to be 0.13% to 0.16% of sales. For small entities manufacturing (including importing) inorganic chemicals subject to reporting, the Agency estimates the impact to be 0.15% to 0.20% of sales. These estimates are based upon the Agency's belief that most small businesses reporting will complete the full Form U, unless the business is eligible for one of the partial exemptions. These small entity impacts are based on EPA's original proposal for the IUR amendments. The revised proposal, which has reduced industry cost and burden even further, is expected to have even less impact on small entities.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking. Any comments regarding the economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency according to the procedures identified in the ''ADDRESSES'' section at the beginning of this preamble.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1884.01), and included in the public version of the official record that is described in Unit I.B.3. of this preamble. In addition to viewing the ICR document as described in Unit I.B.3. of this preamble, you may obtain a copy of the ICR by mail from Sandy Farmer, OP Regulatory Information Division; Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or by e-mail to ''farmer.sandy@epa.gov.'' An electronic copy has also been posted on EPA's World Wide Website (http://www.epa.gov/) with other information related to this action.

The information requirements contained in this proposal are not effective until OMB approves them. An Agency may not conduct or sponsor,

and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are displayed in a list at 40 CFR part 9.

The information that would be reported under these amendments to IUR would better enable EPA to screen thousands of chemical substances for potential risk. Risk screening is necessary in order to conserve limited Agency resources by focusing risk assessment work on chemical substances for which some level of potential risk has been indicated. The new information that would be reported under this rule is critical to the risk screening process and is unavailable through other sources. Responses to this collection of information would be mandatory, pursuant to TSCA section 8(a).

CBI claims may be made for all of the new information that would be reported under these amendments to IUR. This action proposes new substantiation procedures for CBI claims regarding plant site identity. (See § 710.38(d) of the regulatory text). In addition, a new provision for the reassertion of CBI claims would be added. This provision states that all CBI claims made in one reporting period would be valid only until the beginning of the reporting period immediately following the reporting period in which the information was claimed as confidential. To maintain the confidential status of information, the submitter would need to certify during every reporting period following the one in which the original claim of confidentiality was made, that the information should continue to be treated as confidential by EPA. Reassertions must be made to maintain confidentiality even if the submitter is not required to report during a given reporting period. If a submitter fails in a reporting period to reassert the confidentiality claims made in the previous reporting period, the claims are presumed to be waived and EPA will make the information available to the public without further notice to the submitter. (See § 710.39 of the regulatory text).

The following annual burden and cost figures represent the cost of a 4–year reporting cycle, spread over 4 years. Most or all of the burden would fall in the first year of the cycle. The public reporting burden for this collection of information is estimated to be 150,000 to 210,000 hours for each of the 4 years in the first reporting cycle for approximately 3,050 respondents. The average annual reporting burden per response is 6 to 8 hours, with the average company reporting 8.4 times per collection and each information collection occurring every 4 years. The annual public reporting cost burden for operation and maintenance expenses is estimated to be $11 to $15 million annually for the first four year reporting cycle, and decreasing after that. The total capital and start-up costs, as well as the purchase of services, are estimated to be zero.

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. 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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA according to the instructions provided in Unit I.C. of this preamble. Please remember to include the docket control number OPPTS–82053, or the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), EPA has determined that this proposed regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. The analysis of the costs associated with this proposed action are described in Unit XI.A. of this preamble. In addition, EPA has determined that this proposed rule does not significantly or uniquely affect small governments. Accordingly, today's proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12857 requires EPA to provide to the OMB a description of the extent of EPA's prior consultations 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 notice 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 proposed rule. Nevertheless, EPA has sought the active participation of State, local and tribal governments who might be interested in this proposal. The Agency has had several informal consultations regarding the proposed rule with some States through the EPA regional offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States, who are primarily interested in CBI issues and whether they will have access to the information EPA collects under these proposed amendments.

F. 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 communitiies, 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.''

G. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that the information collected under this proposed rule would assist the Agency in determining the risks and exposures associated with these chemicals. Although not directly impacting environmental justice-related concerns, this information would enable the Agency to protect human health and the environment by being better able to prioritize chemical substances of concern.

H. Executive Order 13045

This rulemaking does not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more and it does not have a potential effect or impact on children. As discussed in this preamble, this proposed rule would provide the Agency with information needed to screen and prioritize chemical substances. This information will allow the Agency and others to determine which chemical substances have potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

I. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Section 12(d) of NTTAA 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 Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: August 2, 1999.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 710 be amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

2. By revising § 710.2 to read as follows:

§ 710.2 Definitions.

In addition to the definitions in § 704.3 in this chapter, the following definitions apply to this part:

(a) The following terms shall have the meaning contained in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under such Act: *Cosmetic*, *device*, *drug*, *food*, and *food additive*. In addition, the term *food* includes poultry and poultry products, as defined in the Poultry Products Inspection Act, 21 U.S.C. 453 *et seq.*; *meats* and *meat food products*, as defined in the Federal Meat Inspection Act, 21 U.S.C. 60 *et seq.*; and *eggs* and *egg products*, as defined in the Egg Products Inspection Act, 21 U.S.C. 1033 *et seq.*

(b) The term *pesticide* shall have the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the regulations issued thereunder.

(c) The following terms shall have the meaning contained in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et seq.*, and the regulations issued thereunder: *byproduct material*, *source material*, and *special nuclear material*.

(d) The following definitions also apply to this part:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Administrator means the Administrator of the U.S. Environmental Protection Agency, any employee or authorized representative of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any other person who shall by operation of law be authorized to carry out such functions.

An article is a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.4(d)(5); except that fluids and particles are not considered articles regardless of shape or design.

Byproduct means a chemical substance produced without separate commercial intent during the manufacture or processing of another chemical substance(s) or mixture(s).

Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical; except that ''chemical substance'' does *not* include:

(1) Any mixture,

(2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide,

(3) Tobacco or any tobacco product, but not including any derivative products,

(4) Any source material, special nuclear material, or byproduct material,

(5) Any pistol, firearm, revolver, shells, and cartridges, and

(6) Any food, food additive, drug, cosmetic, or device, when

manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

Commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor).

Consumer use means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.

Distribute in commerce and distribution in commerce when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture, mean to sell or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

EPA means the U.S. Environmental Protection Agency.

Importer means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the U.S. and includes:

(1) The person primarily liable for the payment of any duties on the merchandise, or

(2) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

Impurity means a chemical substance which is unintentionally present with another chemical substance.

Industrial use means use at a site at which one or more chemical substances or mixtures are manufactured (including imported) or processed.

Intermediate means any chemical substance:

(1) Which is intentionally removed from the equipment in which it is manufactured, and

(2) Which either is consumed in whole or in part in chemical reaction(s) used for the intentional manufacture of other chemical substance(s) or mixture(s), or is intentionally present for the purpose of altering the rate of such chemical reaction(s).

Note: The *equipment in which it was manufactured* includes the reaction vessel in which the chemical substance was manufactured and other equipment which is strictly ancillary to the reaction vessel, and any other equipment through which the chemical substance may flow during a continuous flow process, but does not include tanks or other vessels in which the chemical substance is stored after its manufacture.

Known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

Manufacture means to manufacture or import for commercial purposes.

Manufacture or import ''for commercial purposes'' means: To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, or

(2) For use by the manufacturer, including use for product research and development, or as an intermediate.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Mixture means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that ''mixture'' does include:

(1) Any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined and if, after the effective date or premanufacture notification requirements, none of the chemical substances comprising the combination is a new chemical substance, and

(2) Hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water.

New chemical substance means any chemical substance which is not included in the inventory compiled and published under subsection 8(b) of the Act.

Nonisolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Person means any natural or juridicial person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

Process means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.

Process for ''commercial purposes'' means to process (1) for distribution in commerce, including for test marketing purposes, or (2) for use as an intermediate.

Processor means any person who processes a chemical substance or mixture.

Readily obtainable information means information which is known by management and supervisory employees of the submitter company who are associated with research, development, distribution, technical services, or marketing of the reportable chemical substance. Extensive file searches are not required.

Reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would normally include, but not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling, and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, absorption, etc.), but excludes accidental or theoretical exposures.

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce.

Reportable chemical substance means a chemical substance described in § 710.25.

Site means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one manufacturing plant on a single site. For the purposes of imported chemical substances, the site shall be the business address of the importer.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited.

Small maufacturer or importer means a manufacturer or importer whose total annual sales are less than $5,000,000, based upon the manufacturer's or importer's latest complete fiscal year as of January 1, 1978, except that no manufacturer or importer is a ''small manufacturer or importer'' with respect to any chemical substance which such person manufactured at one site or imported in quantities greater than 100,000 pounds during calendar year 1977. In the case of a company which is owned or controlled by another company, total annual sales shall be based on the total annual sales of the owned or controlled company, the parent company, and all companies owned or controlled by the parent company taken together.

Note: The purpose of the exception to the definition is to ensure that manufacturing and importers report production volumes for all chemical substances which they manufactured at one site or imported in quantities equal to or greater than 100,000 pounds during calendar year 1977.

Small quantities for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product (hereinafter sometimes shortened to *small quantities for research and development*) means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed that:

(1) Are no greater than reasonably necessary for such purposes, and

(2) After the publication of the revised inventory, are used by, or directly under the supervision of, a technically qualified individual(s).

Note: Any chemical substances manufactured, imported, or processed in quantities less than 1,000 pounds annually shall be presumed to be manufactured, imported, or processed for research and development purposes. No person may report for the inventory any chemical substance in such quantities unless that person can certify, that the substance was not manufactured, imported, or processed solely in small quantities for research and development, as defined in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Technically qualified individual means a person:

(1) Who because of his/her education, training, or experience, or a combination of these factors, is capable of appreciating the health and environmental risks associated with the chemical substance which is used under his supervision,

(2) Who is responsible for enforcing appropriated methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity. The responsibilities in this paragrah may be delegated to another individual, or other individuals, as long as each meets the criteria in paragraph (1) of this definition.

Test marketing means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, by a manufacturer or processor to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture or article in commerce.

United States, when used in the geographic sense, means all of the States, territories, and possessions of the United States.

Use means any utilization of a chemical substance or mixture that is not otherwise covered by the terms manufacture or process. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.

3. In § 710.26, by revising the introductory text and paragraphs (a) and (c) and adding paragraph (e) to read as follows:

§ 710.26 Chemical substances for which information is not required.

The following categories of chemical substances are excluded from the reporting requirements of this part, with two exceptions: a chemical substance described in paragraph (a) only qualifies for a partial reporting exemption, as described in paragraph (a), and a chemical substance described in paragraph (a), (b), (c), or (e) of this section is not excluded from the reporting requirements of this part if that substance is the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Act, or is the subject of an order issued under section 5(e) or 5(f) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

(a) *Petroleum process streams.* All chemical substances listed by Chemical Abstract Service Registry Number (CAS Number) in this paragraph are excluded only from paragraphs (c)(4) and (5) of § 710.32. Such chemical substances are not excluded from the other reporting requirements under 40 CFR part 710. The chemical substances included in the list in this paragraph may be modified and, if modified, a new list will be published through direct final rulemaking in the **Federal Register** by EPA prior to the upcoming reporting period. If a new list is not published prior to a given reporting period, the list in effect for the previous reporting period is still in effect for the current reporting period.

CAS Numbers of Partially Exempt Chemical Substances Termed ''Petroleum Process Streams''

63231-60-7
64741-41-9
64741-42-0
64741-43-1
64741-44-2
64741-45-3
64741-46-4
64741-47-5
64741-48-6
64741-49-7
64741-50-0
64741-51-1
64741-52-2
64741-53-3
64741-54-4
64741-55-5

64741-56-6
64741-57-7
64741-58-8
64741-59-9
64741-60-2
64741-61-3
64741-62-4
64741-63-5
64741-64-6
64741-65-7
64741-66-8
64741-67-9
64741-68-0
64741-69-1
64741-70-4
64741-71-5
64741-72-6
64741-73-7
64741-74-8
64741-75-9
64741-76-0
64741-77-1
64741-78-2
64741-79-3
64741-80-6
64741-81-7
64741-82-8
64741-83-9
64741-84-0
64741-85-1
64741-86-2
64741-87-3
64741-88-4
64741-89-5
64741-90-8
64741-91-9
64741-92-0
64741-93-1
64741-94-2
64741-95-3
64741-96-4
64741-97-5
64741-98-6
64741-99-7
64742-00-3
64742-01-4
64742-02-5
64742-03-6
64742-04-7
64742-05-8
64742-06-9
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68782-99-0
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68952-82-9
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68955-33-9
68955-34-0
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68955-76-0
68955-96-4
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68956-54-7
68956-55-8
68956-70-7
68988-99-8
68989-88-8
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68991-51-5
68991-52-6
69013-21-4
69029-75-0
69430-33-7
70024-88-3
70528-71-1
70528-72-2
70528-73-3
70592-76-6
70592-77-7
70592-78-8
70592-79-9
70693-00-4
70913-85-8
70913-86-9
70955-08-7
70955-09-8
70955-10-1
70955-17-8
71243-66-8
71302-82-4
71329-37-8
71808-30-5
72230-71-8
72623-83-7
72623-84-8
72623-85-9
72623-86-0
72623-87-1
7732-18-5
8002-05-9
8002-74-2
8006-14-2

8006-20-2
8006-61-9
8007-45-2
8008-20-6
8008-20-6
8009-03-8
8012-95-1
8030-30-6
8032-32-4
8042-47-5
8052-42-4
10024-97-2
* * * * *

(c) *Microorganisms.* Any combination of chemical substances that is a living organism, and that meets the definition of ''microorganism'' at 40 CFR 725.3 of this chapter. Any chemical substance produced from a living microorganism is reportable under this part unless otherwise excluded.

* * * * *

(e) *Certain forms of natural gas.* Chemical substances with the following CAS Numbers: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

4. By revising § 710.28 to read as follows:

§ 710.28 Persons who must report.

Except as provided in §§ 710.29 and 710.30, the following persons are subject to the requirements of this part. Persons must determine whether they must report under this section for each chemical substance that they manufacture (including import) at an individual site.

(a) *Persons subject to recurring reporting.* Any person who manufactured (including imported) for commercial purposes 25,000 lbs. (11,350 kg) or more of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during calendar year 1999 or during the calendar year at 4–year intervals thereafter is subject to reporting. A person who does not manufacture (including import) at least 25,000 lbs. of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during 1999 or during any year in 4–year intervals thereafter, but who chooses to reassert [a] confidentiality claim[s] made in [a] previous reporting period[s], as described in § 710.39, must make the reassertion in each reporting period even if the person is not required to report the information described in § 710.32(c).

(b) *Special provisions for importers.* For purposes of this section, the site for a person who imports a chemical substance described in § 710.25 is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The import site may in some cases be the organization's headquarters in the United States (see also § 710.35(b)).

5. By revising § 710.32 to read as follows:

§ 710.32 Reporting information to EPA.

Any person who must report under this part, as described in § 710.28, must submit the information described in this section for each chemical substance described in § 710.25 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. (11,350 kg) or more at any one site during calendar year 2001 or during the calendar year at 4–year intervals thereafter. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization that is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the United States) Except as otherwise noted, a submitter of information under this part must report information in writing or by magnetic media as prescribed in this section, to the extent that such information is known to or reasonably ascertainable by that person. A submitter under this part must report information that applies to the calendar year for which the person is required to report (i.e., calendar year 2001 and the calendar year at 4–year intervals thereafter).

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.40(b). The form must include all information prescribed in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media.* Any person who chooses to report information to EPA by means of magnetic media must submit the information prescribed in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.40(b).

(c) *Information to be reported.* Manufacturers (including importers) of a chemical substance described in § 710.25 in an amount equal to or greater than 25,000 lbs. (11,350 kg) during a calendar year for which reporting is required must report the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Manufacturers (including importers) of an organic chemical substance described in § 710.25 in an amount equal to or greater than 300,000 lbs. (136,200 kg) during a calendar year for which reporting is required must report the information described in paragraphs (c)(4) and (c)(5) of this section in addition to the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

(1) *A certification statement signed and dated by an authorized official of the submitter company.* Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.40.

(2) *Company and plant site information.* The following company and plant site information must be reported:

(i) The name, company, address, city, State, zip code, and telephone number of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.40.

(ii) The name, street address, city, State, and zip code of each site at which at least 25,000 lbs. (11,350 kg) or more of a chemical substance for which reporting is required under this part is manufactured (including imported). (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.) A submitter under this part must include the appropriate Dun and Bradstreet Number and any EPA Facility Registration Identifier (FRI) (once an FRI has been assigned to the facility) for each plant site reported. In addition, the county or parish (or other jurisdictional indicator) in which the plant site is located must be provided.

(3) *Chemical specific information.* The following chemical-specific information must be reported:

(i) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number of each chemical

substance for which reporting is required under this part (''reportable chemical substance''). As provided in the instruction booklet identified in § 710.40(b), a submitter under this part may use an EPA-Designated Accession Number, a premanufacture notice (PMN) case number (see § 720.65 of this chapter), or a TSCA Chemical Inventory reporting form number (see § 710.40) in lieu of a CAS Registry Number when a CAS Registry Number is not known to the submitter.

(ii) A statement indicating, for each reportable chemical substance, whether the substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) A designation indicating, for each reportable chemical substance, whether the substance is site-limited.

(iv) The total volume (in pounds) of each reportable chemical substance manufactured (including imported) at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within plus or minus 10% of the actual volume.

(v) Any person claiming the volume reported under paragraph (c)(3)(iv) of this section is confidential business information under § 710.38 must provide a statement indicating, for each reportable chemical substance, whether the total volume range (in pounds) which corresponds to the volume reported in response to paragraph (c)(3)(iv) of this section of each reportable chemical substance manufactured (including imported) at each site is claimed confidential. Volume ranges are listed in the following table:

Volume Ranges for Non-Confidential Reporting Purposes

From 25,000 to 100,000 lbs.	
From 100,000 to 1,000,000 lbs.	
From 1,000,000 to 10,000,000 lbs.	
From 10,000,000 to 50,000,000 lbs.	
From 50,000,000 to 100,000,000 lbs.	
From 100,000,000 to 500,000,000 lbs.	
From 500,000,000 to 1,000,000,000 lbs.	
Greater than 1,000,000,000 lbs.	

(vi) The total number of workers reasonably likely to be exposed to each reportable chemical substance at each site where the substance is manufactured (including imported). For each substance, the submitter shall report the code that corresponds to the appropriate number of workers according to the range codes in the following table:

Codes for Reporting Number of Workers Exposed

Codes	Range
W1	Less than 10
W2	At least 10 but less than 25
W3	At least 25 but less than 50
W4	At least 50 but less than 100
W5	At least 100 but less than 500
W6	At least 500 but less than 1,000
W7	At least 1,000 but less than 10,000
W8	At least 10,000

(vii) The physical form of the reportable chemical substance as it is sent off-site. If the reportable chemical substance is sent in more than one physical form, the submitter shall report whichever physical form constitutes the largest portion of its total volume, measured by weight. For each substance, the submitter shall report the code that corresponds with the appropriate physical form code according to the following table.

Codes for Reporting Physical Form of Chemical Substance

Codes	Physical Form
F1	Dry powder
F2	Pellets or large crystals
F3	Water- or solvent-wet solid
F4	Other solid
F5	Gas or vapor
F6	Liquid

(viii) The average concentration and maximum concentration, measured by percentage of weight, of the reportable chemical substance at the time it is sent off-site. For each chemical substance, report the code that corresponds to the appropriate average concentration and maximum concentration according to the following table:

Codes for Reporting Average Concentration and Maximum Concentration of Chemical Substance

Codes	Concentration Range (% weight)
M1	Less than 1% by weight
M2	Between 1 and 30% by weight
M3	Between 31 and 60% by weight
M4	Between 61 and 90% by weight
M5	Greater than 90% by weight

(4) *Industrial processing and use information*—(i) The following information must be be reported only for reportable chemical substances manufactured (including imported) for commercial purposes in an amount of 300,000 lbs. (136,200 kg) or more at any one site during calendar year 1999 or during the calendar year at 4-year intervals thereafter. Persons subject to this paragraph must report industrial processing and use information for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information regarding processing or use activities occurring at sites not under the control of the submitter must be reported only to the extent that it is readily obtainable by the submitter. If the required information is not readily obtainable by the submitter, the submitter shall provide estimates, using the submitter's best professional judgment, based upon the submitter's past experience for similar chemical substances in the same or similar markets, and/or any reasonable projections of likely processing and use scenarios for the chemical substance. The following items must be reported under this paragraph:

(A) A designation indicating the type of industrial processing or use operation at each site subject to the industrial processing and use information reporting under this paragraph. For each reportable chemical substance, report the letters which correspond to the appropriate processing or use operation[s]:

Designation	Operation
PC	Processing as a reactant
PF	Processing - incorporation into formulation, mixture or reaction product
PA	Processing - incorporation into article
PK	Processing - repackaging
U	Use - non-incorporative activities

(B) The five-digit North American Industrial Classification System (NAICS) codes which best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (c)(4)(i)(A) in this section. If more than 10 NAICS codes apply to a reportable chemical substance, submitters need only report the NAICS codes for the reportable chemical substance that cumulatively represent the largest percentage of production volume, measured by weight.

(C) For each NAICS code reported under paragraph (c)(4)(i)(B) in this section, a code from the following list must be selected to designate the industrial function category that best represents the specific manner in which the reportable chemical substance is used:

Codes for Reporting Industrial Function Categories

Codes	Categories
U01	Adsorbents and absorbents
U02	Adhesives and binding agents
U03	Aerosol propellants
U04	Agricultural chemicals (non-pesticidal)
U05	Anti-adhesive agents
U06	Bleaching agents
U07	Coloring agents, dyes
U08	Coloring agents, pigments
U09	Corrosion inhibitors and anti-scaling agents
U10	Fillers
U11	Fixing agents
U12	Flame retardants
U13	Flotation agents
U14	Fuels
U15	Functional fluids
U16	Intermediates
U17	Lubricants
U18	Odor agents
U19	Oxidizing agents
U20	pH-regulating agents
U21	Photosensitive chemicals
U22	Plating agents and metal surface treating agents
U23	Processing aid, not otherwise listed
U24	Process regulators, used in vulcanization or polymerization processes
U25	Process regulators, other than polymerization or vulcanization processes
U26	Reducing agents
U27	Solvents (for cleaning or degreasing)
U28	Solvents (which become part of product formulation or mixture)
U29	Solvents (for chemical manufacture and processing and are not part of product at greater than one percent by weight)
U30	Stabilizers
U31	Surface active agents
U32	Viscosity adjustors
U33	Other

(D) The percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each combination of NAICS code and industrial function category. Where a particular combination of NAICS code and industrial function category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage shall not be rounded off to zero % if the production volume attributable to that NAICS code and industrial function category combination is equal to or greater than 300,000 lbs. during the calendar year for which data must be reported. Instead, in such a case, submitters shall report the percentage, rounded off to the closest 1%, of total production volume of the reportable chemical substance associated with the particular combination of NAICS code and industrial function category.

(E) The number of processing and use sites, by number range, of each subject chemical substance for each combination of NAICS code and industrial function category. For each substance, report the code (e.g., 0 through 9) that corresponds to the appropriate number range according to the following table:

Codes for Reporting Numbers of Sites

Codes	Range
S1	Less than 10
S2	From 10 to 25
S3	From 25 to 100
S4	From 100 to 250
S5	From 250 to 1,000
S6	From 1,000 to 10,000
S7	Greater than 10,000

(F) An estimate of the number range of workers reasonably likely to be exposed to each reportable chemical substance at the site(s) where the chemical substance is processed or used. For each substance, report the code (e.g., W1 through W8) which corresponds to the appropriate worker range according to the table in paragraph (c)(3)(vi) of this section.

(ii) [Reserved]

(5) *Commercial and consumer use information.*—(i) The following information must be reported only for reportable chemical substances manufactured (including imported) for commercial purposes in an amount of 300,000 lbs. (136,200 kg) or more at any one site during calendar year 1999 or during the calendar year at 4–year intervals thereafter. Persons subject to this paragraph must report information for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information regarding use activities occurring at sites beyond the control of the submitter must be reported only to the extent that it is readily obtainable by the submitter. If the required information is not readily obtainable by the submitter, the submitter shall provide estimates, using the submitter's best professional judgment, based upon the submitter's past experience for similar chemical substances in the same or similar market, and/or any reasonable projections on likely use scenarios for the chemical substance. The following information must be reported under this paragraph:

(A) Using the codes listed, submitters must designate each commercial and consumer product category for which the reportable chemical substance is used:

Codes for Reporting Commercial and Consumer Product Categories

Codes	Category
C01	Artists' supplies
C02	Adhesives and sealants
C03	Automotive care products
C04	Electrical and electronic products
C05	Glass and ceramic products
C06	Fabrics, textiles and apparel
C07	Lawn and garden products (non-pesticidal)
C08	Leather products
C09	Lubricants, greases and fuel additives
C10	Metal products
C11	Paper products
C12	Paints and coatings
C13	Photographic chemicals
C14	Polishes and sanitation goods
C15	Rubber and plastic products
C16	Soaps and detergents
C17	Transportation products
C18	Wood and wood furniture
C19	Other

(B) The percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each commercial and consumer product category. Where a particular commercial and consumer product category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage shall not be rounded off to zero % if the production volume attributable to that commercial and consumer product category is equal to or greater than 300,000 lbs. during the calendar year for which data must be reported. Instead, in such a case, submitters shall report the percentage, rounded off to the closest 1%, of total production volume of the reportable chemical substance associated with the particular commercial and consumer product category.

(C) Where the reportable chemical substance is used in commercial or consumer products, the typical maximum concentration, measured by

weight, of the chemical substance in each commercial and consumer product category reported under paragraph (c)(5)(i)(A) of this section.

(ii) [Reserved]

6. By revising § 710.33 to read as follows:

§ 710.33 When to report.

All information reported to EPA in response to the requirements of this part must be submitted during an applicable reporting period. The first reporting period is from August 25, 2002, to December 23, 2002. Subsequent recurring reporting periods are from August 25 to December 23 at 4-year intervals after the first reporting period. Any person described in § 710.28(a) must report during each reporting period for each chemical substance described in § 710.25 that the person manufactured (including imported) during the preceding calendar year.

7. By revising § 710.37 to read as follows:

§ 710.37 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this part must maintain records that document any information reported to EPA. Records relevant to reporting during a reporting period described in § 710.33 must be retained for a period of 5 years beginning with the effective date of that reporting period.

8. By revising § 710.38 to read as follows:

§ 710.38 Confidentiality.

(a) Any person submitting information under this part may assert a business confidentiality claim for the information at the time it is submitted. These claims will apply only to the information submitted with the claim. New confidentiality claims, if necessary, must be asserted with regard to information submitted during the next reporting period. Guidance for asserting confidentiality claims is provided in the instruction booklet identified in § 710.40. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in part 2 of this chapter.

(b) A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this part.

(c) *Chemical identity*. The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this part? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, e.g. as product, effluent, emission, etc.? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as ''trade secret,'' ''confidential,'' or other appropriate designation.

(d) *Site identity*. A person may assert a claim of confidentiality for a submitter site only if the linkage of the site with a chemical submitted in this rule is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, state or local reporting scheme? For example, is the chemical identity linked to a facility in a filing under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any to your competitive position do you think would result from the identity of the site and the chemical substance? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as ''trade secret,'' ''confidential,'' or another appropriate designation.

(e) If no claim of confidentiality is indicated on the reporting form submitted to EPA under this part, or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

9. By revising § 710.39 to read as follows:

§ 710.39 Reassertion of past confidentiality claims.

(a) Any claim of confidentiality under § 710.38 is valid only until the end of the reporting period immediately following the reporting period in which the information was claimed as confidential. To maintain the

confidential status of information, the submitter must certify during every reporting period following the one in which the original claim of confidentiality was made, that the information should continue to be treated as confidential by EPA. Reassertions must be made to maintain confidentiality even if the submitter is not required to report the information in § 710.32(c) during a given reporting period.

(b) If the submitter fails in a reporting period to reassert the confidentiality claims made in the previous reporting period, the claims are presumed to be waived and EPA will make the information available to the public without further notice to the submitter. EPA will publish a Federal Register notice at least 2 weeks before the end of each reporting period, which will remind persons who made or reasserted CBI claims in the previous reporting period of the need to examine these claims and reassert them, as appropriate, in the current reporting period. Claims not reasserted by the end of a reporting period will be declassified after the reporting period ends.

(c) CBI claims made in IUR submissions prior to 2002 will not be subject to this reassertion requirement. CBI claims made in IUR submissions beginning with the 2002 reporting year will need to be reasserted in subsequent reporting years in order to retain CBI protections.

10. By adding § 710.40 to read as follows:

§ 710.40 Availability of reporting form and instructions.

(a) Use the proper EPA form. You must use the EPA form identified as ''Form U'' to submit written information in response to the requirements of this subpart. Copies of Form U are available from EPA at the address set forth in paragraph (c) of this section, from the EPA Internet Home Page at http://www.epa.gov/opptintr, or via fax on demand by using a faxphone to call (202) 401-0527 and selecting item 5119. You may also follow the automated menus.

(b) Guidance for completing the reporting form and preparing a magnetic media report is available in the EPA publication entitled ''Instructions for Reporting for Partial Updating of the TSCA Chemical Inventory Data Base.''

(c) EPA will mail a reporting package (consisting of a copy of Form U and a copy of the ''Instructions for Reporting for Partial Updating of the TSCA Chemical Inventory Data Base'') to those companies that reported in the IUR reporting period that occurred immediately prior to the current reporting period. If you did not receive a reporting package, but are required to report, you may obtain a copy of the reporting package from EPA by submitting a request for this information as follows:

(1) By phone. Call the EPA TSCA Hotline at 202-554-1404, or TDD 202-554-0551.

(2) By e-mail. Send an e-mail request for this information to the EPA TSCA Hotline at TSCA-Hotline@epa.gov.

(3) By mail. Send a written request for this information to the following address: TSCA Hotline, Mail Code 7408, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

(d) Submit the completed reports. You must submit your completed reporting form(s) and/or magnetic media to EPA at the following address: Document Control Officer, Mail Code 7407, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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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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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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