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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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure with respect to attorney fee proceedings to permit reimbursement to a prevailing appellant's attorney at his customary billing rate if that rate is consistent with the prevailing community rate where the attorney ordinarily practices. The intent of the amendment is to provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board previously published a proposal to amend its rule at 5 CFR § 1201.203, which governs attorney fee proceedings, to permit reimbursement of a prevailing appellant's attorney fees at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. (64 FR 72040, December 23, 1999) The Board requested comments on the proposal and suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees. The due date for comments was February 7, 2000.

Comments were received from three practitioners, all with experience representing appellants before the Board. Each of these practitioners supports the Board's proposal. No comments were received in opposition to the proposal.

One practitioner suggested that the Board also amend 5 CFR § 1201.203 to provide that ''reasonable'' attorney fees will be determined using the attorney's current, rather than historic, rates. The practitioner argued that such a rule would provide fairer compensation where a case takes years to resolve. The Board concludes that this suggestion is beyond the scope of the proposed rule and that any such change would more appropriately be developed through case law.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: April 19, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–10232 Filed 4–25–00; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–13–AD; Amendment 39–11693; AD 2000–08–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes, that currently requires the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. This amendment requires the sealing of all unused (open) tooling holes on the firewalls of the left and right engine pylons, and expands the applicability to include additional airplanes. This amendment is prompted by reports of additional unused (open) tooling holes, found at locations other than those currently addressed. The actions specified by this AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

DATES: Effective May 31, 2000.

The incorporation by reference of Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998, as listed in the regulations, is approved by the Director of the Federal Register of May 31, 2000.

The incorporation by reference of Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 27, 1997 (61 FR 66878, December 19, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas, 67201–0085. This information may be examined at the

Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Pretz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–24–16, amendment 39–9840 (61 FR 66878, December 19, 1996), which is applicable to certain Raytheon Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes, was published in the **Federal Register** on January 24, 2000 (65 FR 3619). The action proposed to continue to require the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. The action also proposed to require the sealing of all unused (open) tooling holes on the firewalls of the left and right engine pylons, and would expand the applicability to include additional airplanes.

Comments

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

Conclusion

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

Cost Impact

There are approximately 340 Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–24–16, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane.

The new actions that are required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $26,520, or $120 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9840 (61 FR 66878, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39–11693, to read as follows:

2000–08–07 Raytheon Aircraft Co. (Formerly Beech): Amendment 39–11693. Docket 99–NM–13–AD. Supersedes AD 96–24–16, Amendment 39–9840.

Applicability: Model BAe 125–800A and BAe 125–800B, Model Hawker 800, and Model Hawker 800XP series airplanes; as listed in Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall, accomplish the following:

Restatement of Requirements of AD 96–24–16

(a) For airplanes identified in AD 96–24–16, amendment 39–9840: Within 6 months after January 27, 1997 (the effective date of AD 96–24–16), fill the two, unused tooling holes in the firewalls of the left and right engine pylons, in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996, or Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

New Requirements of This AD

(b) For all airplanes: Within 6 months after the effective date of this AD, fill all unused tooling holes in the left and right engine pylon firewalls with firewall sealant, in accordance with Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE–116W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

Special Flight Permits

(d) 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.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996; or Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998.

(1) The incorporation by reference of Raytheon Service Bulletin SB.54–1–3815B, Revision 1, dated May 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996, was approved previously by the Director of the Federal Register as of January 27, 1997 (61 FR 66878, December 19, 1996).

(3) Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas, 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 31, 2000.

Issued in Renton, Washington, on April 14, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9896 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–346–AD; Amendment 39–11701; AD 2000–08–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing 777 series airplanes, that requires a one-time inspection to detect cracking of the fastener holes common to the upper wing skins and trailing edge panels of both wings, and corrective actions, if necessary. This amendment also requires coldwork of the fastener holes and installation of new or serviceable fasteners. This amendment is prompted by a report indicating that fatigue cracks have been found in the upper wing skin of both wings. The actions specified by this AD are intended to prevent fatigue cracking of the upper wing skin, which could result in reduced structural integrity of the wing.

DATES: Effective May 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing 777 series airplanes was published in the **Federal Register** on January 4, 2000 (65 FR 250). That action proposed to require a one-time inspection to detect cracking of the fastener holes common to the upper wing skins and trailing edge panels of both wings, and corrective actions, if necessary. That action also proposed to require coldwork of the fastener holes and installation of new or serviceable fasteners.

Comments

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

Conclusion

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

Cost Impact

There are approximately 82 airplanes of the affected design in the worldwide fleet. The FAA estimates that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $216 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $32,868, or $996 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–08–15 Boeing: Amendment 39–11701. Docket 99–NM–346–AD.

Applicability: Model 777 series airplanes having line numbers 1 through 119 inclusive, except line numbers 94, 102, 104, and 118; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the upper wing skin, which could result in reduced structural integrity of the wing, accomplish the following:

Eddy Current Inspection of Fastener Holes

(a) Prior to the accumulation of 16,000 total flight cycles or 40,000 total flight hours, whichever occurs earlier, perform a one-time eddy current inspection to detect cracking of the fastener holes common to the upper wing skins and trailing edge panels of both wings, in accordance with Boeing Alert Service Bulletin 777–57A0022, dated August 26, 1999.

Rework and Re-Inspection of Fastener Hole

(b) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, oversize the fastener hole and perform additional eddy current inspections to detect cracking of the fastener holes until all cracking is no longer detectable by means of eddy current inspection. Perform the actions in accordance with Boeing Alert Service Bulletin 777–57A0022, dated August 26, 1999. Prior to further flight, oversize the fastener hole an additional 1/32-inch minimum and measure the starting hole diameter and edge margin of the fastener hole, in accordance with the alert service bulletin.

(1) If the fastener hole diameter or the edge margin of any fastener hole is not within the limits specified in the alert service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, or a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) If the fastener hole diameter and edge margin of all the fastener holes are within the limits specified in the alert service bulletin, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

Coldwork of Fastener Holes

(c) If no cracking is detected during the eddy current inspection required by paragraph (a), or the fastener hole diameter and edge margin of all the fastener holes are within the limits required by paragraph (b) of this AD, prior to further flight, coldwork the fastener holes and install new or serviceable fasteners, in accordance with Boeing Alert Service Bulletin 777–57A0022, dated August 26, 1999.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 777–57A0022, dated August 26, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 31, 2000.

Issued in Renton, Washington, on April 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–10160 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–253–AD; Amendment 39–11703; AD 2000–08–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires repetitive inspections to detect damage of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. This AD also requires eventual replacement of certain taxi light assemblies with improved parts, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report that a damaged taxi light detached from an airplane and was ingested into the airplane engines. The actions specified by this AD are intended to prevent damage to the taxi light assembly, which could result in detachment of the taxi light assembly from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines.

EFFECTIVE DATE: May 31, 2000.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2672; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 10, 1999 (64 FR 24963). That action proposed to require repetitive detailed visual inspections to detect damage (including cracking, corrosion, deformation, or evidence of impact) of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. That action also proposed to require eventual replacement of certain taxi light assemblies with improved parts, which constitutes terminating action for the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule. Another commenter considers the daily repetitive inspection interval to be unnecessarily restrictive, but has no objections to the proposed rule.

Requests To Extend Repetitive Inspection Interval

Two commenters request that the FAA extend the repetitive daily inspection interval for the visual inspection to detect damage of the taxi light assembly mounted on the nose landing gear of the airplane.

One commenter states that the daily inspection is redundant and the interval should be extended to every five days. The commenter states that, during the pre-flight walk-around, the flight crew checks the nose taxi light bracket prior to each flight. If damage is found, the flight crew notifies maintenance to correct the discrepancy.

Therefore, the commenter states that its suggested change would provide an equivalent level of safety to the daily inspections.

Another commenter states that a daily repetitive inspection is excessive and suggests a weekly inspection interval. The commenter justifies its request by stating that it has recently placed additional focus on proper towing procedures, which will ''dramatically'' reduce the potential for impact damage.

The FAA does not concur with the commenters' request. Inspections at a frequency of every five or seven days, instead of daily, reduce the opportunity for discovering damage and are not adequate to ensure that any damage is detected in a timely manner.

With regard to the first commenter's reference to the pre-flight walk-around performed by the flight crew, the FAA does not consider flight crews to be trained in the same manner as maintenance personnel to carry out the detailed visual inspections required by this AD. These expectations and definitions are contained within Parts 1 and 43 of the Federal Aviation Regulations (FAR) (14 CFR parts 1 and 43).

With regard to the second commenter's justification of additional focus on proper towing procedures, the FAA finds that there is no meaningful way to gauge the effectiveness of training procedures in mitigating the unsafe condition addressed in this AD. The FAA expects that the individuals who have been performing towing operations were properly trained; however, there have still been numerous incidents of damage to the taxi light assemblies.

In developing an appropriate repetitive interval for this action, the FAA considered the average utilization of the affected fleet (average of 7 flight cycles per day), the numerous reports of damaged taxi light assemblies, and the degree of urgency associated with addressing the subject unsafe condition. In consideration of all of these factors, the FAA has determined that daily inspections are appropriate to ensure that an acceptable level of safety can be maintained. No change to the final rule is necessary.

Request To Include Approved Repair

One commenter requests that an approved repair be included as a terminating action for the repetitive inspections. The commenter promotes repair as a cost effective means of compliance, but does not provide any reason why a repair would provide a level of safety equivalent to that achieved by accomplishment of the proposed AD.

The FAA does not concur with the commenter's request. The new taxi light assemblies listed in paragraph (c) of this AD as acceptable replacement parts differ from the taxi light assemblies that are the subject of this AD in both the dimensions of the part and the material from which the part is made. These design changes address the inherent failure mode associated with the unsafe condition (*i.e.,* damaged taxi light assemblies due to towing operation practices and design deficiencies). However, repair of the taxi light assemblies subject to this AD would not affect the failure mode. No change to the final rule is necessary.

Request To Clarify Degree of Damage That Warrants Replacement

One commenter requests that the FAA clarify the degree of damage that warrants replacement of the light assembly, because minor superficial damage would not reduce the airworthiness of the assembly. The commenter provides no data or analysis beyond the statement made.

The FAA does not concur with the commenter's request. The FAA has defined the type of damage and level of inspection necessary in paragraph (a) of the AD. The FAA has determined that any damage found at this inspection level would decrease the safety of the aircraft to the point where replacement is necessary. No change to the final rule is necessary.

Clarification of the Term ''Inspector''

One commenter requests clarification of the term ''inspector'' referenced in **Note 2** of the NPRM. The commenter wants to know if this term refers to a job title or the person conducting the inspection.

The FAA concurs that clarification should be provided in this case. The term ''inspector,'' as used in the note, refers to the person performing the inspection. It is not intended as a job title and does not refer to a person with any special technical qualifications. The FAA notes that Part 43 of the FAR (14 CFR part 43) specifies who may perform maintenance. **Note 2** of this final rule has been revised accordingly to clarify the term ''inspector'' as ''the person performing the inspection.''

Request to Include Additional Instructions for Identification of Parts

One commenter recommends that the proposed AD include additional instructions or reference a Boeing or original equipment manufacturer document to assist in identification and reidentification of parts. The commenter states that many of the light assemblies will be difficult to identify due to part numbers ''wearing off.'' The commenter states that an alternative method of identifying parts would preclude unnecessary removals and inspections.

The FAA does not concur with the commenter's request. The FAA understands the difficulty the commenter may have in identifying which airplanes are configured with what parts. However, to develop procedures for identifying a part by a means other than part number would take time and would delay the issuance of this final rule. In consideration of the safety implications of the unsafe condition identified in this rule, the

FAA finds that it would be inappropriate to delay the issuance of this rule in this way. The economic benefit that would be gained (by minimizing unnecessary inspections and replacements) does not outweigh the safety benefits that will be gained by implementing the requirements of this rule in a timely manner. In addition, considering the estimated time necessary for replacement of the taxi light assembly (2 hours), it may cost more in time and effort for operators to properly identify a part as needing replacement than to replace the part. Therefore, the FAA finds that it would be more efficient and cost effective to accomplish the requirements of the AD as proposed. No change to the final rule is necessary.

Comment on Use of Lights Identified in Parts Catalog

One commenter states that it has only authorized the use of light assemblies that are identified within the airplane manufacturer's illustrated parts catalog. However, the commenter makes no request for a specific change to the proposed rule and provides no justification for a change. Therefore, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously.

Cost Impact

There are approximately 2,857 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $69,540, or $60 per airplane, per inspection cycle.

It will take approximately 2 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $549 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $775,371, or $669 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–08–17 Boeing: Amendment 39–11703. Docket 98–NM–253–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; that are not equipped with a Grimes Aerospace taxi light assembly having part number (P/N) 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the taxi light assembly, which could result in detachment of the taxi light from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines; accomplish the following:

Initial and Repetitive Inspections

(a) Within 60 days after the effective date of this AD, perform a detailed visual inspection to detect damage (including cracking, corrosion, deformation, or evidence of impact) of the taxi light assembly mounted on the nose landing gear of the airplane. Repeat the inspection thereafter at intervals not to exceed 1 day, until the requirements of paragraph (c) have been accomplished.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as an intensive visual inspection of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of lighting at an intensity deemed appropriate by the inspector (i.e., the person performing the inspection). Inspection aids such as mirrors, magnifying glasses, etc., may be used. Surface cleaning and elaborate access procedures may be necessary.

Replacement

(b) If any damage of the taxi light assembly is detected during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the existing taxi light assembly with a new or serviceable taxi light assembly in accordance with the applicable maintenance manual. If the existing taxi light assembly is replaced with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA: no further action is required by this AD.

Terminating Action

(c) Within 2 years after the effective date of this AD: Replace the existing taxi light assembly with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; in accordance with the applicable maintenance manual. Such replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on May 31, 2000.

Issued in Renton, Washington, on April 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–10289 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Training Sessions on the New Federal Oil Valuation Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of training sessions.

SUMMARY: The Minerals Management Service (MMS) is offering five 1-day payor training sessions on its revised Federal oil valuation regulations that are effective June 1, 2000.

DATES: See **SUPPLEMENTARY INFORMATION** for training dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for training locations.

FOR FURTHER INFORMATION CONTACT: Ronda Gray, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3152, Denver, Colorado 80225–0165, telephone number (303) 275–7259 or fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The dates and locations of the training sessions are as follows:

1. *Denver, CO:* May 18, 2000, 8:30 a.m. to 4 p.m., Mountain time. Denver Federal Center, Building 810, (S29, southwest side entrance), Denver, Colorado, 80225; telephone number (303) 202–4852
2. *Tulsa, OK:* May 23, 2000, 8:30 a.m. to 4 p.m., Central time. Radisson Inn—Tulsa Airport, 2201 North 77 East Ave., Tulsa, Oklahoma 74115; telephone number (918) 835–9911
3. *Houston, TX:* May 24, 2000, 8:30 a.m. to 4 p.m., Central time. Minerals Management Service Office, 4141 North Sam Houston Parkway East, Houston, Texas; telephone number (281) 987–6802
4. *Bakersfield, CA:* May 24, 2000, 8:30 a.m. to 4 p.m., Pacific time. Bureau of Land Management, Bakersfield District Office, 3801 Pegasus Drive, Bakersfield, California; telephone number (661) 391–6000
5. *Albuquerque, NM:* May 31, 2000, 8:30 a.m. to 4 p.m., Mountain time. Bureau of Land Management, Albuquerque District Office, 435 Montano Road, Albuquerque, New Mexico; telephone number (505) 761–8700.

These classes are offered at no cost to representatives of the oil and gas industry and members of the public who have an interest in the valuation of oil produced from Federal lands. To assure a reservation at any of the training sessions, please contact Ms. Ronda Gray (see **FOR FURTHER INFORMATION CONTACT** section above) because seating is limited for these training sessions. Reservations will be made on a first-come, first-served basis. You must make your own travel and hotel reservations for the training. MMS will not reserve blocks of rooms. Travel and related expenses will not be reimbursed by MMS.

MMS published its revised Federal oil valuation regulations in the **Federal Register** on March 15, 2000 (65 FR 14022), effective June 1, 2000. The primary changes in the revised regulations affect lessees who value oil not sold at arm's length. The following topics will be explained in the training sessions:

- New definitions
- How to value Federal oil sold at arm's-length
- How to value Federal oil not sold at arm's length by region (California/Alaska, Rocky Mountain Region, and elsewhere)
- How to make location and quality adjustments to index prices
- How to calculate a transportation allowance
- How to request a binding valuation determination
- Other new items in the rule

We encourage payors of Federal oil royalties to attend one of the training sessions, especially if you do not sell your Federal oil production at arm's length.

Dated: April 21, 2000.

Harry Corley,

Acting Associate Director for Royalty Management.

[FR Doc. 00–10430 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6585–3]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action lists two substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject to use restrictions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes. In this Final Rulemaking (FRM), EPA is issuing its decisions on the acceptability of halon substitutes in the fire suppression and explosion protection sector that were included in a notice of proposed rulemaking published on February 18, 1999 (64 FR 8038) and a correction to the February 18 proposal that was published on

March 25, 1999 (64 FR 14417). To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

EFFECTIVE DATE: May 26, 2000.

ADDRESSES: Information relevant to this rulemaking is available in Docket A–91–42, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, S.W., Room M–1500, Mail Code 6102, Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Meg Victor at (202) 564–9193 or fax (202) 565–2096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline at (800) 296–1996. EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/''.

SUPPLEMENTARY INFORMATION: This action is divided into four sections:

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Substitutes
III. Administrative Requirements
IV. Additional Information

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published a final rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

II. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risk posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, *i.e.,* those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as ''acceptable subject to use conditions.'' Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other

available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

In this final rule, EPA is issuing its decision on the acceptability (subject to use restrictions) of certain substitutes in the fire suppression and explosion protection sector. Today's rule incorporates decisions that were proposed on February 18, 1999 at 64 FR 8038 (referred to hereinafter as ''the proposal''). A correction to the proposal was published on March 25, 1999 (64 FR 14417). As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

The section below presents a detailed discussion of the fire suppression and explosion protection substitute listing determinations that are finalized in today's Final Rule. Tables summarizing these listing decisions are in Appendix I. The comments contained in Appendix I provide additional information on substitutes determined to be either unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. Since the comments contained in the appendix are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should such comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of substitutes to apply all such comments in their application of these substitutes, regardless of any regulatory requirements. In many instances, these comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of these comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Listing Decisions—Fire Suppression and Explosion Protection

1. Acceptable Subject to Use Conditions

a. Total Flooding Agents. IG–100 is acceptable as a halon 1301 substitute for total flooding applications. IG–100, which is composed of 100% nitrogen, is designed to lower the oxygen level in a protected area to a level that does not support combustion. Typically most combustibles will not burn once the oxygen concentration reaches 15% or below. Since the oxygen level during fire suppression is designed to be lower than atmospheric, EPA is applying specific use conditions designed to protect employees and workplace personnel who may be present in areas where IG–100 is discharged. The conditions specify design requirements for IG–100 systems that are meant to assure that sufficient oxygen will be available to workplace personnel.

These precautionary requirements are supported by medical specialists who have investigated human responses to inert gas fire suppression systems. They are consistent with conditions EPA has specified in approving other inert gas total flooding agents under the SNAP program. They are also consistent with worker safety conditions required by the Occupational Safety and Health Administration (OSHA) and standards developed by the National Fire Protection Association: NFPA 2001 Standard on Clean Agent fire Extinguishing Systems. (NFPA is a non-regulatory organization that publishes consensus codes and standards on fire safety issues for voluntary use.

The use conditions referenced here, which are conditions of acceptability under SNAP, are intended to protect worker safety in the absence of OSHA and other workplace limits. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard. As suggested by the court in *Southern Pacific Transp. Co.* v. *Usery,* 539 F.2nd 386 (5th Cir.1976), ''the scope of the exemption created by [OSHA] Section 4(b)(1) is determined by the [Agency's] intent.''

In accordance with the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards setting bodies.

In the original March 18, 1994 SNAP rulemaking (59 FR 13099), the Agency made clear that in cases like this (where EPA finds acceptable the use of an agent only under certain conditions), EPA has sought to avoid overlap with other existing regulatory authorities. In setting conditions for the safe use of halon substitutes in the workplace under SNAP, EPA has specifically deferred to OSHA's other regulations that govern workplace safety. As stated in the preamble to the original SNAP rule at 59 FR 13099, ''EPA has no intention to assume responsibility for regulating workplace safety especially with respect to fire protection, nor does the Agency intend SNAP regulations to bar OSHA from regulating under its Public Law 91–596 authority.''

2. Acceptable Subject to Narrowed Use Limits

a. Streaming Agents. HCFC Blend E is acceptable as a halon 1211 substitute for streaming agent uses in nonresidential applications. This agent is a blend of an HCFC, an HFC, and an additive. The primary constituent, an HCFC, is currently listed as acceptable for use in non-residential streaming applications. The secondary constituent, an HFC, is listed acceptable as a flooding agent subject to use conditions.

Halocarbon fire extinguishing agents (including HFCs, HCFCs, PFCs and CF_3I) break down into hazardous decomposition products as they are exposed to a fire. Halogen acids, in particular hydrogen fluoride, are the decomposition products of most concern because of their potential toxicity to humans. Users should avoid breathing gases produced by thermal decomposition of the agents, and evacuate and ventilate the area immediately after use. As with other halocarbon agents, EPA recommends that the potential human health risks associated with the use of HCFC Blend E, as well as handling procedures to reduce such risk, be clearly labeled on each extinguisher containing this blend. See the extinguisher marking requirements in Underwriters Laboratories Inc. Standard for Safety for Halocarbon Clean Agent Fire Extinguishers (UL 2129).

Additionally, section 610(d) of the Clean Air Act and its implementing regulations prohibit the sale and distribution of HCFCs in fire extinguishers for residential applications. (See 61 FR 64424, December 4, 1996, and 58 FR 69637, December 30, 1993.)

EPA has reviewed the potential environmental impacts of this blend and has concluded that, by comparison to halon 1211, it significantly reduces overall risk to the environment, particularly with respect to its ozone-depletion potential. The ozone-depletion potential of the HCFC in this blend is 0.02; no other constituent in the blend has ozone-depleting characteristics. Although there are clean agent substitutes acceptable for halon 1211, there are no commercially available alternatives for this end-use with zero ozone-depletion potential, low toxicity, and low global warming potential that provide ample fire suppression capabilities. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking.

B. Response to Comments

No comments were received on the proposal (64 FR 8038; February 18, 1999) or the correction to the proposal (64 FR 14417; March 25, 1999).

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this FRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because costs of the SNAP requirements as a whole are expected to be minor. In fact, this rule offers regulatory relief to small businesses by providing alternatives to phased-out ozone-depleting substances. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The actions herein may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

E. Submission to Congress and the Comptroller General

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

''major rule'' as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks''

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, as the exposure limits and acceptability listings in this final rule primarily apply to the workplace.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule. However, this rule does make use of the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems. EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/'' and from the Stratospheric Protection Hotline number as listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: April 20, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671—7671q.

2. Subpart G is amended by adding the following Appendix I to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix I to Subpart G—Substitutes Subject to Use Restrictions, Listed in the April 26, 2000, Final Rule, Effective May 26, 2000

FIRE SUPPRESSION AND EXPLOSION PROTECTION—TOTAL FLOODING AGENTS

[Substitutes Acceptable Subject to Use Conditions]

End Use	Substitute	Decision	Conditions	Comments
Halon 1301 Total Flooding Systems.	IG–100	Acceptable	IG–100 systems should be designed to maintain an oxygen level of 10%. A design concentration of less than 10% may only be used in normally unoccupied areas and in areas where egress is possible within 30 seconds. If it is not possible to egress an area within one minute, IG–100 systems must be designed to maintain an oxygen level of 12% If the possibility exists for oxygen levels to drop below 10%, employees must be evacuated prior to such oxygen depletion.	IG–100 systems must include alarms and warning mechanisms. Workplace personnel and employees should not remain in or re-enter the area after system discharge (even if such discharge is accidental) without appropriate personal protective equipment. See additional comments 1, 2, 3.

Additional Comments:
1. Should conform with OSHA 29 CFR 1910, Subpart L, Section 1910.160.
2. Per OSHA requirements, protective gear (SCBA) should be available in the event personnel must re-enter the area.
3. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to EPA's regulation of halon substitutes.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—STREAMING AGENTS

[Substitutes Acceptable Subject to Narrowed Use Limits]

End Use	Substitute	Decision	Limitations	Comments
Halon 1211 Streaming Agents.	HCFC Blend E ...	Acceptable	Nonresidential uses only	As with other streaming agents, EPA recommends that potential risks of combustion by-products be labeled on the extinguisher (see UL 2129). See additional comments 1, 2.

Additional Comments:
1. Discharge testing and training should be strictly limited only to that which is essential to meet safety or performance requirements.
2. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

[FR Doc. 00–10422 Filed 4–25–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300992; FRL–6554–4]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fenpropathrin in or on the cucumber/squash crop subgroup. The Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 26, 2000. Objections and requests for hearings, identified by docket control number OPP–300992, must be received by EPA on or before June 26, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300992 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@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 codes	Examples of potentially affected entities
Industry	111 112	Crop production. Animal production.

Categories	NAICS codes	Examples of potentially affected entities
	311 32532	Food manufacturing. 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 under **FOR FURTHER INFORMATION CONTACT.**

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 OPP–300992. The official record consists of the documents specifically referenced in this action, 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 (CM #2), 1921 Jefferson Davis Hwy., 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.

II. Background and Statutory Findings

In the **Federal Register** of December 3, 1999 (64 FR 679054) (FRL–6392–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP 9E6042) for tolerance by IR–4, Rutgers State University, North Brunswick, NJ 08902–3390. This notice included a summary of the petition prepared by Valent USA Company, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.466 be amended by establishing a tolerance for residues of the insecticide fenpropathrin, (alpha-cyano-3-phenoxybenzyl 2,2,3,3- tetramethylcyclopropanecarboxylate), in or on the cucurbit vegetable group at 0.5 part per million (ppm). The petition was subsequently amended by IR–4 to propose a tolerance for the squash/cucumber subgroup at 0.5 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fenpropathrin on the cucumber/squash crop subgroup at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoints

1. *Acute toxicity*. An acute reference dose (RfD) of 0.06 mg/kg/day was established based on clinical signs of neurotoxicity on the day of dosing in dams during a developmental toxicity study in rats. The no observed adverse effect level (NOAEL) was 6.0 milligrams/kilograms/day (mg/kg/day). An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variations) was used to determine the acute RfD. The acute Population Adjusted Dose (PAD) is equal to the acute RfD divided by the FQPA Safety Factor. Since the FQPA Safety Factor was reduced to 1X, the acute PAD is equal to the acute RfD.

2.*Chronic toxicity*. EPA has established the RfD for fenpropathrin at 0.025 mg/kg/day. This RfD is based on the observance of tremors in dogs in the 1-year oral feeding study. The NOAEL was 2.5 mg/kg/day. An uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation) was used to determine the chronic RfD. The chronic PAD is equal to the chronic RfD divided by the FQPA Safety Factor. Since the FQPA Safety Factor was reduced to 1X, the chronic PAD is equal to the chronic RfD.

3. *Carcinogenicity*. As no indication of carcinogenicity was seen in rats or mice, no carcinogenic endpoint was selected.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40

CFR 180.466) for the residues of fenpropathrin, in or on a variety of raw agricultural commodities. Permanent tolerances are established for the residues of fenpropathrin in/on pome fruit crop group at 5.0 ppm; grapes at 5.0 ppm and the processed product raisins at 10 ppm; citrus fruit crop group at 2.0 ppm and the processed product citrus oil at 75.0 ppm and dried citrus pulp at 4.0 ppm; head and stem brassica crop group at 3.0 ppm and the melons crop group at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from fenpropathrin as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Tier 3 acute dietary exposure analyses for fenpropathrin were performed with the Dietary Exposure Evaluation Model (DEEM™) using field trial values and percent crop treated estimates. The acute risk was analyzed at the 99.9th percentile using the 1989–1992 food consumption survey. The U.S. population and population subgroups (with the exception of nursing infants, all infants, and children) acute dietary risk estimates are below EPA's level of concern. The acute dietary risk estimates for subgroups of nursing infants, all infants, and children were above EPA's level of concern. In the 1989–1992 survey, there is a consumption value associated with grapes which can be considered to be aberrant. There were only 4 nursing infants in the 1989–1992 survey who reportedly ate grapes. A single 10-month old nursing infant consumed 2/3 of a pound of grapes in 1 day. This is an unusually high quantity of grapes for an infant to consume in 1 day. Because of the aberrant data point, the acute dietary exposure analysis was conducted using the 1994–1996 food consumption survey.

ii. *Chronic exposure and risk*. A DEEM™ chronic dietary exposure analysis was performed using anticipated residues (field trial data) and percent crop treated data. The FQPA 10X safety factor was removed. As a result, the chronic PAD is equivalent to the chronic RfD: 0.025 mg/kg/day. Based on the 1989–1992 data base, the most highly exposed subgroup (children 1–6 years) utilized 9% of the chronic PAD. As a result, exposure to fenpropathrin of the U.S. population and all population subgroups is below EPA's level of concern.

2. *From drinking water*. Fenpropathrin is persistent and immobile. There are no established maximum contaminant level for residues of fenpropathrin in drinking water. Neither has any health advisory levels for fenpropathrin in drinking water been established.

The Agency lacks sufficient water-related exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenpropathrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. The Agency is currently relying on GENEEC (Generic Estimated Environmental Concentration) and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI–GROW (Screening Concentration in Ground Water), which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Since the models estimates are used as screening tools in the risk assessment process, the Agency does not use the estimates from GENEEC, PRZM/EXAMS and SCI–GROW to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOC) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. Different populations have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

The Agency used its SCI–GROW and GENEEC screening models and environmental fate data to determine the estimated environmental concentration (EEC) for fenpropathrin in ground water and surface water respectively. EPA reported ground water EEC of 0.006 parts per billion (ppb) and surface water EECs of 2.72 ppb (acute) and 0.34 ppb (chronic) for fenpropathrin.

EPA has calculated DWLOCs for both acute and chronic risks. To calculate the DWLOC for acute exposure relative to an acute toxicity endpoint, the acute dietary food exposure (from DEEM) was subtracted from the acute PAD to obtain the acceptable acute exposure to fenpropathrin in drinking water. To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the chronic PAD to obtain the acceptable chronic (non-cancer) exposure to fenpropathrin in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

i. *Acute exposure and risk*. The drinking water EEC for dietary exposures at the 99.9th percentile exceeds the DWLOC for the population subgroups all infants, nursing infants, and children 1–6 years. The DWLOCs, which were calculated based on the exposure values at the 99.5th percentile of exposure for nursing infants and at the 99.75th percentile of exposure for all infants and for children 1–6 years, were above the drinking water EEC. The same is true for the DWLOCs calculated based on the 99.9th percentile exposure values from the 1994–1996 food consumption survey. For the reasons discussed in Unit C.1.i. EPA has chosen to use data from the 1994–1996 food consumption survey for these three population subgroups (and for this risk assessment only). Although the dietary exposure estimates are highly refined, EPA notes that 100% crop treated was used for the following crops: cucurbit group, grapes, pome fruit group, citrus group, and head and stem Brassica vegetable subgroup. Based on percent crop treated values for registered uses, the percent crop treated for these uses will probably be significantly less than 100%.

ii.*Chronic exposure and risk*. EPA generally reduces GENEEC model values by a factor of 3 when determining whether or not a chronic level of comparison has been exceeded. If the GENEEC model value is ≤ 3 times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed.

Based on the chronic dietary (food) exposure estimates, chronic DWLOC for

fenpropathrin have been calculated. The lowest DWLOC is 230 ppb for both nursing infants and children 1–6 years. The highest EEC for fenpropathrin in surface water is from the application of fenpropathrin to pears and citrus fruits (0.34 ppb) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to fenpropathrin residues in drinking water are not expected to exceed EPA's level of concern.

3. *From non-dietary exposure*. There are no residential or non-occupational uses for fenpropathrin; therefore residential exposures are not expected.

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

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

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

1. *Acute risk*. For this risk assessment, the acute aggregate risk is equivalent to the risk from (food + water). Using the 1994–96 food consumption survey, it is estimated that acute exposure to fenpropathrin from food for the most highly exposed population subgroup, children (1–6 years), will utilize 76% of the acute PAD at the 99.9 percentile of exposure (see discussion in Unit III.C.). An acute dietary exposure (food + water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups. The EECs of fenpropathrin in surface and ground water for acute exposure are below the DWLOCs. Thus, the acute aggregate risk of exposure to fenpropathrin from food and drinking water is below EPA's level of concern for the U.S. population and all population subgroups.

2. *Chronic risk*. For this risk assessment, the chronic aggregate risk is equivalent to the risk from (food + water). Chronic residential exposure to fenpropathrin residues is not expected. In addition, no chronic dermal or inhalation endpoints were identified. As discussed above, EPA has concluded that exposure to fenpropathrin from food for the most highly exposed subgroup (children 1–6 years) will utilize 9% of the chronic PAD. EPA generally has no concern for exposure below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The highest EEC for fenpropathrin in drinking water (0.34 ppb) is substantially lower than the lowest DWLOC (230 ppb). Therefore, chronic aggregate risk does not exceed EPA's level of concern.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there is no expected residential exposure to residues of fenpropathrin, the short- and intermediate-term aggregate risk does not exceed EPA's level of concern.

4. *Aggregate cancer risk for U.S. population*. The Agency has determined that there is no evidence of carcinogenicity in studies in either the mouse or rat.

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

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

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

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

ii. *Developmental toxicity studies*. In a developmental toxicity study in rats, pregnant female rats were dosed by gavage on gestation days 6–15 at 0 (corn oil control), 0.4, 1.5, 2.0, 3.0, 6.0, or 10.0 mg/kg/day. The maternal NOAEL is 6 mg/kg/day; maternal LOAEL is 10 mg/kg/day based on death, moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsions, hunched posture, squinted eyes, chromodacryorrhea, and lacrimation; developmental NOAEL is > 10 mg/kg/day. There were no developmental effects observed under the conditions of the study.

In a developmental toxicity study in rabbits, pregnant female New Zealand rabbits were dosed by gavage on gestation days 7 through 19 at 0, 4, 12, or 36 mg/kg/day. Maternal NOAEL is 4 mg/kg/day; maternal LOAEL is 12 mg/kg/day based on grooming, anorexia, flicking of the forepaws; developmental NOAEL is > 36 mg/kg/day highest dose tested. There were no developmental effects observed under the conditions of the study.

iii. *Reproductive toxicity study*. A 3-generation reproduction study was performed in rats. Rats were dosed with fenpropathrin at concentrations of 0, 40, 120, or 360 ppm (0, 3.0, 8.9, or 26.9 mg/kg/day in males; 0, 3.4, 10.1, or 32.0 mg/kg/day in females, respectively). Parents (male/female): Systemic NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Systemic LOAEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors with spasmodic muscle twitches, increased sensitivity

and maternal lethality; reproductive NOAEL = 120 ppm (8.9/10.1 mg/kg/day). Reproductive LOAEL = 360 ppm (26.9/32.0 mg/kg/day) based on decrease mean F_{1B} pup weight, increased F_{2B} loss. Pups (male/female): Developmental NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Developmental LOAEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors, and increased mortality.

iv. *Prenatal and postnatal sensitivity*. There is no evidence of sensitivity to young rats or rabbits following prenatal or postnatal exposure to fenpropathrin.

v. *Conclusion*. There is a complete toxicity data base for fenpropathrin, and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the above, EPA concludes that reliable data support use of the 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk*. (food + water) The percentages of the acute PAD utilized (by food alone) at the 99.9 percentile exposure are 56% for infants and 77% for children (1–6 years), the most highly exposed population subgroup. The EEC for fenpropathrin in drinking water is below the DWLOC. The Agency has no cause for concern if total acute exposure is 100% or less of the acute PAD. Therefore, the Agency has no acute aggregate concern due to exposure to fenpropathrin through food and drinking water.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenpropathrin from food will utilize 5% of the RfD for infants and 9% of the RfD for children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenpropathrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. No uses of fenpropathrin have been identified for residential exposures, therefore, fenpropathin need not be evaluated for short- or intermediate-term risk resulting from residential exposure.

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

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately understood.

B. Analytical Enforcement Methodology

EPA concludes that adequate methodology is available for enforcement of the proposed tolerances. Method RM–22–4 can be used for the analysis of fenpropathrin in cucurbits. Residues are extracted with acetone/hexane, cleaned up with silica gel and C18 Sep Pak chromatography and detection is by gas chromatography. The limit of detection is 0.01 ppm.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

Adequate residue field trials reflecting the prosed use rate were submitted to EPA to demonstrate that tolerances for cucumber/squash crop subgroup will not be exceeded when fenpropathrin products labeled for these uses are used as directed.

V. Conclusion

Therefore, the tolerance is established for residues of fenpropathrin, (alpha-cyano-3-phenoxy-benzyl 2,2,3,3-tetra-methylcyclopropanecarboxylate), in or on the cucumber/squash crop subgroup at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300992 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 26, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For

additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300992, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 11, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.466, amend paragraph (a) by alphabetically adding the following entry to the table to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Squash/cucumber subgroup ...	0.5
* * * * *	
* * * * *	

[FR Doc. 00–10042 Filed 4–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300993; FRL–6554–6]

RIN 2070–AB78

Thiabendazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide thiabendazol and its metabolites in or on lentils at 0.1 part per million (ppm) for an additional 20–month period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lentils. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective April 26, 2000. Objections and requests for hearings, identified by docket control number OPP–300993, must be received by EPA on or before June 26, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300993 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@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 codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing 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 under **FOR FURTHER INFORMATION CONTACT.**

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 OPP–300993. The official record consists of the documents specifically referenced in this action, 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 Hwy., 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.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), it established a time-limited tolerance for the residues of thiabendazole and its metabolites in or on lentils at 0.1 ppm. Subsequently, EPA extended that tolerance, published in the **Federal Register** of December 4, 1998 (63 FR 66994) (FRL–6044–5) with an expiration date of April 30, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of thiabendazole on lentils for this year's growing season due to the situation remaining an emergency. The Applicants (Idaho, Washington, North Dakota, and Montana) state that the ascochyta blight fungus has only occurred in the United States in recent years, and presently available fungicides do not adequately control its spread in lentils, to prevent significant economic loss. Additionally, a recently-discovered sexually-reproducing strain is of even greater concern, as this sexual stage releases spores, capable of traveling long distances on the wind. This disease was

initially of isolated occurrence in the U.S. until the last several years. The sexual strain has potential to lead to significant widespread infection of lentils, and without the requested use of thiabendazole to control this disease, significant economic losses are expected. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18, the use of thiabendazole on lentils for control of ascochyta blight in lentils.

EPA assessed the potential risks presented by residues of thiabendazole in or on lentils. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 25, 1998 (63 FR 9435). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 20-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lentils after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300993 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 26, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300993, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of

the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 12, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.242 [Amended]

2. In § 180.242, amend the entry for ''Lentils'' in the table under paragraph (b) by revising ''4/30/00'' to read ''12/31/01''.

[FR Doc. 00–10041 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1006

RIN 0991–AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From Public Law 104–191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the OIG's civil money penalty (CMP) authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996. Among other provisions, this final rulemaking codifies new CMPs for excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. This rule also codifies a number of technical corrections to the regulations governing OIG's sanction authorities.

EFFECTIVE DATE: These regulations are effective on April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089 OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, included a number of changes to the OIG's authorities intended to curtail and eliminate health care fraud and abuse. With regard to the sanction authorities, HIPAA expanded the scope of certain basic fraud authorities by extending the application of current CMP provisions beyond those programs funded by the Department of Health and Human Services (the Department) to include all Federal health care programs. The HIPAA also significantly revised and strengthened the OIG's existing CMP authorities pertaining to violations under Medicare and the State health care programs.

Among other provisions related to the OIG's CMP authority, HIPAA (1) increased the maximum penalty amounts per false claim from $2,000 to $10,000; (2) allowed CMPs to be

assessed for incorrect coding, medically unnecessary services, and offering remuneration to beneficiaries to influence their choice of a particular provider or supplier; and (3) established a new CMP for physicians' false certification of eligibility for Medicare-covered home health services.

While the majority of these revisions to the OIG's CMP authorities under section 1128A of the Social Security Act (the Act) were effective on January 1, 1997,[1] these provisions did allow the Department some policy discretion in their implementation. As a result, we developed proposed rulemaking to address these HIPAA CMP provisions, along with other technical revisions and conforming policy changes to the OIG's sanction authorities codified in 42 CFR parts 1003, 1005 and 1006.

B. Summary of the Proposed Rule

On March 25, 1998, the Department published proposed rulemaking (63 FR 14393) addressing new and revised CMP authorities in accordance with HIPAA, in addition to a number of proposed technical and corrections to 42 CFR parts 1003, 1005 and 1006. Set forth below is a brief summary of the regulatory provisions contained in that proposed rule—

1. Extension of Current CMP Authority

Section 231(a) of HIPAA expanded the scope of the CMP authorities beyond programs funded by the Department, to include application to other Federal agencies' health care programs. The statute may now be used to address violations involving other Federal health care programs such as Tricare, Veterans Affairs, and the Public Health Service programs which are involved with the funding or provision of health care items and services (42 U.S.C. 1320a–7b(f)). We proposed amending the basis and purpose sections of 42 CFR part 1003, as well as the current definitions for the terms ''claim'' and ''exclusion'' in § 1003.101, to extend CMP coverage to other applicable Federal health care programs.

2. Increased CMP Amounts

In accordance with section 231(c) of HIPAA, we proposed amending § 1003.103(a) of the regulations to increase the CMP maximum amount from $2,000 to $10,000 per false item or service or prohibited practice, and amending § 1003.104 to raise the amount of authorized assessments from double to triple the amount claimed. These amounts are consistent with the penalty and damage amounts contained in the False Claims Act (FCA) (31 U.S.C. 3729(b)).

3. CMPs for Excluded Individuals Retaining Ownership or Control Interest in a Participating Entity

A major loophole existed under the law prior to HIPAA whereby an excluded individual was able, without sanction, to continue to gain benefits from the Medicare and the State health care programs by retaining a direct or indirect ownership or control interest in a health care entity that participates in Medicare or any State health care program. Revised OIG regulations, in accordance with section 231(b) of HIPAA, were proposed to codify a new CMP designed to deter such affiliations. Specifically, the rule proposed a new § 1003.102(b)(11) (now being designated as (b)(12)), and other conforming revisions, to establish a CMP of up to $10,000 for each day that an excluded individual retains a prohibited ownership or control interest in an entity participating in Medicare or any State health care program. The penalty provision would apply to excluded individuals, having an ownership or control interest in a participating entity, who know, or should know, of the action constituting the basis for the exclusion. It also applies to any excluded persons who remain as officers or managing employees of a participating entity.

4. CMPs for Upcoding Claims and Medically Unnecessary Services

While the OIG has historically viewed upcoding medical procedure codes and the submission of claims for medically unnecessary services as warranting the imposition of a CMP, section 231(e) of HIPAA expressly identifies a ''pattern'' of these practices as violations of the CMP statute. The regulations proposed revising § 1003.102(a)(1) to reflect that a CMP and assessment may be imposed for submitting, or causing to be submitted, claims that the person knows or should know will result in greater payment than the code applicable to the item or service actually provided. A new § 1003.102(a)(6) was also proposed for purposes of imposing CMPs and assessments for submitting or causing to be submitted claims for medically unnecessary items or services.

5. CMPs for Offering Inducements to Beneficiaries

A new § 1003.102(b)(12)(now being designated as (b)(13)), and conforming changes, were proposed in accordance with section 231(h) of HIPAA to address the new CMP authority imposing sanctions against individuals or entities that offer remuneration to a program beneficiary that they know, or should know, will influence the beneficiary's decision to order or receive items or services from a particular provider, practitioner or supplier reimbursable by Medicare or the State health care programs. Under the statute and the proposed regulations, remuneration would include both the waiver of all or part of deductible and coinsurance amounts, and the transfer of items and services for free or for other than fair market value.

Congress enacted statutory exemptions to the definition of ''remuneration'' under this CMP provision to encompass deductible and coinsurance waivers that meet certain conditions, certain differentials in coinsurance amounts as part of a benefit plan design, and incentives to promote the delivery of preventive care. Specifically, Congress exempted:

- Waivers of coinsurance and deductible amounts that are not advertised or solicited, are not routine, and are made either after a good faith, individualized determination of financial need or after reasonable collection efforts have failed;
- Any waiver of coinsurance or deductible amounts made in accordance with a ''safe harbor'' to the anti-kickback statute or other regulations issued by the Secretary; [2]
- Differentials in coinsurance and deductible amounts as part of a benefit plan design where the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and where the differentials meet standards set forth in regulations issued by the Secretary; and
- Incentives given to individuals to promote the delivery of preventive care, as determined by the Secretary.

We proposed defining ''remuneration'' consistent with the above provisions.

6. CMPs for the False Certification of Home Health Services Eligibility

The regulations proposed the addition of § 1003.102(b)(13) (now being

[1] Section 232 of HIPAA, setting forth the CMP for false certification of Medicare home health benefit eligibility, applies to certifications made on or after August 21, 1996, the enactment date of the statute.

[2] In HIPAA, this exception was originally contained in the general waiver of co-payment exception. This provision has since been made a separate exception under section 4331(e) of the Balanced Budget Act of 1997, and has been further modified by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277) to expand this exception from co-payment waivers protected by an anti-kickback statute safe harbor to any payment practice that meets an anti-kickback statute safe harbor.

designated as (b)(14)), and conforming changes, to address the new CMP authority set forth in section 232 of HIPAA imposing sanctions against a physician who falsely certifies the necessity of Medicare-covered home health services when he or she knows that such care is not necessary. Under this authority and the proposed rule, the physician could be subject to a CMP of the greater of $5,000 or 3 times the amount of Medicare payments made for the home health services.

7. Clarification of the CMP Knowledge Standard

Section 1128A of the Act and the implementing OIG regulations have applied a ''knows or should know'' standard of proof with regard to false claims and other prohibited acts. The ''should know'' standard historically placed a duty on providers to use reasonable diligence to ensure that claims submitted to the government are true and accurate. However, to make the knowledge standard consistent with the FCA, section 231(d) of HIPAA clarified the applicable standard of proof. Under the proposed revised definition for ''should know or should have known'' in § 1003.101, the proposed regulations indicated that individuals and entities would only be liable under the CMP authority if they acted with actual knowledge, or with reckless disregard or deliberate ignorance of information supporting the truth or falsity of a claim or other fraud. No specific intent to defraud would be required. The rule also proposed adding a new § 1003.102(e) to clarify, in accordance with the legislative history of HIPAA, that the term ''knowingly'' will be applied to the presentment of a claim under the CMP statute consistent with the standard of knowledge set forth in the FCA.

8. Other Technical Corrections

In addition to a number of conforming changes to the CMP provisions in part 1003 required by HIPAA, the regulations proposed to revise certain procedures applicable to the appeal of OIG exclusions, CMPs and assessments in 42 CFR part 1005. These included—

- Clarification of the scope of an administrative law judge's (ALJ) authority to issue subpoenas at a hearing in § 1005.9(b) to indicate that the ALJ is authorized to issue a subpoena to any individual to attend the hearing and to provide documentary evidence at *or prior to* that hearing. (The existing language has been misconstrued in some situations as only authorizing the production of documents at the hearing itself.)
- A proposed revision to § 1005.7(e) to provide for motions to compel discovery once a request for production of documents has been received. The proposed revision was intended to clarify that a party has a right to object to discovery requests without requiring that party to file for a protective order, leaving it to the party seeking the documents to justify why access is appropriate in a motion to compel discovery.
- A revision to § 1005.21(d) was proposed to allow for interlocutory appeal to the Departmental Appeals Board (DAB) of the timeliness of the filing of a hearing request. The proposed rule indicated that without this proposed change, a final DAB ruling that a hearing request was untimely filed can be meaningless, since the hearing has often taken place before appeal of an ALJ's ruling on timeliness can occur.

II. Response to Comments and Summary of Revisions

In response to the notice of proposed rulemaking, the OIG received a total of 31 timely-filed public comments from various health care providers and organizations, professional medical societies and associations, and other interested parties. The comments included both broad concerns about the issuance of these CMP regulations, and more detailed comments on specific aspects of the HIPAA CMP provisions. Set forth below is a synopsis of the various comments and recommendations received, our response to those concerns, and a summary of the specific revisions and clarifications being made to the regulations at 42 CFR parts 1003, 1005 and 1006 as a result of the proposed HIPAA CMP rule and the public comments.

General Comments

Comment: One commenter raised concern over how the Government's anti-fraud activities under this new rule would be coordinated with private sector efforts. The commenter believed that increased enforcement efforts in the public sector might cause fraud perpetrators to shift their illegal activities to programs not covered by these regulations, such as the Federal Employees Health Benefits Program (FEHBP), causing these programs to lose money. The commenter believed that there appeared to be little opportunity for private health insurance plans to receive restitution for their losses.

Response: The OIG is equally concerned about the spread of potential fraud in all health care programs not covered by these regulations, such as the FEHBP. The statute, however, created an exception for that program under the CMP provisions, excluding the FEHBP from the definition of a Federal health care program. Overall, we believe the OIG's anti-fraud efforts should serve to identify and sanction those health care providers that are in a position to defraud both the Federal health care and private sector health care programs.

Comment: In light of the fact that CMPs can now reach $10,000 per claim, one commenter urged the OIG, as well as the Department of Justice, to review and investigate preliminary findings carefully before accusing a health care provider of fraud and abuse.

Response: We understand and agree with the commenter's concerns with regard to increased maximum CMP amounts. The OIG has stressed, and will continue to stress, the importance of investigating specific allegations against a provider thoroughly and completely before taking any action.

Specific Comments

Section 1003.102(a)(1) and (a)(6), Claims for Upcoding and for Medically Unnecessary Services

Comment: Several commenters expressed concern that physicians not be prosecuted for honest coding mistakes and legitimate differences of opinion over medical necessity or the use of appropriate billing codes. Commenters suggested that failure to document the medical basis for a claim may be an oversight rather than proof of a medically unnecessary claim. Other commenters believed that the OIG needs to clarify both that CMPs will not be imposed before intent is established, and that CMPs will only be imposed commensurate with the harm to the Federal Government and not as a bargaining tool.

One organization urged the OIG, in implementing this CMP authority, to work with the medical profession to educate physicians regarding proper billing procedures, in order to minimize potential fraud and abuse violations. Still another commenter believed that peer review should be mandatory before a physician can be subject to a penalty for upcoding or providing services deemed to be not medically necessary. This commenter believed that because of the serious consequences associated with improper coding, it is imperative that judgment on the appropriateness of these claims rest essentially with physicians.

Response: Sanctions may only be imposed against those who act in

''deliberate ignorance'' or with ''reckless disregard'' of the truth or falsity of information specified on claims. A physician whose documentation fails to support the level of service submitted for a service code would not be subject to CMP liability unless he or she specifically acted in ''deliberate ignorance'' or ''reckless disregard'' of the truth or falsity of the claim. As a result, the OIG would not consider as a basis for CMP action the submitting of a claim for a service found upon review to be medically unnecessary, without evidence that the issue of medical necessity was deliberately ignored or recklessly disregarded. Honest or inadvertent billing or coding mistakes will not be the basis for the imposition of CMPs. In addition, CMPs may be imposed only where a ''pattern'' of improper claims with upcoded procedures or unnecessary services exists. Sanctions will be imposed only in appropriate cases where a ''pattern'' of upcoding or billing for unnecessary services has been identified.

Comment: One commenter believed the proposed § 1003.102(a)(6) raised a number of issues for laboratories since laboratories do not determine medical necessity or actually order laboratory services. The commenter believed that it would be inappropriate for the OIG to allege this provision was violated if the laboratory merely submitted a claim for services with an ICD–9 code that the carrier did not recognize as demonstrating the medical necessity of the services. The commenter cited several reasons why the laboratory might submit such claims. Specifically, the commenter indicated that the beneficiary has a right to ask that the claim be submitted to obtain the denial, and that laboratories often disagree with carriers' coding determinations and may submit a claim to obtain the denial so that it can pursue further appeal rights. As a result, the commenter believed that the regulations should emphasize that the mere submission of a claim with an ICD–9 code that is not acceptable to the carrier should not constitute a violation.

Response: Consistent with the statute and the legislative history, the OIG does not intend this penalty provision to apply when providers submit claims that they know will not be considered reimbursable as medically necessary, but that are required to be submitted because their patients need to document that the Medicare program will not cover the service. However, as explained in the legislative history to this statutory provision, in submitting such claims providers must explicitly notify Medicare carriers that a claim is being submitted not for payment, but solely for the purpose of seeking reimbursement from secondary payers.

Comment: Proposed § 1003.106(a)(6) provided that CMPs may be imposed if a claim is submitted for ''an item or service that is medically unnecessary, and which is part of a pattern or practice of such claims.'' Several commenters indicated that the proposed language in § 1003.102(a)(6), regarding the submission of claims for services that are medically unnecessary, should be amended to include the ''knows or should know'' standard found in the statute and in the proposed revision to § 1003.102(a)(1). Commenters believed that absence of a ''knows or should know'' standard for all errors pertaining to medical necessity will place the OIG in the position of subjecting legitimate medical decisions to CMPs, and believed that the ''know or should know'' language is critical to ensuring that physicians are not prosecuted for inadvertent billing mistakes or legitimate disagreements over medical necessity of items or services. Another commenter also stated that the conjunctive re-phrasing of § 1003.102(a)(6) of the proposed regulation (an item or service that is medically unnecessary *and* part of a pattern or practice) could alter the meaning of the statutory language.

In addition, one commenting organization stated that the language in proposed § 1003.102(a)(6) was identical to section 231(c)(4) of HIPAA, except that the words ''or practice'' were not included in the HIPAA language. The commenter indicated that HIPAA requires an actual pattern of medically unnecessary claims as a prerequisite to CMPs, while the regulation, as drafted, would allow CMPs for a single claim.

Response: The knowledge standard in the statute requires that providers assume responsibility for appropriate billing of their services. It is not our intent, however, to subject physicians to penalties for legitimate disagreements over the medical necessity of items and services, or for honest mistakes or errors. The OIG intends to impose CMPs only after establishing that a provider knew that a billed item or service was not medically necessary, or that he or she deliberately ignored or recklessly disregarded such information. In response to comments, we are revising § 1003.102(a)(6) by adding the words ''knows or should know'' to read as follows: ''An item or service that a person *knows or should know* is medically unnecessary, and which is part of a pattern of such claims'' (emphasis added).

We are also amending the proposed § 1003.102(a)(6) by deleting the words ''or practice'' from this section in order to be consistent with language set forth in HIPAA.

Section 1003.102(b)(12), Retaining Ownership or Control Interest While Excluded

Comment: Two commenters believed that the regulations do not adequately allow for the timely divestiture of an excluded person's interest in a health care entity. One commenter indicated, for example, that continuing care of patients might be harmed by the failure to allow an excluded individual to divest his or her interest in a health care entity over a period of time. A second commenter indicated that, given the complexity of business arrangements, it may not be possible to immediately divest an ownership or controlling interest, and that a CMP should not be imposed until the individual has been given adequate time to dispose of his or her interest in the entity.

Response: The use of this CMP authority remains discretionary, with the OIG taking into full consideration the effect on program beneficiaries of any sanctions action. The OIG would refrain from imposing an exclusion normally if it believed that such action would jeopardize patient care. However, where we have deemed a particular provider unfit to participate in the Medicare and other Federal health care programs, and to provide items or services for which these programs will pay (by virtue of a program exclusion), we believe that, ordinarily, immediate exclusion will protect, rather than harm, program beneficiaries. With respect to allowing a sufficient time period to permit excluded individuals to divest themselves of an ownership or controlling interest in a health care entity once excluded, the OIG is cognizant of the complex nature of some business arrangements involving ownership or controlling interests in health care entities, and will remain flexible in its imposition of a CMP if it receives adequate assurances from the excluded individual that he or she is taking concrete steps to dispose of an ownership or controlling interest in a timely manner.

Section 1003.102(b)(13), Offering Inducements to Program Beneficiaries

a. Waivers of Coinsurance and Deductibles

Congress exempted from the prohibition on persons offering inducements to beneficiaries certain waivers of Federal health care program copayments that are not advertised, that are not routine, and that are either made

after an individualized determination of financial need or the failure of reasonable collection efforts. Congress also exempted copayment waivers that are exempt from the anti-kickback statute in accordance with the safe harbor or other regulations.

Comment: While supporting the exception for waivers of coinsurance and deductible amounts in cases where the beneficiary is indigent or reasonable collection efforts have failed, several commenters requested guidance as to what constitutes ''financial need'' and ''reasonable collection efforts.'' At a minimum, commenters asked that we incorporate the text of the statutory definition of remuneration into the regulations, instead of merely incorporating it by reference.

Response: We agree with the commenters and are incorporating the language of the statutory definition of ''remuneration'' in the final regulations in full text form. We are not specifying any particular method of determining financial need because we believe what constitutes ''financial need'' varies depending on the circumstances. What is important is that providers make determinations of financial need on a good faith, individualized, case-by-case basis in accordance with a reasonable set of income guidelines uniformly applied in all cases. The guidelines should be based on objective criteria and appropriate for the applicable locality. We do not believe that it is appropriate to apply inflated income guidelines that result in waivers of copayments for persons not in genuine financial need. ''Reasonable collection efforts'' are those efforts that a reasonable provider would undertake to collect amounts owed for items and services provided to patients.

If the patient has an insurer providing secondary coverage that refuses to pay a copayment amount, the provider should attempt to collect from the patient, unless the provider has contractually agreed with the insurer not to balance bill the patient. In that case, the insurer remains liable for the copayment.

Comment: One commenter also sought clarification as to whether section 231(h)(6)(B) of HIPAA, which exempts any ''permissible waiver'' as specified in an anti-kickback statute safe harbor, applies to items or services covered by a health plan that are protected from anti-kickback liability under the safe harbor for reduced cost-sharing amounts at § 1001.952(l).

Response: In accordance with an amendment contained in section 5201(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, prohibited remuneration under section 231(h) of HIPAA does not include ''any permissible practice described in any subparagraph of section 1128B(b)(3) of the Act or in regulations issued by the Secretary'' (with the exception of certain premium payment arrangements described in the statute). In other words, payment practices that are protected by a safe harbor to the anti-kickback statute are also protected from sanction under section 231(h) of HIPAA.

b. Differentials in Coinsurance and Deductibles as Part of a Benefits Plan Design

Congress exempted from the definition of remuneration differentials in coinsurance and deductible amounts as part of a benefits plan design where the differentials are disclosed to beneficiaries, providers and third-party payers, and otherwise conform to standards promulgated by the Secretary. We stated in the preamble to the proposed rule that we do not interpret this exemption as authorizing any benefits plan design that directly or indirectly operates to waive deductible or coinsurance amounts required by any Federal health care program. Thus, for example, a private plan's ''coordination of benefits'' provision may not relieve a provider or a plan that is secondary to Medicare from its respective obligations to bill and pay Medicare copayments. We solicited comments regarding how to best define differentials in coinsurance and deductibles that are part of a plan design.

Comment: Commenters expressed three major concerns in response to our statement that the exception for plan coinsurance differentials did not authorize any benefit plan design that directly or indirectly operates to waive deductible or coinsurance amounts required by any Federal health care program. The first concern expressed by several physicians' organizations is that the practice is not uncommon and that many health care plans require physicians to enter into contracts that limit payment for services to the plan's specified fee schedule (which is usually lower than Medicare's fee schedule) and prohibit physicians from billing beneficiaries for any amounts. These plans include enrollees who are Medicare beneficiaries for whom Medicare is the primary payer (on a fee-for-service basis) and the plan is the secondary payer. The commenters indicated the following sequence of events for physicians: (i) The physician bills Medicare for a service at the physician's ''actual charge'' and is paid 80 percent of the lower of the charge or the Medicare fee schedule amount; (ii) the physician bills the secondary plan for the 20 percent Medicare copayment; (iii) the secondary plan denies payment for all or part of the copayment on the ground that the physician has already received full payment under the contract, because the amount paid by Medicare (80 percent of the lower of the charge or Medicare fee schedule amount) is more than the applicable amount in the plan's fee schedule; and (iv) the physician, barred from billing the beneficiary for any amounts, must forego the unpaid copayment amount. These commenters stated that the effect of this is to waive routinely the Medicare copayment, since neither the secondary plan nor the beneficiary has paid it.

The second major concern that was expressed by the same physician groups is that, because physicians join multiple managed care plans and agree to different discounted rates with each one, often physicians do not know the plans' reimbursement rates. They indicated that, in some cases, plans do not provide fee schedules to their physicians, and that plan payment schedules are often changed unilaterally and retroactively, sometimes without notification to participating physicians. Moreover, the commenters stated that the exact amount of plan reimbursement is often contingent on bonus and withhold pools.

The third concern expressed by commenters was that secondary insurer contracts that operate to waive Medicare copayments do not implicate the statute, since section 231(h) of HIPAA only precludes remuneration that is likely to influence the choice of a particular provider. In situations where all providers participating in a particular plan are equally restricted from billing beneficiaries for copayments, the commenters believed that the waiver will not influence a patient's choice of provider. Alternatively, some commenters urged that the definition of ''remuneration'' as used in this CMP provision exclude routine waivers of coinsurance where a secondary insurer contract prohibits physicians from billing either the plan or the beneficiary for the full Medicare copayment amount. Similarly, some commenters requested that a section 231(h) ''safe harbor'' regulation be established for physician waivers of copayments in circumstances where Medicare requirements conflict with physician contractual arrangements with secondary insurers, arguing that in these circumstances physicians do make reasonable collection efforts and

therefore fall within the exemption for waivers of coinsurance. Finally, some other commenters advocated a contrary view; they suggested that the regulations should prohibit the contractual waiver of copayments and require that all secondary carriers (including Medigap insurers) cover the full Medicare copayment and deductible amounts.

Response: We agree that differentials in copayments or coinsurance amounts paid out of pocket by beneficiaries as part of plan designs that are properly disclosed to beneficiaries, providers and third party payers are not remuneration within the meaning of section 231(h) of HIPAA and do not violate the prohibition in section 231(h). However, as explained below, this practice implicates other Federal laws including, most notably, the anti-kickback statute. The Department is actively developing a safe harbor for waivers of coinsurance incidental to fee schedules for employer plans in which ten percent or less of the enrollees have primary coverage under Medicare.

Our statement in the preamble to the proposed regulation that the benefits plan design exception does not authorize any plan design that directly or indirectly operates to waive statutory coinsurance obligations for any Federal health care program was somewhat misconstrued by the commenters. Our original statement was only intended to make clear that plan designs that operate to waive Federal health care program statutory coinsurance obligations so that they are not satisfied by anyone may implicate other Federal laws, including the anti-kickback statute. Since the inception of the Medicare program and continuing to the present, the Social Security Act has imposed cost-sharing obligations on program beneficiaries, including beneficiaries enrolled in Medicare HMOs. However, most of these coinsurance obligations are imposed in conjunction with Medicare fee-for-service reimbursement. These coinsurance requirements help cover the total cost of health care, and they control overutilization by encouraging beneficiaries to be prudent purchasers. For most benefits covered under the Part B program, Medicare pays 80 percent of the lower of the physician's actual charge or the Medicare fee schedule. Providers are legally obligated to make reasonable efforts to collect the remaining 20 percent from the beneficiary. Part A also has certain coinsurance and deductible requirements. Private contracts cannot waive or defeat these Federal statutory obligations.

Supplemental Medicare insurance is very important to many program beneficiaries. Approximately ninety percent of all beneficiaries have some form of supplemental Medicare insurance coverage. Approximately thirty percent of beneficiaries purchase separate Medigap insurance which can cost $100 per month or more without any prescription drug benefit. Another 15 percent cover the coinsurance through joining Medicare HMOs; in these plans, the actuarial cost of the coinsurance obligation is covered either by the beneficiary's copayments and premiums or by the plan in lieu of returning profits to the Medicare program. Approximately 12 percent of beneficiaries have Medicaid coverage.

Approximately 30 percent of beneficiaries have supplemental coverage from their former employers. Generally, Medicare is the primary insurer and the employer-sponsored plan is secondary. For retirees in these plans, Medicare pays the plan's providers on a fee-for-service basis. The comments we received indicate that an increasing number of these plans are utilizing contracts with their participating providers that purport to release the plans and their enrollees from some or all of the applicable Medicare coinsurance obligations. This result is achieved through a combination of: (i) A fee schedule that is below the Medicare fee schedule; (ii) a prohibition on a provider billing enrollees more than a token copayment; and (iii) a ''coordination of benefits'' provision that obligates the plan to pay providers only to the extent that payments from the primary insurer (including Medicare) are less than the contract fee schedule.

For example, an employer establishes a retiree plan that requires no copayments by the retirees if the retirees utilize certain ''preferred providers.'' The contracts between the employer (or more likely a third party administrator) and the providers establish a fee of $80 for a procedure for which Medicare will allow $100; a ''coordination of benefits'' clause that limits plan liability if the provider has received the contract fee (*i.e.,* $80) from another insurer; and a prohibition on balance billing enrollees. The net result is that Medicare pays the $80 (80% of $100); the plan refuses to pay any copayment because the provider has already received the $80 plan contract fee amount; and the beneficiary pays nothing. In other words, the employer plan receives a substantial financial benefit equal to the coinsurance obligations it does not pay.

The employer in this example is ''free riding'' on the Medicare program. The practice is unfair and inequitable to the roughly 60 percent of Medicare beneficiaries who must pay the coinsurance obligations out of their own pockets or purchase Medigap insurance at considerable personal expense. It is also unfair to beneficiaries in Medicare HMOs, who must either pay the coinsurance obligation through their premiums or copayments or forgo other desirable benefits, such as enhanced prescription drug coverage, which an HMO might have offered if it had not applied its surplus profit to pay the beneficiaries' premiums. Simply stated, liabilities imposed by Federal law should not turn on happenstance of a beneficiary's employer benefit plan.

Routine waivers of Medicare copayments and deductibles in accordance with a contract between an insurer and a plan also implicate the anti-kickback statute. This practice presents a significant risk of overutilization of services and increased program costs to Medicare. Since neither plans nor beneficiaries pay for services where the copayment is waived, they have no incentive to control costs or utilization. We have repeatedly expressed our concern that such agreements between providers and health plans can result in kickbacks from providers to health care plans in exchange for Federal health care program business.[3]

We recognize that the interplay between Medicare and employee-sponsored supplemental plans is complex. As indicated above, the Department is developing a safe harbor for waivers of coinsurance incidental to fee schedules that would protect employer plans in which ten percent or less of the plan enrollees have primary coverage under Medicare.

Absent a safe harbor, plans that prohibit participating physicians from balance billing enrollees for whom Medicare is the primary insurer are responsible for those enrollees' outstanding Medicare copayments. Accordingly, to avoid receiving prohibited remuneration, the secondary plan must pay the Medicare copayment in full if physicians bill Medicare an amount higher than the plan's fee schedule amount. Medicare would pay 80 percent of the Medicare fee schedule amount and the plan would pay the 20 percent copayment, resulting in physicians receiving 100 percent of the Medicare fee schedule amount.

[3] See, for example, 42 CFR 1001.952(k)(1)(iii) (hospital waiver of inpatient deductible or coinsurance not protected by safe harbor regulation if part of an agreement between hospital and third party payer, including a health plan) and OIG Advisory Opinion 98–5 (April 17, 1998).

Alternatively, the physicians must bill Medicare the lower amount they agreed to accept from the plan. For example, if the Medicare fee schedule amount for a given service is $100 and the plan fee schedule for the service is $80, the physician would submit a claim to Medicare for $80, receive $64 from Medicare (80 percent of $80), and the secondary plan would pay $16 (the twenty percent copayment obligation). We understand that physicians currently may have difficulty in identifying the payment amount they will receive under a particular contract. However, that is an issue between them and the plans and can be addressed by developing with a plan a fixed fee schedule for plan participants that have primary coverage under Medicare. If a plan is denying payment on the ground that the provider has already received the full amount the plan is obligated to pay, the plan must necessarily know how much it is obligated to pay.

In sum, properly disclosed benefit plan designs that utilize differentials in coinsurance and deductible amounts paid by an enrollee are *not* remuneration within the meaning of section 231(h) of HIPAA. However, when such differentials are coupled with other provisions to achieve a waiver of Medicare coinsurance obligations, they implicate other Federal laws, including the anti-kickback statute.

Comment: One commenter requested guidance with regard to a physician's obligation to seek payment from a beneficiary when the beneficiary's health plan capitates payment to the physician, and the physician has been paid a capitation for the beneficiary.

Response: From Medicare's perspective, if the beneficiary is a fee-for-service patient, the physician is obligated to collect the full amount of the Medicare coinsurance, unless a waiver of the copayment would comply with the requirements for the exemptions under section 231(h) of HIPAA for waivers of coinsurance and deductibles. Where the capitation amount has been actuarially determined to equate with the expected copayment, no further payment amount would be required.

Comment: Two commenters believed that the policy position taken by the OIG on physician billing of copayments was an attempt to use the fraud and abuse laws to effectuate a ''most favored nation'' Medicare payment policy (for which there is no statutory authority), requiring physicians to limit their Medicare fees to levels established by private payers. One commenter stated that section 1848 of the Act explicitly exempts the Medicare physician fee schedule from the comparability rules that are applicable to many other services under Part B of the Medicare program.

Response: We do not believe that anything in these regulations requires physicians to limit their Medicare fees to private payer levels. However, it should be noted that section 1128(b)(6)(a) of the Act prohibits charges that are ''substantially in excess'' of a provider's ''usual charges.'' Therefore, provider charges to Medicare should be comparable (and not ''substantially in excess'') of charges to private payers. In circumstances where plans and providers contract so as to prohibit physicians from seeking payment of coinsurance from Medicare beneficiaries and where plans decline to pay the coinsurance on behalf of beneficiaries, it is the plan and physicians that impose the lower fee amount for the plan's Medicare-covered members.

Comment: Several commenters asked that we clarify that this CMP provision does not affect the ability of physicians to be reimbursed for beneficiary copayments and deductibles through Medigap insurance.

Response: As discussed above, the exemption for differentials in coinsurance amounts that are part of a plan design includes arrangements where a beneficiary's copayments are paid by a secondary insurer, provided there is proper disclosure as required by the statute. Our main concern is with situations where nobody is obligated to pay the copayment amounts for beneficiaries for whom Federal health care payment is made on a fee-for-service basis (as is the case for many retirees in employer plans). In those circumstances, there is no one with an economic interest in controlling utilization of reimbursable services. We caution, however, that a secondary insurer's refusal to pay a claim for a copayment amount does not obviate the physician's obligation to engage in reasonable efforts to collect the copayment, including reasonable efforts to collect directly from the beneficiary in circumstances in which there is no contractual prohibition on billing beneficiaries.

Comment: One commenter questioned the applicability of the differentials exemption in the context of Medicare risk- and cost-based managed care contractors, who are permitted by HCFA to waive coinsurance and deductibles and whose waivers are exempt from section 231(h) of HIPAA by virtue of the anti-kickback safe harbor for reduced cost-sharing amounts at § 1001.952(l).

Response: Differentials in coinsurance and deductible amounts by Medicare managed care contractors disclosed to, and approved by, HCFA do not implicate section 231(h) of HIPAA.

Comment: One commenter requested that the Secretary exercise her discretion under section 231(h)(6)(B) of HIPAA to promulgate regulations identifying other permissible copayment waivers, including ''professional courtesy'' waivers offered by physicians to fellow physicians and family members.

Response: At this time, we are not identifying other permissible copayment waivers, but reserve the right to do so in the future. With respect to ''professional courtesy,'' we note that traditionally the term means free care (*i.e.,* no charge is made to anyone), not care provided on an ''insurance only'' basis. Generally, a routine practice by a physician of waiving the entire fee for services provided to other physicians without regard to the potential for referrals is not a problem under section 231(h) of HIPAA or the anti-kickback statute. However, waivers of Medicare or other Federal health care program copayments for non-indigent persons, whether physicians or any other groups, are problematic.

Comment: One national association, commenting on what constitutes acceptable payment differentials under benefits plans, proposed that it should be acceptable for health plans to impose one deductible for a supplier that participates in the plan network and a different deductible for a comparable supplier that does not participate. The association also recommended that acceptable plan designs should include copayment or deductible differentials based on whether a beneficiary chooses brand name or generic drugs, and whether the beneficiary chooses drugs that are (or are not) on the relevant drug formulary. The association asserted that such differentials have legitimate economic bases and do not raise fraud concerns. On the other hand, the association asked that the OIG deem unacceptable differentials that exist between two suppliers that participate equally in the plan, such as a community pharmacy and a mail order pharmacy.

Response: We believe that Congress intended section 231(h) of HIPAA to be broadly construed to permit plans maximum flexibility to structure their financial incentives within their benefits packages, so long as the resulting arrangement does not have the effect of waiving payment of the Medicare copayment to the provider and is properly disclosed.

c. Applicability of Section 231(h) of HIPAA to Managed Care Organizations

Comment: Several managed care organizations and associations commented that section 231(h) should not apply to managed care organizations. These commenters stated that the OIG's interpretation of the statute set forth in the proposed rule was expansive and inappropriate on the grounds that the OIG's interpretation presumed that offering an incentive to enroll in a *particular health plan* is equivalent to offering an incentive to use a *particular provider.* Although the incentives may influence a beneficiary's choice of health plans, the commenters stated that such choice is not the same as influencing the choice of a particular provider. Another commenter remarked that limiting incentives provided by managed care organizations for Medicare and Medicaid enrollees was unfair to those populations, as such incentives are commonly offered in the commercial managed care market to those who are not Medicare or Medicaid enrollees. In addition, the commenter indicated that one effect of the regulation would be to terminate certain benefits that Medicare and Medicaid enrollees of employee benefit plans had been receiving before becoming eligible for Medicare or Medicaid. One commenter stated that even if managed care plans were not covered by section 231(h) of HIPAA, the OIG would still have the authority to oversee inducements by managed care plans under the anti-kickback statute.

Response: After having reviewed all of the comments, we agree that health plans that provide incentives to Federal health care program beneficiaries to enroll in a plan are not offering remuneration to induce the enrollees to use a particular provider, practitioner, or supplier. Accordingly, we are indicating that health plans that provide incentives to enroll in a plan will not be subject to sanctions under this provision. However, incentives provided by health plans to induce a Federal health care program beneficiary to use a particular provider, practitioner, or supplier once the beneficiary has enrolled in a plan are within the purview of this provision and are prohibited if they do not meet an exception. For example, coinsurance differentials for out-of-network providers fall within the prohibition of this statute, although they fit within the exception for differentials of coinsurance and deductibles, as long as the other requirements of the exception are met.

We remain concerned that health plans may use inducements in a manner that leads to enrollment of only healthy beneficiaries, such as offering memberships to exercise clubs for purposes of patient screening. However, such ''cherry picking'' is prohibited under separate CMP provisions that are unaffected by this provision. Additionally, incentives provided by health plans remain subject to the anti-kickback statute.

Many other comments were submitted that raised issues with regard to health plans. These comments were all premised on inducements to enroll in health plans falling within the provisions of the statute (section 1857 of the Act). Since such inducements will not be subject to section 231(h), these comments are no longer relevant.

d. Incentives To Promote the Delivery of Preventive Care

The statutory exception for preventive care, as defined in the proposed rule, exempted from the definition of remuneration incentives given to individuals to promote the delivery of preventive care. In the preamble to the proposed rule, we indicated that such incentives did not include the direct rendering of preventive medical care. Specifically, the exception included the provision of incentives to individuals eligible for benefits under a Federal health care program where the incentives are provided for the purpose of inducing individuals to obtain preventive care.

For purposes of the exception, we proposed defining in § 1003.101 the term ''preventive care'' to mean annual physicals and care associated with, and integral to, preventing the need for treatment or diagnosis of a specific illness, symptom, complaint or injury (including, but not limited to, prenatal and postnatal care, flu shots, and immunizations for childhood diseases, AIDS and HIV testing, mammograms, pap smears and prostate cancer screenings, eye examinations, treatment for alcohol and drug addiction, and treatment designed to prevent domestic violence) where such care is provided or directly supervised by the medical provider that has provided the incentive. In addition, the proposed rule listed examples of permissible and impermissible incentives under this provision. Specifically, we stated that impermissible incentives would include items or services related to the promotion of general health and fitness (excluding annual physicals), such as health club memberships, nonprescription vitamins, nutritional supplements and beauty aids. In addition, cash and cash equivalents would not be permissible incentives.

In the section discussing this exception we also reiterated the conference report statement that made clear that section 231(h) does not preclude the provision of items and services of nominal value, including, for example, refreshments, medical literature, complimentary local transportation services or participation in free health fairs. We interpreted the conference report to mean that the provision of items and services to an individual is not prohibited if the aggregate value of such items and services is nominal. However, it should be recognized that the frequent rendering of items or services to any individual may preclude such items and services from being classified as nominal in value.

Comment: We received a number of comments addressing the exception for incentives to promote the delivery of preventive care. Commenters expressed concern about the proposed definition of ''preventive care.'' Some commenters found the proposed definition too narrow and confusing. One commenter, for example, questioned whether pharmacy care is included in the definition. Other commenters urged that preventive care include care related to general health and fitness and care associated with acute and chronic illnesses and diseases. Some commenters urged us to adopt a broad definition of preventive care, noting, for example, that preventive care promotes healthier patient populations, leads to increased productivity by patients, and results in lower health care costs.

Commenters also raised objections to the proposed scope of permissible incentives. These commenters requested clarification of permissible and impermissible incentives under the preventive care exception. For example, several commenters objected to the statement that the direct rendering of preventive medical care was not a permissible incentive, urging that the provision of free or discounted preventive care should fall within the exception for incentives to promote the delivery of preventive care. Other commenters noted that health plans often give patients, particularly Medicaid patients, gifts to encourage the use of health care services, such as diabetes management programs and prenatal care. These incentives include, among other things, coupons, gift certificates, Thanksgiving turkeys, amusement park tickets, books on caring for babies, baby blankets and medicine droppers. Several commenters noted that the examples of permissible

incentives provided in the proposed regulation were all non-medical items or services and requested clarification that permissible incentives could also include incentives that were health care related.

Some commenters suggested that lists of permissible and impermissible incentives be included in the text of the regulation. Commenters also suggested that the OIG add limiting factors to the definition of permissible incentives, such as a requirement that permissible incentives be offered to all similarly situated persons in a given community. Further, commenters requested clarification of the meaning of the term ''cash equivalent'' set forth in the proposed regulation. Two commenters suggested that a cash equivalent be defined as ''an item easily convertible to cash.''

Several commenters recommended that incentives that promote general health and fitness be allowed under the preventive care exception. The commenters argued that such incentives encourage healthy behavior, even though they are not tied to prevention of a specific illness, complaint, or injury. According to commenters, permissible incentives that promote general fitness should include items such as health club memberships, nonprescription vitamins, nutritional supplements and beauty aids. Specific examples offered by commenters included discounts for completion of a weight watchers program, a discounted price for an American Red Cross CPR course, and free YMCA visits for postpartum mothers.

Response: Based on our review of the public comments and after further consideration of the statutory language and public policy, we have concluded that the regulations should be revised to accord more fully with the statutory language of section 231(h) and the scope of coverage of preventive care by existing Federal health care programs. The following discussion addresses three key elements of the preventive care exception: The meaning of ''preventive care,'' the scope of permissible incentives, and the requirement that incentives promote the delivery of preventive care. Some additional issues are addressed in separate comments and responses below.

- *Definition of Preventive Care*

Our review of the public comments disclosed considerable uncertainty about the proposed definition of preventive care for purposes of the preventive care exception. Moreover, it became apparent, based on an internal review, that the proposed definition did not comport with the scope of preventive care services reimbursed by Medicare or the State health care programs. For these reasons, we concluded that it would be preferable to replace our proposed definition with an objective, ''bright line'' rule.

Section 231(h) of HIPAA prohibits remuneration paid to an eligible beneficiary to influence him or her to order or receive from a particular provider, practitioner, or supplier *any item or service for which payment may be made by Medicare or a State health care program* (as defined in 42 U.S.C. 1320a–7(h)). In other words, section 231(h) generally bars incentives paid to influence the choice of provider, practitioner, or supplier for *covered* items or services.

We believe that in enacting the preventive care exception, Congress recognized that in some circumstances it may be prudent to allow providers to encourage beneficiaries to obtain covered preventive care services through payment of remuneration linked to the delivery of such services. Well-recognized benefits from appropriate preventive care include, among other things: Healthier patient populations, lower health care costs, and reduced morbidity and mortality. For these reasons, it is especially important that Medicare and Medicaid beneficiaries access appropriate preventive care services.

Accordingly, for purposes of the preventive care exception to section 231(h) of HIPAA, we are interpreting preventive care to mean preventive care covered by Medicare or the State health care program in the applicable State. We have decided to define ''preventive care'' as any service that is a prenatal service or a post-natal well-baby visit or is a specific clinical service described in the then current U.S. Preventive Services Task Force's *Guide to Clinical Preventive Services.*[4] If such services are covered by medicare or the applicable State health care program, they fall within the preventive care exception to section 231(h) of HIPAA.

The *Guide to Clinical Preventive Services* addresses preventive care services provided to asymptomatic individuals in a clinical setting, classifying a number of preventive care services into three broad categories: screening tests, counseling interventions, and immunizations and chemoprophylaxis. For purposes of this regulation, to be considered as preventive care the service in question must be described in the *Guide* (*e.g.,* listed in the table of contents) to fall within the exception. The mere fact that a service involves screening, counseling, or immunization will not suffice to qualify the service for the preventive care exception. The *Guide* also includes measures of the effectiveness of preventive care services when performed on a routine basis. For purposes of determining whether a service is preventive under this regulation, these effectiveness measures will not be taken into account. By way of example, the second edition of the *Guide* includes ''screening for visual impairment'' as a preventive care service, but does not recommend certain kinds of screening for all elderly patients. Notwithstanding, any screening for visual impairment, if covered by the applicable Federal health care program, is a preventive care service within the meaning of the exception.

For beneficiaries enrolled in Medicare or Medicaid managed care programs, covered preventive care services would be those services included in the managed care organization's annual contract with HCFA or a State health care program.

Remuneration paid to influence the selection of a provider for non-covered preventive care services falls outside the scope of the statutory proscription. We are concerned, however, about arrangements that purport to provide patients with incentives to obtain non-covered items or services, where the true purpose of the incentives is to influence the selection of a provider for covered services. We are similarly concerned about arrangements where an incentive to obtain covered preventive care services is, in reality, an incentive paid to patients to induce them to obtain other covered services. Any tie between provision of an exempt covered preventive care service and a covered service that is not preventive would vitiate the preventive care exception and might constitute a violation of section 231(h), the Federal anti-kickback statute, or other legal authorities.

- *Scope of Permissible ''Incentives''*

Many commenters sought clarification regarding the meaning of ''incentives'' for purposes of the preventive care exception. Because Congress intended the scope of permissible incentives under the preventive care exception to be reasonably broad, except for the limitations noted below, we are not imposing any particular limitations on the type or value of incentives that may qualify under the preventive care

[4] U.S. Preventive Services Task Force, *Guide to Clinical Preventive Services*, 2nd ed. Baltimore: Williams and Wilkins, 1996.

exception. Examples of permissible incentives include health care items or services (*e.g.,* blood sugar screenings, cholesterol tests, medic alert jewelry) and non-health care items or services (*e.g.,* gift certificates, t-shirts, infant car seats, Thanksgiving turkeys). Because of the large variety of permissible incentives, we decline to list permissible incentives in the regulation.

A price reduction is likely to be an effective means of encouraging beneficiaries to obtain preventive care services. Providers can offer a price reduction for a *covered* service for Medicare and Medicaid beneficiaries in one of two ways: (1) By waiving all or part of a copayment obligation, or (2) by offering care as a free community service and forgoing billing Medicare or Medicaid, as well as beneficiaries. Thus, notwithstanding our long-held and continuing concern with routine waivers of copayments, we are permitting providers to waive copayments as an incentive to promote the delivery of preventive care. We believe a copayment waiver in these limited circumstances comports with congressional intent in enacting the preventive care exception.

We are imposing two limitations on permissible incentives. First, we are concerned that excessively valuable incentives may be intended to induce a beneficiary to select a provider for more than just the covered preventive care service. Therefore, we are providing that the value of the incentive must bear a reasonable relationship to the value of the preventive care service (*i.e.,* to the service itself or to future health care costs reasonably expected to be avoided as a result of the preventive care). A disproportionately large incentive gives rise to an inference that at least part of the incentive is being provided to induce beneficiaries to obtain additional services beyond the preventive care that is the predicate for the incentive. Such incentives for additional services are not covered by the preventive care exception to section 231(h) of HIPAA. An incentive that is disproportionally small in comparison to the value of the preventive care service does not raise similar concerns and is permissible.

Second, we proposed excluding cash and cash equivalents from the scope of permissible incentives. Several commenters indicated confusion regarding the meaning of the term ''cash equivalents.'' We agree that the term may not have clearly captured our intent. Accordingly, we are excluding from the scope of permissible exceptions cash payments and instruments convertible to cash. Thus, for example, it would not be permissible to provide an incentive in the form of a check.

Finally, we note that section 231(h) of HIPAA only prohibits incentives that are likely to influence a beneficiary's choice of a provider for particular services. Such influence is only possible if the beneficiary knows about the incentive before making his or her choice. Thus, incentives that are not advertised or otherwise disclosed to a beneficiary before the beneficiary selects a provider for services do not come within the statutory proscription, and therefore need not qualify under any of the exceptions, including the preventive care exception. For example, discounted CPR courses or home visits offered to women who have delivered a child at a particular hospital are not prohibited under section 231(h), if the availability of the discounted CPR course or home visits is not made known to the mother until after she enters the hospital to deliver her child.

• *Promoting the Delivery of Preventive Care*

We interpret the phrase ''to promote the delivery of preventive care'' to mean that the incentives must be designed to encourage individuals to avail themselves of preventive care services, as defined above. Thus, the exception requires that a nexus exist between the incentive and the delivery of specific preventive care services. The preventive care must be care that is delivered by a person qualified to provide or furnish such services under State licensure laws and Federal health care program requirements (including conditions of participation and billing requirements). Moreover, as discussed above, there must be a rational relationship between the value of the incentive and the value of the preventive care service.

Comment: Several commenters urged the OIG to expand the definition of preventive care to include items or services designed to prevent the deterioration of, or complications from, an acute or chronic illness, such as hemophilia or diabetes. These commenters argued that preventive care should include care aimed at managing and preventing the exacerbation of chronic conditions, such as disease management programs.

Response: As indicated above, the final rule defines preventive care with reference to those services that are both described in the then current U.S. Preventive Services Task Force's *Guide to Clinical Preventive Services* (as well as pre-natal and well-baby care visits) and covered by Medicare or a State health care program for the particular patient. The *Guide to Clinical Preventive Services* is limited to certain primary and secondary preventive care services provided to asymptomatic individuals in a clinical setting. Primary preventive care measures prevent the onset of a targeted condition (*e.g.,* routine immunization of healthy children). Secondary preventive measures identify and treat asymptomatic persons who have developed risk factors or preclinical disease, but in whom the condition has not become clinically apparent (*e.g.*, screening for high blood pressure).

An expansion of the preventive care exception to include tertiary preventive care (that is, preventive care that is part of the treatment and management of persons with clinical illnesses), as suggested by the commenters, would understandably be desirable from the perspective of those individuals afflicted with acute or chronic illness, but would create an exception that would swallow the general prohibition. Most medical services provided to a symptomatic patient can arguably be characterized as designed to prevent the patient from getting worse or developing complications. We do not believe that Congress intended the preventive care exception to be so broadly construed. Given the large number of possible chronic and acute conditions, we also do not believe it is feasible or fair to craft a rule that would apply only to some diseases or illnesses (such as hemophilia or diabetes), but not to others.

Comment: One commenter noted that HCFA and the Health Resources and Services Administration (HRSA) have promoted programs to enlist the support of the business community to provide incentives to encourage medically uninsured populations to receive needed health care services or obtain available health insurance coverage. The commenter questioned the effect of these regulations on such outreach programs.

Response: We do not believe anything in this final rule is inconsistent with the HCFA and HRSA outreach programs. As explained above, incentives to encourage an individual to enroll in a particular health plan or program are outside the scope of the statutory provision, as are incentives provided to individuals not covered by Medicare or a State health care program.

Comment: One commenter questioned whether permissible incentives include incentives designed to promote the delivery of services that can lead to preventive care, such as early detection tests. The commenter asked whether it would be permissible for a hospital to offer free blood sugar screenings, which

are not covered by Medicare, at health care fairs or as part of a National Diabetes Awareness Week campaign. The purpose of the screenings would be to increase diabetes awareness and to identify diabetic individuals who are not receiving treatment. The screenings might also identify individuals eligible for Medicare-covered diabetes self-management education programs.

Response: Under the final rule, certain early detection tests may themselves qualify as preventive care if they are enumerated in the *Guide to Clinical Preventive Services* and covered by Medicare or an applicable State health care program. With respect to the hypothetical posed by the commenter, provision of a free non-covered screening test would not violate section 231(h) of HIPAA so long as the test is not tied to the provision of other services by the hospital. Thus, for example, the screening test would be permissible where the hospital provides an individual who tests positive for diabetes with general information or literature and a recommendation that the individual contact his or her personal physician. If, on the other hand, as part of the screening program, the hospital makes appointments for individuals with one of its physicians, offers individuals discounts for additional covered services, or otherwise promotes its particular diabetes programs, an inference may be drawn that the free screening test was an inducement to choose the hospital as a provider of other services. Finally, we note that some early detection tests may be of such nominal value as not to come within the scope of the statutory prohibition, as discussed below.

Comment: One commenter suggested that the rule include a requirement that permissible incentives be offered to all similarly situated persons in a given community.

Response: We are not requiring in this rule that incentives to promote the delivery of preventive care be offered to all similarly situated persons in a given community. For example, a health plan may offer incentives designed to influence plan members' selections of particular participating providers for preventive services to plan members only. Requiring permissible incentives to be offered to all similarly situated persons might discourage providers from offering potentially beneficial preventive care to a limited number of individuals, for example, to the first x-number of individuals who show up. We do not believe that Congress intended to prohibit such arrangements.

Comment: A commenter questioned whether a managed care organization violates section 231(h) of HIPAA if it provides transportation for Medicaid patients to and from health care services for diagnosed conditions. The commenter observed that transportation costs are often a barrier to care for this patient population and that some States require managed care organizations to provide such transportation as a covered benefit.

Response: We do not believe that section 231(h) is violated if a State requires a managed care organization to include transportation services as a covered benefit. Moreover, we do not believe that the statute is violated if the transportation is provided on an equal basis to all plan enrollees and transportation is available to any participating plan provider.

Comment: A number of commenters questioned whether incentives to promote the delivery of preventive care must be of nominal value.

Response: The incentives need not be of nominal value. As discussed below, incentives that are of nominal value may not be improper under section 231(h) of HIPAA.

Comment: One commenter believed that our proposed interpretation of the preventive care exception would conflict with the HCFA marketing guidelines, since vitamins, nutritional supplements and beauty aids valued at under $10 would be permissible under HCFA's guidelines but prohibited by the OIG rule.

Response: No conflict exists between the HCFA marketing guidelines and this CMP provision. Vitamins, nutritional supplements and the like are permissible incentives if offered to promote the delivery of covered preventive care services or if they are of nominal value, as discussed below. Moreover, pre-enrollment incentives offered by health plans do not implicate section 231(h) of HIPAA for the reasons stated above under paragraph heading c., Applicability of section 231(h) to managed care organizations. Finally, a payment will not be considered impermissible remuneration if it falls into any one of the statutory exceptions.

Comment: Numerous commenters requested clarification as to the requirement that the preventive care must be provided, or directly supervised by, the medical provider that provided the incentive. Managed care organizations and associations commenting on the proposed rule raised concern over how this requirement would apply to them, since it is the managed care organization and not the provider that is offering the incentive. In addition, a physician association commented that the ''directly supervised'' language was very restrictive, especially if it is given the same meaning as under the proposed Stark II regulations.

Response: As a result of these concerns and in light of our revised interpretation of this provision, we have amended the regulations to delete this requirement. In drafting the proposed rule, we did not intend to limit ''medical providers'' to physicians. Accordingly, we wish to clarify that preventive services may be provided by non-medical providers, including health plans, as long as all elements of the preventive care exception described above are satisfied.

e. Applicability to Items That Are of Nominal Value

Comment: Several commenters requested clarification as to whether items of nominal value also had to be related to preventive care. One commenter stated that if an item or service is preventive, it need not be nominal in value, and conversely, if the item is nominal it need not be preventive. One commenter suggested that if an item is of nominal value, it would not induce a beneficiary to choose a particular provider, practitioner, or supplier. In addition, two commenters asked that we incorporate a nominal value ''exception'' into the final regulations.

Response: Incentives that are only of a nominal value were not specifically exempted in the language of this CMP provision. However, we agree with the interpretation of the commenter who suggested that if an incentive is nominal in value, then the individual providing the incentive would not and should not know that the incentive is likely to induce a beneficiary to use a particular provider, practitioner or supplier. Accordingly, we believe that incentives that are only nominal in value are not prohibited by the statute, and therefore no exception is necessary. Further, we wish to clarify that the exception for preventive care is separate from the issue of whether an incentive is of nominal value. Consequently, incentives that meet the preventive care exception do not need to be nominal in value, and items of nominal value do not have to meet the preventive care exception.

Comment: The OIG was asked by commenters to clarify and take a flexible position as to what constitutes ''nominal.'' Most of the commenters on this issue were not in favor of aggregating the value of items, suggesting that recordkeeping would be difficult and cumbersome. One commenter requested that the measure

of nominal value be greater for patients with chronic diseases because such patients receive items and services more frequently. The commenter suggested using the proposed Stark II definition [5] of *de minimis* compensation as a basis for defining ''nominal.''

Response: For purposes of consistency with the HCFA national marketing guidelines, we are interpreting nominal value to be no more than $10 per item, or $50 in the aggregate on an annual basis.

Section 1003.102(b)(14), False Certification of Home Health Services Eligibility

Comment: While supporting efforts to prevent, investigate and eliminate fraud and abuse associated with the provision of home health services, one commenter expressed concern over any increased enforcement and investigative activities that would unfairly target physicians for authorizing appropriate home health services.

Response: These regulations are merely designed to implement new CMP authorities, consistent with the statute, for program violations related to the false certification of home health services eligibility. Only in those circumstances where there is evidence that the physician had actual knowledge that Medicare-covered home health services certified were medically unnecessary will the OIG seek to impose appropriate penalties. These situations will come to our attention from the OIG's normal investigative efforts focusing on all aspects of fraud and abuse in Medicare and other Federal health care programs.

Section 1003.106, Determining CMP and Assessment Amounts

Comment: Several commenters expressed concern that the guidelines set forth in § 1003.106(b)(2) fall below the level of intent required for CMPs established under section 321(d) of HIPAA. Specifically, commenters indicated that the mitigating circumstance under the degree of culpability—described in part as ''unintentional and unrecognized'' errors—is not consistent with the ''knows or should know'' standard set forth in HIPAA and § 1003.101 of the proposed regulations.

Response: We agree with the concerns expressed by the commenters and are modifying these guidelines by deleting this phrase from § 1003.106(b)(2) to more accurately reflect the level of intent required under HIPAA for the imposition of CMPs.

Comment: One commenter raised concern over health care providers' reliance on Medicare contractors and the contractors' responsibility for accurate guidance on Medicare reimbursement issues. As a result, the commenter requested that § 1003.106(b)(2), addressing the degree of culpability, be amended to include contractor error as a mitigating factor when determining whether, and how much, to penalize a health care provider.

Response: We do not believe the recommended change is necessary. The OIG already takes into account such factors as contractor error in determining the culpability of a health care provider.

Comment: One commenter believed that, with regard to determining penalty amounts, the factor relating to ''prior offenses'' should be expanded to include any item reported to the Health Care Fraud and Abuse Data Collection Program, established under section 221 of HIPAA. The Data Collection Program requires Government agencies and private health plans to report all final adverse actions against health care providers, suppliers and practitioners to the Healthcare Integrity and Protection Data Bank (HIPDB). The commenter suggested that § 1003.106(d) be amended to include as an aggravating circumstance any time a respondent has an action reported in the final adverse action database.

Response: ''Prior offenses'' will routinely be identified in the HIPDB. We do not believe respondents should be penalized twice by having the listing of a prior offense in the HIPDB constitute a separate aggravating factor. However, the HIPDB includes many sanction actions (such as loss of professional license) that would not typically be considered ''prior offenses.'' Therefore, we are amending § 1003.106(d)(3) to state that, with respect to prior offenses, it would be an aggravating circumstance if there were evidence that at any time prior to the current violation(s) the respondent was identified in the HIPDB for any conduct not constituting a ''prior offense'' in accordance with the statute.

Comment: With regard to the ''financial condition'' circumstance set forth in § 1003.106(b)(5), some commenters objected to the proposed deletion of the mitigating circumstance under which ''the imposition of the penalty or assessment without reduction will jeopardize the ability of the respondent to continue as a health care provider.'' One commenter believed that this factor should be maintained since it allows physicians and other providers to retain important protections from loss of their profession and livelihood and, in the case of health professional shortage areas, protects against physician loss that could otherwise impair the delivery of health care services.

Response: We have indicated that the current factor does not represent a generally applicable standard since the penalty authority is intended to apply not only to direct providers of health care, but also to those involved in other related activities and positions. Accordingly, we believe this language change to § 1003.106 is appropriate and warranted. With regard to the concerns stated by several of the commenters, in health professional shortage areas where the loss of a provider could seriously impair the delivery of health care services, the OIG still retains the authority to waive any sanctions action that it believes would seriously impair the delivery of health care services. Our foremost responsibility is and remains the protection of program beneficiaries and the care they receive.

Section 1005.7, Discovery

Comment: One commenter indicated that the OIG needs to be sensitive to the fact that some evidentiary material may involve medical records for patients undergoing active medical treatment, and that discovery procedures should not impede the ongoing care of patients. In addition, the commenter expressed concern about discovery requests for records in the possession of private health insurance companies that need the documents for private fraud cases.

Response: With respect to medical records involving ongoing patient care and private health care cases, the OIG's current practice is to photocopy appropriate medical records, exercising all due precaution to protect records and not compromise patient care.

Comment: One commenter was concerned that the proposed regulatory changes to the discovery process would transform the administrative process into a formal judicial process.

Response: We disagree. The changes we proposed in the discovery section of the proposed rule have been designed to streamline the discovery process and to avoid protracted litigation over the failure to produce documents in a timely fashion. These changes are not intended to create a more formal administrative process, but rather are designed to protect against discovery abuses.

Comment: One commenter believed that the 15 days given to health care providers to comply fully with the request for documents is inadequate and

[5] 63 FR 1659; January 9, 1998.

recommended expanded time frames. The commenter indicated that this provision makes no distinction between a request for information on a handful of claims and a request involving numerous claims, and fails to recognize that such information may be stored at different locations.

Response: The time frame set forth in § 1005.7(e) is intended to induce parties to produce discovery within a reasonable period of time. We believe that the 15-day period will be adequate in the majority of cases, and the ALJs have been amenable to granting extensions in appropriate circumstances. Also, we are amending § 1005.7 to indicate that, upon a showing of good cause, the period of time for fully responding to the request for discovery may be extended by the ALJ.

III. Provisions of the Final Rule

For the most part, this final rule incorporates the provisions of the March 25, 1998 proposed rule. A brief description of the provisions of this final rule follow.

- We are amending §§ 1003.100(b)(1)(i), 1003.102(a)(3), 1003.109(a), as well as the definitions for the terms *claim* and *exclusion* set forth in § 1003.101, to apply CMP coverage to all applicable Federal Government health care programs. The definition for the term *program* in § 1003.101 is being deleted.
- We are amending the definition of the term *remuneration* in § 1003.101 by incorporating the language of the statutory definition of ''remuneration'' in the final regulations and reflecting the fact that incentives to promote the delivery of preventive care services are exceptions to the prohibition on inducements. We are also adding a new definition for the term *preventive care.*
- We are amending § 1003.103(a) to address the increase in the penalty amount from $2,000 to $10,000 per item or service improperly claimed or prohibited practice, and amending § 1003.104 to address the increase in the authorized assessment amount from double to triple the amount claimed.
- In § 1003.101, we are specifically defining the terms *should know* and *should have known*, and are making corresponding revisions in §§ 1003.100(b)(1)(i) and 1003.102(a) and (b). We are also adding a new paragraph (e) to § 1003.102, defining the term *knowingly*, to clarify congressional intent to apply the False Claims Act (FCA) standard of knowledge to the presentment of a claim under the CMP law.
- In § 1003.102, we are adding a new paragraph (b)(12) to codify the new CMP authority for excluded individuals that retain ownership or control interests in a participating entity. Conforming revisions are also being made to § 1003.100 through the addition of a new paragraph (b)(1)(xi), and to § 1003.103 through the addition of a new paragraph (j). We are also making technical changes in §§ 1003.105 and 1003.106 to reflect this new authority.
- We are clarifying § 1003.102(a)(1) to indicate that the OIG may impose a penalty and assessment against any person it determines has presented or caused to be presented a claim for any item or service that the person knows, or should have known, was not provided as claimed, including any claim that is part of a pattern or practice of claims based on upcoding. We are also adding a new § 1003.102(a)(6) to implement the OIG's authority to impose a CMP and assessment for any claim for an item or service that was medically unnecessary and part of a pattern of such claims.
- We are adding a new § 1003.102(b)(13) to codify the new CMP authority for the offering of inducements to beneficiaries, along with a conforming change through a new § 1003.100(b)(1)(xii). In addition, we are adding new §§ 1003.106(a)(1)(i), (a)(1)(vii) and (b)(2)(iv) to include the factors the OIG will take into account with respect to this authority in determining a penalty and assessment, including the degree of culpability and the amount of remuneration offered or transferred.
- We are adding a new §§ 1003.100(b)(1)(xiii), 1003.102(b)(14) and 1003.103(i), allowing for a CMP of the greater of $5,000 or 3 times the amount of the Medicare payments made, against any physician who falsely certifies the medical necessity for Medicare-covered home health services, knowing that the care is not necessary. This provision applies to false certifications made on or after August 21, 1996.
- We are deleting § 1003.100(b)(1)(viii) and redesignating the remaining paragraphs accordingly, since many CMPs (including several new CMP authorities in HIPAA) do not involve the submission of claims as the prohibited conduct. The existing language in § 1003.100(b)(1)(viii) had provided for the imposition of CMPs and, as applicable, assessments against persons who have ''submitted certain prohibited claims against the Medicare program.''
- We are deleting the language in §§ 1003.102(b)(2) and (b)(3) and are reserving these paragraphs. The statutory freeze for actual charges exceeding the maximum allowed has expired, making CMPs for non-participating physicians billing for actual charges in excess of the maximum allowable actual charge in § 1003.102(b)(2) no longer valid. The CMP authority for billing for the services of an assistant at routine cataract surgery in § 1003.102(b)(3) has been delegated to the Health Care Financing Administration. We are making conforming changes through the deletion of § 1003.107(c) and (e).
- We are updating the language in §§ 1003.103(e) and 1003.105(a)(1), relating to patient anti-dumping provisions, to remove the knowledge and penalty provisions that are no longer applicable. With respect to the imposition of a CMP against hospitals and physicians under the patient anti-dumping statute (section 1867 of the Act), the statute imposes liability based upon the negligent violation of statutory requirements, and we are confirming that the new ''should know'' standard does not apply to CMPs for violations of the patient anti-dumping provisions.
- In § 1003.106, we are broadening the language in paragraph (a)(1) to include all existing and new CMP authorities. In addition, we are amending § 1003.106(b)(5), the factor addressing financial condition, by deleting the first sentence in this paragraph to clarify that this penalty authority is intended to apply not only to direct providers of health care, but also to those involved in other related activities and positions (such as a transporter of patients or a CEO of a drug company). Section 1003.106(b)(2) is being revised, in part, by deleting the mitigating circumstance involving ''unintentional and unrecognized errors'' under the degree of culpability, to be consistent with § 1003.101.
- We are amending § 1003.107(b) to incorporate reference to the new CMP authorities being set forth in §§ 1003.102(b)(12) and (13).
- We are revising § 1005.1, Definitions, to include a definition for the term ''Inspector General.''
- We are amending § 1005.7(e) to provide for motions to compel discovery once a request for production of documents has been received. The revision to § 1005.7(e) will make clear that a party has a right to object to discovery requests without requiring that party to file for a protective order, leaving it to the party seeking the documents to justify why access is appropriate in a motion to compel discovery. Any objections to production of documents will have to be filed with

the opposing party within 15 days of receiving the discovery request, unless good cause is shown for an extension of time. The party seeking the production of documents may then file a motion to compel discovery within the next 15 days unless a lengthier time frame is set by the administrative law judge (ALJ).

• We are amending § 1005.9(b) to clarify that this provision is intended to authorize an ALJ to issue a subpoena to any individual to attend the hearing and to provide documentary evidence at or prior to the hearing. The language clarifies that an ALJ may issue a subpoena *duces tecum* requiring documents to be produced before the hearing.

• In § 1005.15(b), the language incorrectly used the term ''respondent'' to refer to several exclusion authorities. (Section 1005.2(b) of the regulations defines a ''respondent'' as the party appealing a CMP, and a ''petitioner'' as the party appealing an exclusion.) We are revising § 1005.15(b) to make the language in this paragraph consistent with the way parties are currently defined in § 1005.2(b).

• We are revising § 1005.21(d) to allow for interlocutory appeals to the Departmental Appeals Board (DAB) in one limited situation, the timeliness of filing of the hearing request. Absent this change, in many cases a final ruling on the timeliness of a hearing request will be rendered meaningless because the hearing will take place before an appeal of an ALJ's ruling on timeliness can occur.

• We are making technical revisions in §§ 1003.126, 1003.128(b) and 1006.4(b)(2) by deleting the reference to ''the Office of the General Counsel.'' With the consolidation of the IG Division of Office of the General Counsel into the OIG, these regulatory revisions give the OIG exclusive authority to settle or compromise cases brought under these regulations, and to attend investigational inquiries.

• We are also making technical revisions to §§ 1003.109(b) and 1005.2 that were not previously addressed in the proposed rule. Specifically, § 1005.2 is being amended to provide that a request for an administrative appeal be to the DAB. In addition, § 1003.109(b) is being amended to provide that an administrative appeal be sent certified mail with a return receipt. These changes are being made to ensure that the appropriate adjudicating body, the DAB, receives the request for appeal. The certification requirement is being made to ensure that the Department has knowledge of the appeal and its receipt. These procedural clarifications should help avoid the improper filing of requests for hearings with the OIG, as well as having to litigate timeliness issues.

IV. Additional Technical Revision

We are also making technical clarifications to §§ 1001.2003 and 1005.20 with regard to exclusion decisions made under section 1128(b)(7) of the Act. Under the current regulations, there appears to be some uncertainty as to when an exclusion under section 1128(b)(7) of the Act may be implemented. Section 1001.2003 currently states that the exclusion will not take effect unless the ALJ upholds the decision to exclude, while § 1005.20 indicates that the ALJ decision is final and binding 30 days from the date of the decision unless appealed to the DAB. This language would indicate that an appeal to the DAB on any case stays the effect of the ALJ decision until the DAB rules on the request. The intent of § 1001.2003 is to give the individual or entity an opportunity to have an ALJ hearing before the effectuation of an exclusion under section 1128(b)(7) of the Act. As it was never intended that the individual or entity would be able to exhaust all appeals before the exclusion could go into effect, the OIG believes that it is appropriate to implement the exclusion under section 1128(b)(7) once an ALJ makes a ruling. Accordingly, we are revising §§ 1001.2003(b)(2) and 1005.20(d) to conform these provisions and to clearly indicate that the OIG will be able to effectuate an exclusion under section 1128(b)(7) of the Act once an ALJ decision is rendered, even if an appeal is still pending.

V. Regulatory Impact Statement

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). Section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any final rulemaking that may result in an expenditure by State, local or tribal government, in the aggregate, or by the private sector of $100 million or more in any given year. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a number of businesses the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. Further, Executive Order 13132, Federalism, requires agencies to determine if a final rule will have a significant affect on States, on their relationship with the Federal Government, and on the distribution of power and responsibility among the various levels of government.

As indicated above, the provisions contained in this final rule are primarily intended to comply with amended statutory authority by (1) expanding the protection of certain basic fraud authorities beyond the Department to include other Federal health care programs, (2) strengthening current legal authorities pertaining to our imposition of CMPs against individuals and entities engaged in prohibited actions and activities, and (3) codifying other new and revised OIG sanction authorities set forth in Public Law 104–191.

We believe that these regulations will not have a significant economic effect on Federal, State or local economies, nor will they have a significant economic effect on a substantial number of small entities. In addition, in accordance with the Unfunded Mandates Reform Act, there are no significant costs associated with this rule that will impose mandates on State, local or tribal governments or on the private sector that would result in an expenditure of $100 million or more in any given year. The CMP statute, as enacted by Congress in 1981, was an administrative remedy to combat increases in health care fraud. The CMP provisions have been expanded upon since their original enactment to counteract evolving fraudulent and abusive practices. These final regulations merely continue the approach of authorizing CMP sanctions against individuals and entities that abuse Federal and State health care programs as emerging fraudulent practices are identified. These remedial sanctions are addressed to a limited group of individuals and entities; that is, providers who abuse the Federal health care programs to the detriment of the beneficiaries and the public fisc.

The revised CMP provisions set forth in this final rule that address the upcoding of claims, and claims for medically unnecessary services, are essentially clarifications of existing OIG authorities. In addition, with respect to the new penalty authorities being

codified, such as the CMP for excluded individuals retaining ownership or control interests in an entity and the CMP for the false certification of eligibility for home health services, these provisions target egregious conduct that is limited in scope and nature.

These final regulations implement congressional intent in the area of fraud and abuse in health care programs. The regulations target areas of health care fraud, not specific segments of the industry; the scope of effect is narrow and targeted specifically to those individuals defrauding or abusing the Medicare and State health care programs. There should be little or no increase in paperwork or reporting burdens in any pre-existing programs as a result of these regulations.

Similarly, while increases in the authorized CMP amounts from $2,000 to $10,000 per false item or service claimed or prohibited practice may increase overall penalty amounts and recoveries, the process for deriving any settlement will remain essentially the same. While the rise in the amount of penalty from $2,000 to $10,000 is an increase, it is only proportionate to the amount of fraud against the public fisc. It also serves as a deterrent to health care fraud, consistent with congressional intent in the enactment of HIPAA. This penalty amount increase should not significantly affect the health care industry; the only effect is remedial against those who perpetrate fraud against the system and thus violate Federal and State law. This increased maximum amount per false claim or prohibited practice may, in certain circumstances, reduce OIG investigative costs since fewer individual false claims will need to be developed and proved in order for the Government to recover appropriate penalties and assessments.

Overall, we believe that any increase in CMP recoveries will not be significant since the vast majority of individuals, organizations and entities addressed by these regulations do not engage in such prohibited activities and practices. As indicated, these final regulations are narrow in scope and effect, serve to codify or revise existing OIG sanctions, comport with congressional and statutory intent, and strengthen the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. Since there is no significant economic effect on the industry as a whole, there is little likelihood of effect on Federal or State expenditures to implement these regulations. In addition, while some sanctions addressed in this rule may have a minor impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In conclusion, we believe that the aggregate economic impact of these final regulations will be minimal, affecting only those limited few who have chosen to engage in prohibited arrangements, schemes and practices in violation of statutory intent. As a result, we have concluded, and the Secretary certifies, that this final rule should not have a significant effect on Federal, State or local economies and expenditures, and would not have a significant economic impact on a substantial number of small entities that would require a regulatory flexibility analysis. We have also reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that this final rule does not significantly affect the rights, roles and responsibilities of States.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

Accordingly, 42 CFR Parts 1001, 1003, 1005 and 1006 are amended as set forth below:

PART 1001—[AMENDED]

A. Part 1001 is amended as follows:

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.2003 is amended by revising paragraph (b)(2) to read as follows:

§ 1001.2003 Notice of proposal to exclude.

* * * * *

(b) * * *

(2) If the individual or entity makes a timely written request for a hearing and the OIG determines that the health or safety of individuals receiving services under Medicare or any of the State health care programs does not warrant immediate exclusion, an exclusion will only go into effect, with the date of the ALJ's decision, if the ALJ upholds the decision to exclude.

* * * * *

PART 1003—[AMENDED]

B. Part 1003 is amended as follows:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7(c), 1320b(10), 1395mm, 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

(i) Have knowingly submitted certain prohibited claims under Federal health care programs;

(ii) Seek payment in violation of the terms of an agreement or a limitation on charges or payments under the Medicare program, or a requirement not to charge in excess of the amount permitted under the Medicaid program;

(iii) Give false or misleading information that might affect the decision to discharge a Medicare patient from the hospital;

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Departmental and Medicare and Medicaid program words, letters symbols or emblems;

(vi) Violate a requirement of section 1867 of the Act or § 489.24 of this title;

(vii) Substantially fail to provide an enrollee with required medically necessary items and services; engage in certain marketing, enrollment, reporting, claims payment, employment or contracting abuses; or do not meet the requirements for physician incentive plans for Medicare specified in §§ 417.479(d) through (f) of this title;

(viii) Present or cause to be presented a bill or claim for designated health services (as defined in § 411.351 of this title) that they know, or should know, were furnished in accordance with a referral prohibited under § 411.353 of this title;

(ix) Have collected amounts that they know or should know were billed in violation of § 411.353 of this title and have not refunded the amounts collected on a timely basis;

(x) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this title;

(xi) Are excluded, and who retain an ownership or control interest of five percent or more in an entity participating in Medicare or a State health care program, or who are officers or managing employees of such an entity (as defined in section 1126(b) of the Act);

(xii) Offer inducements that they know or should know are likely to influence Medicare or State health care program beneficiaries to order or receive particular items or services; or

(xiii) Are physicians who knowingly misrepresent that a Medicare beneficiary requires home health services;

(2) Provides for the exclusion of persons from the Medicare or State health care programs against whom a civil money penalty or assessment has been imposed, and the basis for reinstatement of persons who have been excluded; and

(3) Sets forth the appeal rights of persons subject to a penalty, assessment and exclusion.

3. Section 1003.101 is amended as follows:

A. By republishing the introductory text;

B. By revising the definition for the terms *Claim* and *Exclusion*;

C. By removing the terms *General Counsel* and *Program*; and

D. By adding, in alphabetical order, definitions for the terms *Preventive care*, *Remuneration* and *Should know, or should have known*. The republication, revisions and additions read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Claim means an application for payment for an item or service to a Federal health care program (as defined in section 1128B(f) of the Act).

* * * * *

Exclusion means the temporary or permanent barring of a person from participation in a Federal health care program (as defined in section 1128B(f) of the Act).

* * * * *

Preventive care, for purposes of § 1003.102(b)(13) of this part and the preventive care exception to section 231(h) of HIPAA, means any service that—

(1) Is a prenatal service or a post-natal well-baby visit or is a specific clinical service described in the current U.S. Preventive Services Task Force's *Guide to Clinical Preventive Services*, and

(2) Is reimbursable in whole or in part by Medicare or an applicable State health care program.

Remuneration, as set forth in § 1003.102(b)(13) of this part, is consistent with the definition contained in section 1128A(i)(6) of the Act, and includes the waiver of coinsurance and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. The term ''remuneration'' does not include—

(1) The waiver of coinsurance and deductible amounts by a person, if the waiver is not offered as part of any advertisement or solicitation; the person does not routinely waive coinsurance or deductible amounts; and the person waives coinsurance and deductible amounts after determining in good faith that the individual is in financial need or failure by the person to collect coinsurance or deductible amounts after making reasonable collection efforts;

(2) Any permissible practice as specified in section 1128B(b)(3) of the Act or in regulations issued by the Secretary;

(3) Differentials in coinsurance and deductible amounts as part of a benefit plan design (as long as the differentials have been disclosed in writing to all beneficiaries, third party payers and providers), to whom claims are presented; or

(4) Incentives given to individuals to promote the delivery of preventive care services where the delivery of such services is not tied (directly or indirectly) to the provision of other services reimbursed in whole or in part by Medicare or an applicable State health care program. Such incentives may include the provision of preventive care, but may not include—

(i) Cash or instruments convertible to cash; or

(ii) An incentive the value of which is disproportionally large in relationship to the value of the preventive care service (*i.e.,* either the value of the service itself or the future health care costs reasonably expected to be avoided as a result of the preventive care).

* * * * *

Should know or *should have known* means that a person, with respect to information—

(1) Acts in deliberate ignorance of the truth or falsity of the information; or

(2) Acts in reckless disregard of the truth or falsity of the information. For purposes of this definition, no proof of specific intent to defraud is required.

* * * * *

4. Section 1003.102 is amended as follows:

A. By revising introductory text paragraph (a) and paragraphs (a)(1) and (a)(3);

B. Republishing the introductory text of paragraph (a)(4) and revising paragraphs (a)(4)(iii) and (5);

C. Adding a new paragraph (a)(6);

D. Republishing the introductory text of paragraph (b) and revising paragraph (b)(1), introductory text;

E. Removing and reserving paragraphs (b)(2) and (b)(3);

F. Revising paragraphs (b)(4) and (b)(9); and

G. By adding new paragraphs (b)(12) through (b)(14) and (e). The revisions, additions and republications read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has knowingly presented, or caused to be presented, a claim which is for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that is part of a pattern or practice of claims based on codes that the person knows or should know will result in greater payment to the person than the code applicable to the item or service actually provided;

* * * * *

(3) An item or service furnished during a period in which the person was excluded from participation in the Federal health care program to which the claim was made;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

* * * * *

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified;

(5) A payment that such person knows, or should know, may not be made under § 411.353 of this title; or

(6) An item or service that is medically unnecessary, and which is part of a pattern of such claims.

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

(1) Has knowingly presented or caused to be presented a request for payment in violation of the terms of—

* * * * *

(2) [Reserved]

(3) [Reserved]

(4) Has knowingly given or caused to be given to any person, in the case of inpatient hospital services subject to the provisions of section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital.

* * * * *

(9) Has not refunded on a timely basis, as defined in § 1003.101 of this part, amounts collected as the result of billing an individual, third party payer or other entity for a designated health service that was provided in accordance with a prohibited referral as described in § 411.353 of this title.

* * * * *

(12) Who is not an organization, agency or other entity, and who is excluded from participating in Medicare or a State health care program in accordance with sections 1128 or 1128A of the Act, and who—

(i) Knows or should know of the action constituting the basis for the exclusion, and retains a direct or indirect ownership or control interest of five percent or more in an entity that participates in Medicare or a State health care program; or

(ii) Is an officer or managing employee (as defined in section 1126(b) of the Act) of such entity.

(13) Offers or transfers remuneration (as defined in § 1003.101 of this part) to any individual eligible for benefits under Medicare or a State health care program, that such person knows or should know is likely to influence such individual to order or to receive from a particular provider, practitioner or supplier any item or service for which payment may be made, in whole or in part, under Medicare or a State health care program.

(14) Is a physician and who executes a document falsely by certifying that a Medicare beneficiary requires home health services when the physician knows that the beneficiary does not meet the eligibility requirements set forth in sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

* * * * *

(e) For purposes of this section, the term ''knowingly'' is defined consistent with the definition set forth in the Civil False Claims Act (31 U.S.C. 3729(b)), that is, a person, with respect to information, has actual knowledge of information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information, and that no proof of specific intent to defraud is required.

5. Section 1003.103 is amended by revising paragraphs (a) and (e); and by adding new paragraphs (i) and (j) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (h) of this section, the OIG may impose a penalty of not more than—

(1) $2,000 for each wrongful act occurring before January 1, 1997 that is subject to a determination under § 1003.102; and

(2) $10,000 for each wrongful act occurring on or after January 1, 1997 that is subject to a determination under § 1003.102.

* * * * *

(e) For violations of section 1867 of the Act or § 489.24 of this title, the OIG may impose—

(1) Against each participating hospital with an emergency department, a penalty of not more than $50,000 for each negligent violation occurring on or after May 1, 1991, except that if the participating hospital has fewer than 100 State-licensed, Medicare-certified beds on the date the penalty is imposed, the penalty will not exceed $25,000; and

(2) Against each responsible physician, a penalty of not more than $50,000 for each negligent violation occurring on or after May 1, 1991.

* * * * *

(i) For violations of § 1003.102(b)(14) of this part, the OIG may impose a penalty of not more than the greater of—

(1) $5,000, or

(2) Three times the amount of Medicare payments for home health services that are made with regard to the false certification of eligibility by a physician in accordance with sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(j) The OIG may impose a penalty of not more than $10,000 per day for each day that the prohibited relationship described in § 1001.102(b)(12) of this part occurs.

* * * * *

6. Section 1003.104 is revised to read as follows:

§ 1003.104 Amount of assessment.

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102, of not more than—

(1) Two times the amount for each item or service wrongfully claimed prior to January 1, 1997; and

(2) Three times the amount for each item or service wrongfully claimed on or after January 1, 1997.

(b) The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.

7. Section 1003.105 is amended as follows:

A. By revising the section heading and paragraphs (a)(1);

B. Removing existing paragraph (b)(1); and

C. By redesignating existing paragraphs (b)(2) and (b)(3) respectively as new paragraphs (b)(1) and (b)(2). The revisions read as follows:

§ 1003.105 Exclusion from participation in Medicare, Medicaid and all Federal health care programs.

(a)(1) Except as set forth in paragraph (b) of this section, the following persons may be subject, in lieu of or in addition to any penalty or assessment, to an exclusion from participation in Medicare for a period of time determined under § 1003.107. There will be exclusions from Federal health care programs for the same period as the Medicare exclusion for any person who—

(i) Is subject to a penalty or assessment under § 1003.102(a), (b)(1), (b)(4), (b)(12) or (b)(13); or

(ii) Commits a gross and flagrant, or repeated, violation of section 1867 of the Act or § 489.24 of this title on or after May 1, 1991. For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety or well-being of the individual who seeks emergency examination and treatment or places that individual unnecessarily in a high-risk situation.

* * * * *

8. Section 1003.106 is amended as follows:

A. By revising paragraph (a)(1);

B. Republishing the introductory text of paragraph (b) and revising paragraphs (b)(2) and (b)(5);

C. Revising the introductory text of paragraph (c) and paragraph (c)(3);

D. Redesignating existing paragraphs (d) and (e) as new paragraphs (e) and (f);

E. Revising the introductory text of the new redesignated paragraph (e); and

F. By adding a new paragraph (d). The revisions, republication and additions read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* (1) In determining the amount of any penalty or assessment in accordance with § 1003.102(a), (b)(1), (b)(4) and (b)(9) through (b)(14) of this part, the Department will take into account—

(i) The nature of the claim, referral arrangement or other wrongdoing;

(ii) The degree of culpability of the person against whom a civil money penalty is proposed;

(iii) The history of prior offenses of the person against whom a civil money penalty is proposed;

(iv) The financial condition of the person against whom a civil money penalty is proposed;

(v) The completeness and timeliness of the refund with respect to § 1003.102(b)(9);

(vi) The amount of financial interest involved with respect to § 1003.102(b)(12);

(vii) The amount of remuneration offered or transferred with respect to § 1003.102(b)(13); and

(viii) Such other matters as justice may require.

* * * * *

(b) *Determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered—

* * * * *

(2) Degree of culpability. It should be considered a mitigating circumstance if corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if—

(i) The respondent knew the item or service was not provided as claimed or if the respondent knew that the claim was false or fraudulent;

(ii) The respondent knew that the items or services were furnished during a period that he or she had been excluded from participation and that no payment could be made as specified in §§ 1003.102(a)(3) and 1003.102(b)(12), or because payment would violate the terms of an assignment or an agreement with a State agency or other agreement or limitation on payment under § 1003.102(b);

(iii) The respondent knew that the information could reasonably be expected to influence the decision of when to discharge a patient from a hospital; or

(iv) The respondent knew that the offer or transfer of remuneration described in § 1003.102(b)(13) of this part would influence a beneficiary to order or receive from a particular provider, practitioner or supplier items or services reimbursable under Medicare or a State health care program.

* * * * *

(5) *Financial condition.* In all cases, the resources available to the respondent will be considered when determining the amount of the penalty and assessment.

* * * * *

(c) In determining the amount of the penalty and assessment to be imposed for every item or service or incident subject to a determination under §§ 1003.102(a), (b)(1) and (b)(4)—

* * * * *

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages and costs (as defined in paragraph (f) of this section) sustained by the United States, or any State, as a result of claims or incidents subject to a determination under §§ 1003.102(a), (b)(1) and (b)(4).

(d) In considering the factors listed in paragraph (a)(4) of this section for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) *Degree of culpability.* It would be a mitigating circumstance if the respondent hospital had appropriate policies and procedures in place, and had effectively trained all of its personnel in the requirements of section 1867 of the Act and § 489.24 of this title, but an employee or responsible physician acted contrary to the respondent hospital's policies and procedures.

(2) *Seriousness of individual's condition.* It would be an aggravating circumstance if the respondent's violation(s) occurred with regard to an individual who presented to the hospital a request for treatment of a medical condition that was clearly an emergency, as defined by § 489.24(b) of this title.

(3) *Prior offenses.* It would be an aggravating circumstance if there is evidence that at any time prior to the current violation(s) the respondent was found to have violated any provision of section 1867 of the Act or § 489.24 of this title.

(4) *Financial condition.* In all cases, the resources available to the respondent would be considered when determining the amount of the penalty. A respondent's audited financial statements, tax returns or financial disclosure statements, as appropriate, will be reviewed by OIG in making a determination with respect to the respondent's financial condition.

(5) *Nature and circumstances of the incident.* It would be considered a mitigating circumstance if an individual presented a request for treatment, but subsequently exhibited conduct that demonstrated a clear intent to leave the respondent hospital voluntarily. In reviewing such circumstances, the OIG would evaluate the respondent's efforts to—

(i) Provide the services required by section 1867 of the Act and § 489.24 of this title, despite the individual's withdrawal of the request for examination or treatment; and

(ii) Document any attempts to inform the individual (or his or her representative) of the risks of leaving the respondent hospital without receiving an appropriate medical screening examination or treatment, and obtain written acknowledgment from the individual (or his or her representative) prior to the individual's departure from the respondent hospital that he or she is leaving contrary to medical advice.

(6) *Other matters as justice may require.* (i) It would be considered a mitigating circumstance if the respondent hospital—

(A) Developed and implemented a corrective action plan;

(B) Took immediate appropriate action against any hospital personnel or responsible physician who violated section 1867 of the Act or § 489.24 of this title prior to any investigation of the respondent hospital by HCFA; or

(C) Is a rural or publicly-owned facility that is faced with severe physician staffing and financial deficiencies.

(ii) It would be considered an aggravating circumstance if an individual was severely harmed or died as a result, directly or indirectly, of the respondent's violation of section 1867 of the Act or § 489.24 of this title.

(iii) Other circumstances of an aggravating or mitigating nature will be taken into account if, in the interests of justice, they require either a reduction of the penalty or an increase in order to assure the achievement of the purposes of this part.

(e) In considering the factors listed in paragraph (a)(5) of this section for violations subject to a determination under § 1003.103(f), the following

circumstances are to be considered, as appropriate, in determining the amount of any penalty—

* * * * *

9. Section 1003.107 is amended as follows:

A. By revising paragraph (b);

B. Removing existing paragraphs (c) and (e);

C. Redesignating paragraph (d) as new paragraph (c) and revising it. The revisions read as follows:

§ 1003.107 Determinations regarding exclusion.

* * * * *

(b) With respect to determinations to exclude a person under §§ 1003.102(a), (b)(1), (b)(4), (b)(12) or (b)(13) of this part, the Department considers those circumstances described in § 1003.106(b). Where there are aggravating circumstances with respect to such determinations, the person should be excluded.

(c) The guidelines set forth in this section are not binding. Nothing in this section limits the authority of the Department to settle any issue or case as provided by § 1003.126 of this part.

10. Section 1003.109 is amended by revising the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes a penalty and, when applicable, assessment, or proposes to exclude a respondent from participation in a Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

* * * * *

(b) Any person upon whom the Inspector General has proposed the imposition of a penalty, assessment or exclusion may appeal such proposed penalty, assessment or exclusion to the DAB in accordance with § 1005.2 of this chapter. The provisions of part 1005 of this chapter govern such appeals.

* * * * *

11. Section 1003.126 is revised to read as follows:

§ 1003.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without consent of the ALJ.

12. Section 1003.128 is amended by revising paragraph (b) to read as follows:

§ 1003.128 Collection of penalty and assessment.

* * * * *

(b) A penalty or assessment imposed under this part may be compromised by the Inspector General, and may be recovered in a civil action brought in the United States district court for the district where the claim was presented, or where the respondent resides.

* * * * *

PART 1005—[AMENDED]

C. Part 1005 is amended as follows:

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.1 is amended by adding, in alphabetical order, a definition for the term *Inspector General* to read as follows:

§ 1005.1 Definitions.

* * * * *

Inspector General (IG) means the Inspector General of the Department of Health and Human Services or his or her designees.

3. Section 1005.2 is amended by revising paragraph (c) to read as follows:

§ 1005.2 Hearing before an administrative law judge.

* * * * *

(c) The request for a hearing will be made in writing to the DAB; signed by the petitioner or respondent, or by his or her attorney; and sent by certified mail. The request must be filed within 60 days after the notice, provided in accordance with §§ 1001.2002, 1001.203 or 1003.109, is received by the petitioner or respondent. For purposes of this section, the date of receipt of the notice letter will be presumed to be 5 days after the date of such notice unless there is a reasonable showing to the contrary.

* * * * *

4. Section 1005.7 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) When a request for production of documents has been received, within 15 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 15 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

(i) Is irrelevant,

(ii) Is unduly costly or burdensome,

(iii) Will unduly delay the proceeding, or

(iv) Seeks privileged information.

* * * * *

5. Section 1005.9 is amended by revising paragraph (b) to read as follows:

§ 1005.9 Subpoenas for attendance at hearing.

* * * * *

(b) A subpoena requiring the attendance of an individual in accordance with paragraph (a) of this section may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 1005.7 of this part at or prior to the hearing.

* * * * *

6. Section 1005.15 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1005.15 The hearing and burden of proof.

* * * * *

(b) With regard to the burden of proof in civil money penalty cases under part 1003, in Peer Review Organization exclusion cases under part 1004, and in exclusion cases under §§ 1001.701, 1001.901 and 1001.951 of this chapter—

(1) The respondent or petitioner, as applicable, bears the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

* * * * *

7. Section 1005.20 is amended by revising paragraph (d) to read as follows:

§ 1005.20 Initial decision.

* * * * *

(d) Except for exclusion actions taken in accordance with § 1001.2003 of this chapter and as provided in paragraph (e) of this section, unless the initial decision is appealed to the DAB, it will be final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

* * * * *

8. Section 1005.21 is amended by revising paragraph (d) to read as follows:

§ 1005.21 Appeal to DAB.

* * * * *

(d) There is no right to appear personally before the DAB or to appeal to the DAB any interlocutory ruling by the ALJ, except on the timeliness of a filing of the hearing request.

* * * * *

PART 1006—[AMENDED]

D. Part 1006 is amended as follows:

1. The authority citation for part 1006 continues to read as follows:

Authority: 42 U.S.C. 405(d), 405(e), 1302 and 1320a-7a.

2. Section 1006.4 is amended by republishing the introductory text of paragraph (b) and by revising paragraph (b)(2) to read as follows:

§ 1006.4 Procedures for investigational inquiries.

* * * * *

(b) Investigational inquiries are non-public investigatory proceedings. Attendance of non-witnesses is within the discretion of the OIG, except that—

* * * * *

(2) Representatives of the OIG are entitled to attend and ask questions.

* * * * *

Dated: April 19, 1999.

June Gibbs Brown,

Inspector General.

Approved: November 24, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–10142 Filed 4–25–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[GN Docket No. 93–252, PR Docket No. 93–144, PR Docket No. 89–553; FCC 00–106]

Commercial Mobile Radio Service (CMRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissing various petitions for reconsideration.

SUMMARY: This document dismisses or denies fourteen of the fifteen petitions for reconsideration filed against an earlier Federal Communications Commission (Commission) order. The Commission takes this action because most of the issues raised in the petitions have been addressed in or rendered moot by action taken in other Commission orders. Other issues raised in the petitions are being considered in ongoing Commission proceedings. The Commission does, however, amend its rules to clarify the station identification requirements applicable to CMRS providers licensed under its private land mobile radio services rules.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr., Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: In this document released on April 7, 2000, the Commission, resolves various petitions for reconsideration of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93–252, Third Report and Order, 59 FR 59945 (November 21, 1994) (CMRS Third Report and Order). The primary goal of the CMRS Third Report and Order was to establish the regulatory framework for implementing the mandate of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI § 6002(b), 107 Stat. 312, 392 (1993) (1993 Budget Act), to treat ''substantially similar'' CMRS providers in a similar regulatory manner. In the five years since the release of the CMRS Third Report and Order, this task has been accomplished through the revision of scores of Commission rule sections in several Commission proceedings. In fact, the majority of the issues raised in the petitions have been addressed in or rendered moot by Commission action taken in Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, Implementation of Sections 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking, 61 FR 6212 (February 16, 1996) (800 MHz Report and Order), Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98–20, Report and Order, 63 FR 68904 (December 14, 1998) (ULS Report and Order), and other Commission orders released subsequent to the release of the CMRS Third Report and Order. Other issues raised in the petitions are being considered in ongoing Commission proceedings. For these reasons, with one exception, the Commission dismisses or denies all of the pending petitions for reconsideration. The Commission does, however, amend §§ 90.425 and 90.647 of our rules to clarify the station identification requirements applicable to CMRS providers licensed under part 90. The amended rule language appears below.

This Order (FCC 00–106), adopted March 17, 2000 and released on April 7, 2000, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc. 1231 20th Street, NW, Washington DC 20036 (202) 857–3800. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/*.

I. Final Regulatory Flexibility Certification

1. Final Regulatory Flexibility Certification. In this Memorandum Opinion and Order on Reconsideration, we amend §§ 90.425 and 90.647(d) of the Commission's rules as set forth in the Rule Changes below. The amended rules clarify that all part 90 CMRS providers licensed by geographic area are exempt from station identification requirements, and that other part 90 CMRS providers need comply only with the streamlined station identification requirements of § 90.425(e). Specifically, the amendments clarify that station identification need only occur once an hour instead of once every 15 minutes and that the affected CMRS providers need not comply with other detailed technical requirements. We therefore certify, pursuant to the Regulatory Flexibility Act, that the rules adopted in this Order will not have a significant economic impact on a substantial number of small entities.

2. The Commission will send a copy of this Memorandum Opinion and Order on Reconsideration, including specifically a copy of this final certification, 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). In addition, the Memorandum Opinion and Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be

published in the **Federal Register**. See 5 U.S.C. 605(b).

II. Ordering Clauses

3. Accordingly, *It is Ordered,* pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Section 1.429(i) of the Commission's rules, 47 CFR 1.429(i), that the petition for reconsideration or clarification filed by American Mobile Telecommunications Association, Inc. IS GRANTED to the extent that American Mobile Telecommunications Association, Inc. seeks clarification of § 90.425 of the Commission's rules.

4. *It is further Ordered* that in all other respects, the petitions for reconsideration and/or clarification of the CMRS Third Report and Order in GN Docket No. 93–252 discussed herein *are dismissed* to the extent they are identified herein as moot, and otherwise are denied.

5. *It is Further Ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Memorandum Opinion and Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Reporting and recordkeeping requirements.

Federal Communications Commission.

Deputy Secretary.

William F. Caton,

Rule Changes

As discussed in the preamble, 47 CFR Part 90 is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.425 is amended by revising paragraphs (a) introductory text and (e)(1) to read as follows:

§ 90.425 Station identification.

* * * * *

(a) *Identification procedure.* Except as provided for in paragraphs (d) and (e) of this section, each station or system shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety Pool) during periods of continuous operation. The call sign shall be transmitted by voice in the English language or by International Morse Code in accordance with paragraph (b) of this section. If the station is employing either analog or digital voice scrambling, or non-voice emission, transmission of the required identification shall be in the unscrambled mode using A3E, F3E or G3E emission, or International Morse, with all encoding disabled. Permissible alternative identification procedures are as follows:

* * * * *

(e) * * *

(1) Station identification will not be required for 929–930 MHz nationwide paging licensees or MTA or EA-based SMR licensees. All other CMRS stations will be required to comply with the station identification requirements of this paragraph.

3. Section 90.647 is amended by adding a paragraph (d) to read as follows:

§ 90.647 Station identification.

* * * * *

(d) Notwithstanding the requirements set forth in this paragraph, systems operated by geographic area CMRS licensees are subject only to the station identification requirements of § 90.425(e).

[FR Doc. 00–10354 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN–1018–AF45

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Umpqua River Cutthroat Trout From the List of Endangered Wildlife

AGENCIES: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), are amending the current regulations by removing the entry of the Umpqua River Ecologically Significant Unit (ESU) of the coastal cutthroat trout (*Oncorhynchus clarki clarki*) from the List of Endangered and Threatened Wildlife (List). The National Marine Fisheries Service (NMFS), which has jurisdiction for this population, has determined that the Umpqua River cutthroat trout population, formerly identified as an ESU of the species, is part of a larger population segment that previously was determined to be neither endangered nor threatened as defined by the Endangered Species Act (Act). Therefore, NMFS determined that the Umpqua River cutthroat trout should be removed from the List of Endangered and Threatened Wildlife and recommended that the Department of the Interior implement this action by amending the List accordingly. We concur with the determination by NMFS and are removing all of the Act's protections, including critical habitat designation, for this population in the Umpqua River basin.

DATES: This rule is effective April 26, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at Branch of Conservation and Classification, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, at the above address or telephone 703/358–2171.

SUPPLEMENTARY INFORMATION:

Background

The coastal cutthroat trout subspecies (*Oncorhynchus clarki clarki*) is native to western North America and is found in the coastal temperate rainforests from southeast Alaska to northern California (Trotter 1989). The populations addressed in this document inhabit the Umpqua River basin of coastal Oregon. Details of the coastal cutthroat trout's life history and ecology, including particular aspects of the various resident and migratory life forms, can be found in published reviews by Pauley *et al.* (1989), Trotter (1989), Behnke (1992), Johnson *et al.* (1994), and Johnson *et al.* (1999).

Previous ESA Actions Related to Coastal Cutthroat Trout

Descriptions of previous Federal actions pertaining to coastal cutthroat trout are summarized in the **Federal Register** notice on the transfer of agency jurisdiction (65 FR 21376, April 21, 2000), final delisting rule published by NMFS (65 FR 20915, April 19, 2000), the proposed delisting rule (64 FR 16397, April 5, 1999), and the initial listing determination (61 FR 41514,

August 9, 1996). In response to a petition, NMFS proposed to list the Umpqua River coastal cutthroat trout ESU as endangered on July 8, 1994 (59 FR 35089), and made the listing final on August 9, 1996 (61 FR 41514). The listing was followed by a critical habitat designation on January 9, 1998 (63 FR 1388).

Determinations

After making the initial findings to list the Umpqua River cutthroat trout, NMFS conducted an expanded review of coastal cutthroat trout that identified six ESUs in Washington, Oregon, and California (Johnson 1999). One of the conclusions of this more comprehensive review was that the Umpqua River cutthroat trout population was part of a larger Oregon Coast ESU bounded by Cape Blanco in the south and the Columbia River mouth in the north. Moreover, NMFS determined that the larger ESU did not warrant listing under the ESA. In light of these findings, NMFS proposed to delist the Umpqua River ESU on April 5, 1999 (64 FR 16397). This proposal was announced jointly with us because section 4(a)(2)(B) of the Act requires our concurrence on any NMFS delisting action. The proposal also noted that a determination would be made regarding which of the two agencies should have sole jurisdiction over the species of which the Umpqua River ESU is a part. On April 21, 2000, the agencies published a document announcing that we would retain this authority, but that NMFS would complete the final determination on the Umpqua delisting proposal (65 FR 21376).

The agencies requested information on all aspects of the April 1999 delisting proposal, and NMFS held public hearings May 25–26, 1999, to solicit additional comments (64 FR 20248, April 26, 1999). In accordance with a July 1, 1994, interagency policy (59 FR 34270), NMFS also solicited scientific peer review on the proposal from species experts. A summary of the comments received and the NMFS responses can be found in the final delisting rule published by NMFS on April 19, 2000 (65 FR 20915).

Based on an assessment of the best available scientific and commercial information, and after taking into account public and peer review comments, NMFS found that the Umpqua River ESU of the coastal cutthroat trout is not a valid ''distinct population segment,'' as defined by a joint NMFS/FWS policy published on February 7, 1996 (61 FR 4722). Therefore, NMFS concludes that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened Wildlife, thereby removing all protections provided by the Act. In accordance with section 4(a)(2)(B) of the Act, NMFS has recommended that the Department of the Interior implement this action by amending the List accordingly. We have reviewed the complete administrative record regarding this action, find that the determination is well based, and concur that the Umpqua River ESU of the coastal cutthroat trout should be removed from the List. Therefore, in accordance with section 4(a)(2) of the Act, we are amending the List (50 CFR 17.11(h)) by revising the regulations to remove the entry for this population.

Effects of the Final Rule

This action removes Umpqua River cutthroat trout from the List of Endangered and Threatened Wildlife. The Act and its implementing regulations set forth a series of general prohibitions that apply to all endangered animals. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 223.203, currently apply to Umpqua River cutthroat trout. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Once removed from the List, these prohibitions will no longer apply to Umpqua River cutthroat trout.

The requirements of section 7 of the Act will also no longer apply to Umpqua River cutthroat trout, and Federal agencies will no longer be required to consult on their actions that may affect Umpqua River cutthroat trout.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. Umpqua River cutthroat trout is being delisted due to a reevaluation of the ESUs in Oregon and California that indicated that the Umpqua River ESU is not a valid ESU, and that the Umpqua River cutthroat trout is part of a larger ESU. Therefore, since this delisting is not due to recovery, no monitoring period is required.

Critical habitat for the Umpqua River cutthroat trout was designated on January 9, 1998 (63 FR 1388). It includes all estuarine areas and river reaches accessible to the species in the Umpqua River basin, except areas above longstanding, naturally impassable barriers. The Act defines critical habitat as ''specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.'' Because critical habitat can be designated only for species listed as endangered or threatened under the Act, upon publication of this final rule to amend the regulations, critical habitat would no longer be designated for the Umpqua River cutthroat trout population.

This final rule is issued under 50 CFR part 17 and is not subject to Office of Management and Budget review under Executive Order 12866. Because this rule implements a determination previously subject to notice and comment and will relieve regulatory restrictions, the Service Director, under section 553(b)(3)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), for good cause, finds that it is unnecessary to provide additional notice and public comment on this rule or to delay for 30 days its effective date.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Branch of Conservation and Classification (see **ADDRESSES** section).

Author

The primary author of this final rule is Tim Van Norman, Branch of Conservation and Classification (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for ''Trout, Umpqua River cutthroat, *Oncorhynchus* (=*Salmo*) *clarki clarki*'' under ''FISHES'' from the List of Endangered and Threatened Wildlife.

Dated: April 10, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–10372 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 65, No. 81
Wednesday, April 26, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–065–1]

RIN 0579–AA93

Importation of Fuji Variety Apples From the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to allow Fuji variety apples grown in certified orchards within approved production areas in the Republic of Korea to be imported into the United States, without treatment, under conditions designed to prevent the introduction into the United States of the peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*). The conditions to which the proposed importation of Fuji variety apples would be subject, including pest risk-reducing cultural practices, packinghouse procedures, and inspection and shipping procedures, would reduce the risk of pest introduction to an insignificant level.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 26, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97–065–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 97–065–1.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Dennis J. Hannapel, Co-director of Asia and Pacific, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–4308.

SUPPLEMENTARY INFORMATION:

Background

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

Currently, § 319.56–2cc of the regulations specifies that Fuji variety apples may be imported into the United States from the Republic of Korea or Japan if the apples have been cold treated and then fumigated for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*).

The regulations have allowed the importation of Fuji variety apples from the Republic of Korea, if they have been treated, since August 1994. However, the Republic of Korea has only shipped Fuji variety apples to Saipan and the U.S. territory of Guam.

The National Plant Quarantine Service (NPQS) of the Ministry of Agriculture of the Republic of Korea has requested that the Animal and Plant Health Inspection Service (APHIS) consider allowing Fuji variety apples grown in certified orchards within approved production areas in the Republic of Korea to be imported into the United States without cold treatment and fumigation. In support of its request, the Government of the Republic of Korea submitted the results of scientific studies and surveys that were conducted over a 3-year period in Fuji variety apple producing areas of the Republic of Korea and that reveal data on pest population and pest management. A work plan that accompanied the request contained specific phytosanitary guidelines for mitigating the risk of plant pest introduction associated with the importation of Fuji variety apples from the Republic of Korea into the United States.

The insect pests of concern for Fuji variety apples from the Republic of Korea are the peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), which can infest Fuji variety apples and other fruits and vegetables.

APHIS has reviewed the documentation submitted by the Government of the Republic of Korea in support of its request and conducted several visits to Fuji variety apple producing areas in the Republic of Korea. We also reviewed the pest risk assessment we prepared prior to allowing the importation of Fuji variety apples with treatment and determined that the pest complex identified is still accurate. Based on our review of the documentation provided by the Republic of Korea, our pest risk assessment, and the data gathered during the site visits, we believe that the Government of the Republic of Korea has demonstrated that the Fuji variety apple producing areas of the Republic of Korea can produce Fuji variety apples that could be imported into the United States without presenting a significant risk of plant pest introduction.

We are proposing to amend § 319.56–2cc of the regulations to allow the importation of Fuji variety apples from the Republic of Korea under certain conditions. These conditions constitute a systems approach to mitigating pest risk and are discussed in detail below.

Systems Approaches

Using systems approaches to phytosanitary security, APHIS establishes growing, packing, shipping,

and other conditions whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. APHIS has used systems approaches to establish conditions for the importation of several commodities, including Unshu oranges from Japan (7 CFR 319.28); tomatoes from Spain, France, Morocco, and Western Sahara (7 CFR 319.56–2dd); peppers from Israel (7 CFR 319.56–2u); Ya variety pears from China (7 CFR 319.56–2ee); and Hass avocados from Mexico (7 CFR 319.56–2ff). Each of these programs has performed successfully.

For the Ya variety pears mentioned above, APHIS used a systems approach to establish growing, treatment, packing, and inspection requirements designed to prevent the introduction of plant pests, including *Bactrocera dorsalis,* which exist in China and can infest Ya pears. The rule requires Chinese growers and agricultural agencies to follow phytosanitary measures, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. The rule also requires measures to preclude commingling with other fruit at the packinghouse and specifies other shipment, treatment, and inspection requirements. The systems approach for Ya variety pears is most like the systems approach that we are proposing for Fuji variety apples from the Republic of Korea.

The systems approach we are proposing for Fuji variety apples from the Republic of Korea combines a series of complementary phytosanitary measures, including pest risk-reducing cultural practices, packinghouse procedures, and inspection and shipping procedures, all intended to prevent the introduction of *Carposina sasakii, C. niponensis, Conogethes punctiferalis, Tetranychus viennensis,* and *T. kanzawai.* Some of the proposed requirements were originally suggested in the mitigation plan that accompanied the request submitted by the Government of the Republic of Korea. The proposed conditions for importation, which would be set out in § 319.56–2cc, are explained below.

Permit Requirement

Section 319.56–3 of the regulations requires persons contemplating the importation of fruits or vegetables that are authorized entry under the regulations to first apply for a permit from APHIS. That permit requirement would be applicable to the importation of Fuji variety apples under the provisions of this proposed rule. Section 319.56–4 states that, upon receipt of an application and approval by an inspector, a permit will be issued that specifies the conditions of entry and the port of entry. Therefore, our proposed regulations would require that the Fuji variety apples be imported under a permit issued in accordance with § 319.56–4.

Registered Growers, Certified Orchards, and Export Production Areas

First, we would require that the Fuji variety apples be grown in a certified orchard in an APHIS-approved export production area by growers registered with the Korean Ministry of Agriculture. An export production area may encompass several orchards. Orchard certification and export production area approval would be granted initially when the grower registers and agrees to comply with the requirements in our regulations and after inspection by APHIS. If any of the listed pests, or any other pests of quarantine significance, are found during the inspections, the orchard would not be certified and, therefore, would not be included in the export program. As part of the ongoing certification and approval, APHIS and the Korean Ministry of Agriculture would inspect the orchards and the export production areas to ensure that the Fuji variety apples were grown in accordance with our regulations.

The export production area would have to be surrounded by a 200-meter-wide buffer area. The buffer area would have to receive the same treatments as would be required in the export production area (see ''Pest Risk-Reducing Cultural Practices,'' below). This buffer area, in which only trees of the of the genera *malus* (apple or crabapple) could be grown and from which no fruit could be offered for importation into the United States, would separate the export production area from surrounding agricultural and nonagricultural areas. No trees of the *Prunus* species (peach, plum, apricot, cherry, *Prunus tomentosa*, etc.) could be grown in the export production area or buffer zone because these trees are known hosts of *Tetranychus viennensis.* Because those areas lying outside the buffer area would not be subject to the same measures as would be applied in the export production area and buffer area, there is the possibility that *Carposina sasakii*, *C. niponensis*, *Conogethes punctiferalis*, *Tetranychus viennensis*, or *T. kanzawai* may be present in those areas. Thus, by providing for the suppression of plant pests over a wide area, the buffer area would offer the export production area an additional measure of protection. The buffer area would be inspected by APHIS. If any of the listed pests, or any other pests of quarantine significance, were found in the buffer area, all orchards within 200 meters of the detection site would be removed from the export program until the source of the pest infestation is identified and removed. Then, the buffer area and the removed orchards could be reinspected for recertification.

Pest Risk-Reducing Cultural Practices

Under the systems approach, the Fuji variety apples must originate from certified orchards within export production areas where chemical controls and cultural practices ensure that the apples are not infested with the pests previously listed. The Korean Ministry of Agriculture and APHIS would be responsible for conducting field inspections for signs of pest infestations during the growing season. If pests are found during the inspections, the orchard would not be certified and, therefore, would not be included in the export program. The registered growers would be responsible for following phytosanitary measures agreed upon by APHIS and the Ministry of Agriculture. These measures would include applying pesticides and controlling weeds to reduce the pest populations and bagging the apples on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. Application of pesticides in Fuji variety apple orchards in the Republic of Korea is a routine pest management practice for the control of pests, including mites and rust. NPQS personnel would have to monitor the application of the treatments to ensure that the treatments were being applied correctly and at the proper time. Controlling weeds is another routine pest management practice for reducing mite populations during the growing season. Bagging is also a routine pest management practice for growing Fuji variety apples in the Republic of Korea, and the Republic of Korea submitted research results, which we reviewed, showing that bagging is effective against some of the listed pests.[1] Growers would have to cover individual Fuji variety apples with a bag to keep pests from landing on the fruit and laying eggs in the fruit. The bags could be removed from the apples no earlier than 3 weeks before the harvest.

[1] For information on this research, contact the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this document.

Post-Harvest Handling of Fruit

After being harvested, the Fuji variety apples would have to be handled in accordance with several specific conditions.

We would prohibit a packinghouse in which Fuji variety apples are packed for export to the United States from accepting any fruit from orchards that are not certified to export Fuji variety apples to the United States during the time that fruit intended for export to the United States is being handled in the packinghouse. Barring the entry of fruit into the packinghouse from orchards that are not certified to export Fuji variety apples to the United States would ensure that the fruit intended for export is not infected or infested as a result of comminglement with fruit that was grown in an orchard that has not been subject to the same phytosanitary measures as orchards producing Fuji variety apples for export to the United States.

The packinghouses would have to be kept clean and free of plant pests and plant debris. In the packinghouse, the fruit would have to be sorted, and all injured and infested fruits would have to be immediately removed from the packinghouse premises. Before packing, the fruit would again have to be inspected by the Korean Ministry of Agriculture to verify its freedom from the pests previously listed. If fruit from a grower were rejected after inspection, then subsequent fruit from that grower would be inspected at a higher sampling rate. Rejected lots would not be eligible for reinspection. A second rejected lot from an orchard would result in the orchard losing its certification for the season.

Fruit to be exported to the United States would have to be packed in boxes used exclusively for export to the United States. All boxes would have to be marked with information identifying the grower and the packinghouse. These proposed requirements would ensure that inspectors would be able to trace the fruit back to its orchard of origin in the event that plant pests were detected on the fruit. Additionally, the Fuji variety apples would have to be loaded at the packinghouse into a shipping container for movement to the United States to prevent contamination during transportation to the port of export. This proposed requirement would ensure that the fruit would not be exposed to insect pests while en route to the port of export. Fruit not immediately loaded after packing would have be stored in a secure refrigerated warehouse until loaded. After the fruit is loaded into the shipping containers, the shipping containers would have to be sealed by the Korean Ministry of Agriculture with an official seal whose number is noted on the phytosanitary certificate.

Phytosanitary Certificate

We would require the Fuji variety apples to be accompanied by a phytosanitary certificate issued by NPQS. The phytosanitary certificate would have to state that the Fuji variety apples were examined and found to be free from *Carposina sasakii*, *C. niponensis*, *Conogethes punctiferalis*, *Tetranychus viennensis*, and *T. kanzawai*. The phytosanitary certificate would also have to include the following declaration: ''The apples in this shipment are from certified orchards and comply with all the requirements in 7 CFR 319.56–2cc(e).'' The phytosanitary certificate would serve as NPQS's official confirmation that the requirements of the regulations had been met.

Inspection at the Port of First Arrival

Fuji variety apples imported into the United States from the Republic of Korea under this rule would be subject to § 319.56–6 of the regulations, which provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be inspected and shall be subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with fruit flies or other injurious plant pests that an inspector determines that it cannot be cleaned or treated. The inspector at the port of arrival would also review the documentation, including the phytosanitary certificate, accompanying the fruit to ensure that the fruit was being imported in accordance with the regulations.

Trust Fund Agreement and APHIS Participation

APHIS would be directly involved with NPQS in the monitoring and supervision of Fuji variety apple exports to the United States. APHIS would monitor orchard and export production area inspections, harvest, and packinghouse operations to ensure that our export requirements are met. The costs of APHIS' involvement during each shipping season would be covered by a trust fund agreement between APHIS and NPQS or an industry association representing Korean Fuji variety apple growers, packers, and exporters. Under the agreement, NPQS or the Korean industry association would pay in advance all estimated costs that APHIS expected to incur through its involvement in the required growing, harvest, and packinghouse operations prescribed in proposed § 319.56–2cc(e). Those costs would include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing those services. The agreement would require NPQS or the Korean industry association to deposit a certified or cashier's check with APHIS for the amount of the costs, as estimated by APHIS. If the deposit was not sufficient to meet all costs incurred by APHIS, the agreement would further require NPQS or the Korean industry association to deposit another certified or cashier's check with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS' services would be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to NPQS or the Korean industry association or held on account until needed.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we need information on the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule and the economic effect of those benefits or costs.

We propose to amend the regulations to add a new option for the importation into the United States of Fuji variety apples from the Republic of Korea. Although Fuji variety apples with required treatments from the Republic of Korea have been eligible for importation into the United States for several years, Fuji variety apples have only been shipped from the Republic of

Korea to Saipan and the U.S. territory of Guam.

Analysis

This economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and considers the potential economic effects of this proposed action on domestic producers of apples. It focuses on apple production, price, and potential effects of the proposed rule on producers and consumers. The possible economic effects considered include losses to domestic producers due to increased competition from imports. The magnitude of the economic effects would depend on the size of additional supply from the Republic of Korea and the U.S. supply and demand for Fuji variety apples. As explained below, we expect that any economic effect on U.S. producers and consumers would be small due to the relative sizes of the U.S. apple industry and expected import volumes from the Republic of Korea. In addition, although this is not taken into account in the analysis below, Fuji apples grown in Korea are a specialty fruit (they are larger than U.S. grown Fuji apples about the size of a softball), and we do not believe that they will be marketed in direct competition with U.S. grown Fuji apples. Rather, we expect that they will have their own market niche.

Our analysis used information from the following sources: Pest Risk Assessment for Fuji Variety Apples from the Republic of Korea, APHIS, Biological Assessment and Taxonomic Support, December 1, 1995; APHIS, International Services; USDA, Agricultural Statistics 1998, Table 5–4; USDA FAS, Global Agricultural Trade System (data from the United Nations Statistical Office); USDA, National Agricultural Statistics Service; U.S. Department of Agriculture, 1997 Census of Agriculture, Volume 1, Part 51, Chapter 1, Table 43; Washington Apple Commission; U.S. Apple Commission; ''Production and Utilization Analysis Book (1998 Edition),'' U.S. Apple Association; Northwest Horticultural Council; Yakima Growers and Shippers Association; and Washington State University.

Small Businesses

The Small Business Administration (SBA) includes apple producers in the ''deciduous tree fruits'' category; in this category SBA defines small businesses as those that have annual receipts of less than $500,000. For U.S. apple producers, annual average apple yields range from 32,000 to 36,000 pounds per acre. Apple prices at the producer level, for the 5-year period 1993–1997, averaged 14.8 cents per pound. These data imply average returns of between $4,736 and $5,328 per acre. Given these returns, an apple producer would be considered a small entity if the area of production were less than 93 to 105 acres. According to the 1997 Census of Agriculture, of 28,100 farms producing apples that year, more than 95 percent had less than 100 acres. These farms accounted for 44 percent of apple production acreage and 38 percent of the apple trees. U.S. Fuji variety apple producers may tend to have larger-than-average operations, but, like apple farms in general, the vast majority are small entities. Of the 28,100 U.S. farms producing apples in 1997, over 60 percent had apple orchards of less than five acres. These farms accounted for only four percent of the acreage and two percent of the trees. Therefore, most apple producers in the United States can be considered small entities.

Fuji Variety Apple Production in the United States

Apple growers in Washington and California produce the majority of Fuji variety apples grown in the United States. Table 1, below, shows the dramatic increase in Fuji variety apple production in these two States from 1993 to 1997; 1998 production is expected to be four times 1993 production. Production and plantings of Fuji variety apples in California in 1995 show the variety's expansion:

- 20 percent of California's apple-bearing trees (7,315 of 35,676 acres) were Fuji variety apple trees and
- 62 percent of the apple trees that had not yet borne fruit (2,413 of 3,896 acres) were also Fuji variety apple trees.

This rapid growth is in contrast to U.S. apple production in general, which increases about one percent each year.

TABLE 1.—FUJI VARIETY APPLE PRODUCTION IN CALIFORNIA AND WASHINGTON, 1993 TO 1998.

Year	Metric tons
1993	90,760
1994	176,071
1995	196,932
1996	248,332
1997	300,399
1998 (estimated)	376,795

U.S. apple producers initially planted Fuji variety apples in response to attractive export markets, in particular, high Taiwanese prices. A grower may earn about $150 (normal net return) per bin (about 1,000 pounds) of Red Delicious apples (one of the most popular apple varieties). Growers exporting Fuji variety apples to Taiwan were earning about $600 per bin. However, Taiwanese demand has dropped and, given the widespread financial crisis in Asia, it is likely that a significant share of Fuji variety apples once intended for the export market will be diverted to the domestic market. Last year's yield of 7.5 million 42-pound boxes of Fuji variety apples increased to 10 million boxes this year and is expected to reach 15 million boxes by the year 2000. Fuji variety apples were expected to overtake the Rome and Granny Smith varieties to become the third-leading U.S. apple variety in 1998.

Apple Industries in the United States and the Republic of Korea

Table 2 shows apple industry information for 1996. The table shows the quantity and value of apples (1) produced by the United States, (2) exported from the United States, (3) imported into the United States, and (4) exported from the Republic of Korea.

TABLE 2.—U.S. APPLE PRODUCTION, EXPORTS AND IMPORTS, AND GLOBAL KOREAN APPLE EXPORTS, 1996

	Quantity (metric tons)	Value (1000$)
U.S. utilized commercial production	4,690,224	1,644,226
U.S. exports	590,649	381,591
U.S. imports	182,961	129,165
Global Korean exports	5,822	9,731
Global Korean exports as a percentage of U.S. supply (production + imports—exports)	0.1%	0.7

Under the proposal, Fuji variety apple orchards in the Republic of Korea must be certified to be eligible to export their apples into the United States. According to the Korean Ministry of Agriculture, annual production of Fuji variety apples from certified orchards is expected to be about 1,920 metric tons. The Korean Ministry of Agriculture does not anticipate any substantial increase in this volume of production in the next 5 years. This expectation is reasonable, given that nearly all arable land in this mountainous country is already under cultivation, and the Republic of Korea's apple acreage has been more or less constant for several years. Table 3 shows the expected volume of Fuji variety apple exports from these orchards to the United States for the next 5 years. These amounts are of such negligible size that the impact on the U.S. apple industry and consumers would be insignificant. A quantity of 600 metric tons is less than 0.2 percent of U.S. Fuji variety apple production in 1997. U.S. consumers would benefit marginally only if the imports increased the net domestic supply. Given the large volumes of apples produced and traded by the United States, any impact would be extremely small. Fuji variety apple imports from the Republic of Korea will be competing with imports from Canada, Chile, New Zealand, and South Africa; these four countries supply approximately 97 percent of U.S. apple imports.

TABLE 3.—EXPECTED FUJI VARIETY APPLE EXPORTS FROM KOREA TO THE UNITED STATES, 1999 TO 2003, UNDER THE PROPOSED CERTIFICATION AND PRECLEARANCE PROGRAM

Year	Metric tons
1999	150
2000	200
2001	300
2002	400
2003	600

Source: Korean Ministry of Agriculture.

The Republic of Korea's annual apple production is about 650,000 metric tons, and the Fuji variety comprises 77 percent of this total. Fuji variety apple production expected from the Republic of Korea's certified orchards, 1,920 metric tons per year, represents only about 0.3 percent of the country's total apple production and 0.4 percent of its Fuji variety production. Therefore, export prices received for apples from certified orchards are not expected to have a significant effect on the Republic of Korea's apple production and exports overall.

The effect of this rule on U.S. apple producers and consumers is expected to be negligible, given that the United States exports significantly more apples than it imports and the potential imports from the Republic of Korea are so small relative to U.S. apple production. In addition, apple imports comprise only a small percentage of U.S. supply. The market for Fuji variety apples is expanding rapidly. Fuji variety apples imported from the Republic of Korea are not likely to dampen prices or sales by domestic producers and will help meet the expanding demand.

The alternative to this proposed rule would be to make no changes to the current Fuji variety apple import regulations. Currently, we allow the importation of Fuji variety apples into the United States from the Republic of Korea or Japan when the apples undergo cold treatment and fumigation. After consideration, we rejected this alternative since there appears to be no pest risk reason to maintain the prohibition on untreated Fuji variety apples from the Republic of Korea, in light of the safeguards that would be applied to their importation.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule would allow Fuji variety apples to be imported into the United States from the Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Fuji variety apples imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Fuji variety apples are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–065–1. Please send a copy of your comments to: (1) Docket No. 97–065–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) 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.

Our regulations currently allow Fuji variety apples grown in the Republic of Korea to be imported into the United States after they have been cold treated and fumigated. In this document, we are proposing to amend our regulations to allow Fuji variety apples grown in certified orchards within approved production areas in the Republic of Korea to be imported into the United States, without treatment, under conditions designed to prevent the introduction of the peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*) into the United States.

These proposed amendments would require the use of several information collection activities, including a phytosanitary certificate and a trust fund agreement. We are asking OMB to approve our use of these information collections in connection with our efforts to ensure that Fuji variety apples from the Republic of Korea do not pose a risk of introducing the aforementioned pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection 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 of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

Respondents: Korean plant health authorities; growers, exporters, and shippers of Fuji variety apples in the Republic of Korea; and U.S. importers of Fuji variety apples.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 8.53.

Estimated annual number of responses: 256.

Estimated total annual burden on respondents: 192 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. Section 319.56–2cc would be amended as follows:

a. In paragraph (a), by removing the words ''The apples'' and adding the words ''Except when imported under the requirements in paragraph (e) of this section, the apples'' in their place.

b. By adding a new paragraph (e) to read as set forth below.

§ 319.56–2cc Administrative instructions governing the entry of Fuji variety apples from Japan and the Republic of Korea.

* * * * *

(e) *Systems approach requirements.* Fuji variety apples may be imported from the Republic of Korea into the United States only under a permit issued in accordance with § 319.56–4 and only under the following conditions:

(1) *Growing and harvest conditions.* The apples must have been grown in a certified orchard in an APHIS-approved export production area by growers registered with the Korean Ministry of Agriculture. APHIS and the Korean Ministry of Agriculture will inspect orchards and production areas to certify that the Fuji variety apples were grown according to the following conditions:

(i) The export production area must be surrounded by a 200-meter-wide buffer zone. Only fruit trees of the *malus* species (apple or crabapple) may be grown in the export production area and buffer zone. Fruit trees of the *Prunus* species (peach, plum, apricot, cherry, *Prunus tomentosa,* etc.), which are major hosts of *Tetranychus viennensis,* must not be grown in the export production area or buffer zone. No fruit grown in the buffer zone may be imported into the United States. If pests of quarantine significance are found in the buffer zone, all orchards within 200 meters of the detection site will be removed from the export program.

(ii) Field inspections for signs of pest infestation and for compliance with the requirements of this section must be conducted by the Korean Ministry of Agriculture and APHIS during the growing season. The Korean Ministry of Agriculture and APHIS will conduct field inspections after bagging and prior to harvest to detect signs of pest infestation. If pests of quarantine significance are found during the inspections, the orchard will not be certified and, therefore, will not be included in the export program.

(iii) To ensure that Fuji variety apples exported to the United States are not infested with peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), registered growers must comply with the phytosanitary measures agreed to by APHIS and the Korean Ministry of Agriculture, including bagging the apples on the trees to reduce the opportunity for pests to attack the fruit during the growing season; applying pesticides to reduce the mite, rust, and other pest populations; and controlling weeds to reduce mite populations. The bags must remain on the apples until 3 weeks prior to the harvest.

(2) *After harvest.* After harvest, the Fuji variety apples must be handled in accordance with the following conditions:

(i) During the time that a packinghouse is used to prepare Fuji variety apples for export to the United States, the packinghouse may accept fruit only from orchards that meet the requirements of paragraph (e)(1) of this section.

(ii) The packinghouses must be kept clean and free of plant pests and plant debris.

(iii) In the packinghouse, the fruit must be sorted and all injured and infested fruits must be immediately removed from the packinghouse premises. Before packing, the fruit must again be inspected by the Korean Ministry of Agriculture to verify its freedom from peach fruit moths (*Carposina sasakii* and *C. niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*). If fruit from a grower is rejected after inspection, then subsequent fruit from that grower will be inspected at a higher sampling rate. Rejected lots are not eligible for reinspection and must be immediately removed from the packinghouse premises. A second rejected lot from an orchard will result in the orchard losing its certification for the season.

(iv) Fruit to be exported to the United States must be packed in boxes used exclusively for export to the United States. All boxes must be marked with information identifying the grower and the packinghouse. The boxes must be loaded at the packinghouse into a shipping container for movement to the United States to prevent contamination during transportation to the port of export. Fruit not immediately loaded after packing must be stored in a secure refrigerated warehouse until loaded. After the fruit is loaded into the shipping containers, the shipping containers must be sealed by the Korean Ministry of Agriculture with an official seal whose number is noted on the phytosanitary certificate.

(3) *Certificates.* Each shipment of apples must be accompanied by a phytosanitary certificate issued by the Korean Ministry of Agriculture stating that the Fuji variety apples were examined and found to be free from *Carposina sasakii, C. niponensis, Conogethes punctiferalis, Tetranychus viennensis,* and *T. kanzawai.* The phytosanitary certificate must include the following additional declaration: ''The apples in this shipment are from certified orchards and comply with all the requirements in 7 CFR 319.56–2cc(e).''

Done in Washington, DC, this 20th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–10388 Filed 4–25–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, and 78

[Docket No. 99–090–2]

Livestock Identification; American Identification Numbering System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our advance notice of proposed rulemaking that solicited public comment on our intent to recognize the American Identification Numbering System as a means of providing unique identification for livestock. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 99–090–1. We will consider all comments that we receive by May 16, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–090–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–090–1.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. John F. Wiemers, National Animal Health Programs Staff, VS, APHIS, 2100 South Lake Storey Road, Galesburg, IL 61401; (309) 344–1942.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2000, we published in the **Federal Register** (65 FR 11485–11486, Docket No. 99–090–1) an advance notice of proposed rulemaking to solicit public comment on our intent to recognize the American Identification Numbering System as a means of providing unique identification for livestock.

Comments on the advance notice of proposed rulemaking were required to be received on or before May 2, 2000. We are extending the comment period on Docket No. 99–090–1 for an additional 14 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 19th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–10387 Filed 4–25–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Petition for Recognition of CSA International To Be a Nationally Recognized Certification Program for Electric Motor Efficiency

AGENCY: Office of Energy Efficiency and Renewable Energy; Department of Energy.

ACTION: Public notice and solicitation of comments.

SUMMARY: CSA International has petitioned the Department of Energy (Department) to classify its motor efficiency verification service program as a nationally recognized certification program in the United States for the purposes of section 345(c) of the Energy Policy and Conservation Act, as amended (EPCA). The Department solicits comments, data and information as to whether to grant CSA International's petition.

DATES: Written comments, data and information, in triplicate, must be received at the Department of Energy by May 26, 2000.

ADDRESSES: Written comments, data and information should be labeled ''CSA International Petition to be Classified as a Nationally Recognized Certification Program for Electric Motor Efficiency,'' and submitted to: Ms. Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3. Telephone: (416) 747–2798; or Telefax (416) 747–4173.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, telephone (202) 586–8654, telefax (202) 586–4617, or: jim.raba@ee.doe.gov

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507, telefax (202) 586–4116, or: edward.levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: A copy of the CSA International petition for national recognition is appended to this notice. Supporting documents that accompanied the petition may be viewed at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Additional information about CSA International's electric motor efficiency verification service, and petition to be a nationally recognized certification program for electric motor efficiency, can be obtained on the World Wide Web at *http://www.csa-international.org/welcome.html,* or from Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3, or telephone (416) 747–2798, or telefax (416) 747–4173, or electronic mail at otto.krepps@csa-international.org.

The Final Rule for Test Procedures, Labeling, and Certification Requirements for Electric Motors, 10 CFR Part 431, was published in the

Federal Register (64 FR 54114) on October 5, 1999. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121, or telephone 202–586–9127, or on the World Wide Web at http://www.eren.doe.gov/buildings/codes__standards/rules/motors/index.htm.

Authority: Part B of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316. Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). Regulations to implement this EPCA directive are codified in Title 10 of the Code of Federal Regulations Part 431 (10 CFR Part 431) at sections 431.123, *Compliance Certification,* 431.27, *Department of Energy recognition of nationally recognized certification programs,* and 431.28, *Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.* Sections 431.27 and 431.28 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

Background

For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of section 345 of EPCA, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with sections 431.27 and 431.28 of 10 CFR Part 431. In sum, for the Department to grant such a petition, the certification program must (1) have satisfactory standards and procedures for conducting and administering a certification system, and operate that system in a highly competent manner, (2) be expert in the test procedures and methodologies in IEEE Standard 112—1996 Test Method B and CSA Standard C390–93 Test Method (1), (3) have satisfactory sampling criteria and procedures for selecting an electric motor for energy efficiency testing, and (4) be independent of electric motor manufacturers, importers, distributors, private labelers or vendors.

Discussion

Pursuant to sections 431.27 and 431.28(a) of 10 CFR Part 431, on November 12, 1999, CSA International submitted to the Department a ''Petition for Recognition of CSA International to be a Nationally Recognized Certification Program in the Area of Motor Efficiency'' (''petition'' or ''CSA petition''). The petition consisted of a letter from CSA International to the Department, narrative statements on each of five subjects, and supporting documentation on four of these subjects. Pursuant to section 431.28(b) the Department is hereby publishing as an attachment to this notice the five narrative statements in their entirety. Also, attached is a summary of the supporting documentation.

Pursuant to section 431.28(b) of 10 CFR Part 431, the Department hereby solicits comments, data and information on whether the CSA International's Petition should be granted. Any person submitting written comments to DOE with respect to the CSA International Petition must also, at the same time, send a copy of such comments to CSA International. As provided under section 431.28(c) of 10 CFR Part 431, CSA International may submit to the Department a written response to any such comments. After receiving any such comments and responses, the Department will issue an interim and then a final determination on CSA International's petition, in accordance with sections 431.28(d) and (e) of 10 CFR Part 431.

In particular, the Department solicits comments, data, and information respecting the following:

a. *Section 1 of the CSA International Petition,* segment entitled ''Designated Testing Facility.'' The Department is interested in gathering comments on the competence of CSA International's Toronto test facility and the Laboratoire des technologies electrochimiques et des electrotechnologies d'Hydro-Quebec for energy efficiency testing of electric motors up to 50 horsepower, and above 50 horsepower through 200 horsepower, respectively.

b. *Section 3 of the CSA International Petition,* ''Certification Division Quality Assurance Manual,'' and attachment 1 to *Section 4 of the CSA International Petition.* The Department is interested in gathering comments on the standards and procedures for the qualification by CSA International of a testing facility, including a manufacturer's testing facility, to test motors for energy efficiency, and the appropriateness of evaluating motor efficiency through testing and/*or* review of test data on representative samples.

c. *Section 4 of the CSA International Petition,* ''CSA International's Motor Efficiency Verification Program,'' segment entitled ''Sampling Process.'' In particular, the Department is interested in gathering comments on the criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. In sum, under the CSA International process for sampling, a minimum of five basic models are required to be tested to verify the efficiency ratings of a series of motors. The basic models, including high volume production motors, are selected such that they represent the complete range of motors within the series. Thereafter, from one to five units of each basic model are selected at random and tested. Added features of the CSA International sampling process include unannounced follow-up inspections, random motor re-testing, and challenge testing.

Issued in Washington, DC, on April 4, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

CSA International Petition

November 12, 1999.

Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585

Dear [Mr.] Reicher: Please accept this letter and accompanying supporting material as CSA International's petition for recognition of our motor efficiency verification service program to be classified as a nationally recognized certification program in the United States under EPCA in accordance with 10 CFR Part 431.

Enclosed please find three (3) binders, each containing the required information for the Department of Energy (DOE) recognition of nationally recognized certification programs described in Sections 431.27 and 431.28 of 10 CFR Part 431, dated October 5, 1999.

Among the topics this documentation package includes are:

1. A guide describing our motor verification service program;

2. A quality assurance manual covering the essential elements of our standards and procedures for operating a certification system;

3. CSA International By-Laws and assurance of our independence and influence from manufacturers, suppliers and vendors; and

4. Samples of other CSA International accreditations.

CSA International has been using this motor efficiency verification service program since 1992 in support of Canadian Federal and Provincial Regulations. Additional beneficial features our program offers for

confirming continued compliance of the motor with the standard by (1) developing a construction report for a motor on its initial submission; (2) follow-up inspections to confirm consistency of construction; (3) re-testing; and (4) challenge testing service.

CSA International is confident that our organization, staff, proven experience in operation a certification program in this area, and our certification system procedures fully meet the evaluation criteria for us to be classified by DOE as a nationally recognized certification program.

We, therefore, believe that this petition is in order and that it can be processed without delay since it serves to reinforce the mutual recognition agreement between the Standards Council of Canada and the National Institute of Standards. Please let me know if you require any further information.

Thank you very much for your cooperation.

Daniel Barbini, P.Eng.,

Manager, Quality Assurance, CSA International.

Narrative Statements

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Section 1

Scope and Application

CSA International is seeking recognition to be classified as a nationally recognized certification program in the United States under EPCA with respect to verifying motor efficiencies when applying the following test procedure standards:

(a) Test Method B of ANSI/IEEE 112–1996, Test Procedure for Polyphase Induction Motors and Generators;

(b) Test Method 1 of CSA Standard C390–93, Energy Efficiency Test Methods for Three-Phase Induction Motors; and

(c) NEMA MG1–1993 (including revisions 1 to 4), Motors and Generators.

Facilities

CSA International Certification Facilities

CSA International has facilities in Canada and the United States and for your reference they are as follows:

Area	Address
Montreal	865 Ellingham Street, Pointe-Claire, Quebec, H9R 5E8
Toronto	178 Rexdale Blvd., Toronto, Ontario, M9W 1R3
Edmonton ...	1707–94th Street, Edmonton, Alberta, T6N 1E6
Vancouver ..	13799 Commerce Parkway, Richmond (Vancouver), BC, V6V 2N9
Cleveland ...	8501 E. Pleasant Valley Rd., Cleveland, OH, 44131–5575
Irvine	2805 Barranca Parkway, Irvine, CA, 92606–5114
Charlotte	5970 Fairview Rd. #416, Charlotte, NC, 28210
Dallas	208 Billings Street, Ste. 190, Arlington, Oaks Office Park, Arlington, TX, 76010
Nashville	639 E. Main Street—B202, Hendersonville, TN, 37075
Pittsburgh ...	5115 Yale Drive, Aliquippa, PA, 15001

Designated Testing Facility

As part of CSA International's motor energy efficiency verification program we are using our Toronto test facility and the Laboratoire des technologies electrochimiques et des electrotechnologies d'Hydro-Quebec (LTEE) for such purposes as product qualification testing, re-testing, and challenge testing. The facilities of Toronto are used for testing the full range of motors up to 50 horsepower and the LTEE facilities are used for the remaining range of motors.

Summary of CSA International Section 1 Supporting Documentation

Section 1 of the CSA petition contained no supporting documents.

Section 2.—CSA International

Name and Address

CSA International, 178 Rexdale Blvd., Toronto, Ontario, Canada, M9W 1R3 (Headquarters)

Background

CSA International is an independent organization providing services in the fields of Standards Development and Conformity Assessment. The Standards Division of CSA International is responsible for the administration of the development of voluntary consensus standards, while the Certification Division and the Quality Management Institute provide conformity assessment programs including laboratory testing certification, inspection, and quality management services.

CSA International was formed in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the name, Canadian Standards Association, and then renamed to CSA International in 1999.

Since our conception, CSA International has developed more than 1400 standards and codes—covering consumer and industrial products; and services in a wide range of product areas.

In 1940 we began to certify and test products. Today, we are an international organization with more than 8000 volunteer members from 20 countries representing consumers, regulators, manufacturers, and retailers. They are supported by a staff of approximately 1000 employees, with management staff located in the Far East and Europe.

More than 15,000 manufacturers worldwide use our certification and testing services, and our Mark appears on over one billion products a year. We process about 36,000 engineering projects annually, and our inspection staff make factory follow-up visits to some 50,000 factories in almost 60 countries.

Ownership

CSA international is an independent, not-for-profit organization governed by a Board of Directors selected by the membership. The Association has no affiliation with manufacturers or suppliers of the products submitted for certification.

Attachment 1 provides information regarding: (a) CSA's Letters of Patent; (b) Statement of Independence; and (c) By-Laws.

Board of Directors and Principal Officers

See CSA International's Annual Report for the individuals serving on our Board of Directors and Executive Management Team. See Attachment 2.

Major components of the Association are shown on the ''Corporate Organization Chart.'' See Attachment 3.

Summary of CSA International Section 2 Supporting Documentation

Section 2, Attachment 1, contains copies of: the Canadian Engineering Standards Association Charter, dated January 21, 1919; the Canadian Standards Association Supplementary Letters Patent, dated April 26, 1944; a sworn Statement of Independence, dated June 4, 1998; and the By-Laws to govern the organization and activities of the Canadian Standards Association, dated January 1992.

Section 2, Attachment 2, is a copy of the CSA International 1999 Annual Report.

Section 2, Attachment 3, is a copy of the CSA International senior management organization chart.

Section 3.—Certification Division Quality Assurance Manual

CSA International's Certification Division maintains the quality assurance system for the Association's worldwide operations. The objective of this system is to ensure (a) technical excellence; (b) consistency of interpretation, application of standards, programs and procedures; (c) integrity of our Mark; and (d) continuous improvement.

The Quality Assurance system for the Division is based on national and international accreditation requirements and specific contractual customer requirements. The accreditation requirements are found in the applicable editions of the following standards.

SCC/CAN–P3 Criteria and Procedure for Accreditation of Certification Organizations

SCC/CAN–P–4 General Requirements for the Accreditation of Calibration and Testing Laboratories

ISO/IEC Guide 25 General Requirements for the Competence of Calibration and Testing Laboratories

ANSI Z34.1 American National Standard for Certification—third party certification program
EN 45001 General Criteria for the Operation of Testing Laboratories
EN 45011 General Criteria for Certification Bodies Operating Product Certification

CSA International has implemented the requirements specified in ISO/IEC Guide 65, General requirements for bodies operating product certification systems. It is to be noted that the accreditation bodies, Standards Council of Canada and ANSI, are in the beginning stages of accrediting Certification Organizations to this standard. As a result, these accreditors will be auditing CSA International to these requirements during their regularly scheduled visits beginning in January 2000.

Divisional quality documents (DQDs) are operating procedures and guidelines used by staff in support of the quality assurance system. Examples of DQDs applicable to our energy efficiency verification program are located in Attachment 1.

Summary of CSA International Section 3 Supporting Documentation

Section 3 contains a copy of the CSA International ''Certification Division Quality Assurance Manual,'' DQD No. 050, July 6, 1998.

Section 3, Attachment 1, contains copies of the following CSA International ''Certification and Testing Division, Divisional Quality Documents:'' DQD No. 200, ''Certification Program;'' DQD No. 306, ''Guidelines for Handling Complaints and Disputes;'' DQD No. 306.1, ''Customer Complaints;'' DQD No. 318, ''Guidelines for Handling Product Incidents Investigations;'' DQD No. 320, ''Factory Inspections;'' DQD No. 326, ''Handling of Nonconformances;'' and DQD No. 327, ''Corrective & Preventive Action.''

Section 4.—CSA International's Motor Efficiency Verification Program

Introduction

As Canada's premier Standards Development Organization, CSA International publishes consensus standards to improve products and enhance trade—all the time ensuring the needs of our various stakeholders are met. By establishing consensus among the different interest sectors using an open committee process, CSA International creates effective standards that are frequently referenced in government regulation.

CSA Standard C390–93, Energy Efficiency Test Methods for Three-Phase Induction Motors, is widely used in Canada as an integral part of Federal and Provincial Regulations. Electrical utility programs also make use of this standard to promote the use of higher levels of energy performance on a voluntary basis.

Our intimate knowledge of the standard coupled with CSA International's recognition as an accredited Certification Organization in Canada for motor efficiency and electrical safety supports the needs of manufacturers, consumers and regulators. We provide the necessary independent assurance that motors covered by government regulations meet and continue to comply with the established energy performance requirements.

Verification Program

The acceptance of motors under the CSA International verification service depends upon the satisfactory evaluation and testing to determine that the requirements of the applicable standard (*e.g.,* CSA Standard C390–93) are met on a continuing basis. The following is a description of the major elements of our program used for qualifying manufacturers' motors or group of motors.

Application

The customer makes an application requesting verification for his motor and submits all required documentation such as a list of all motors being submitted by model designation, type, and applicable performance ratings. The application is given a specific file to track and record all activities to the project. A qualified person (*e.g.,* professional engineer) is then assigned responsibility for handling the project.

Evaluation and Testing

CSA International with the manufacturer' assistance prepares a motor control list, identifying the critical features and the controls for these features for maintaining consistent performance with respect to energy efficiency. Representative motor samples are tested by an acceptable facility such as CSA International or LTEE to verify manufacturers rated efficiency values. Attachment 1 provides a description of the procedures used for the initial motor qualification testing and the follow-up retesting service to ensure continued compliance. A findings letter is then issued giving the results of our evaluation and actions needed, if applicable, to meet the standard. Modified samples may be required for further examination and testing.

Certification

After the resolution of all the action items, and all the conditions of the standard are met, the applicant is formally authorized to apply the CSA International Energy Efficiency Marking. A report is prepared describing the product and giving the related test results. A directory listing all products verified for energy efficiency is published and available to the general public. See Attachment 2.

Service Agreement

The applicant authorized to represent its motor as verified with our Energy Efficiency Marking must enter a signed agreement with CSA International. This agreement addresses the conditions for maintaining certification such as access to facilities and records, follow-up inspection, product re-testing and challenge testing. Manufacturers are also required to notify CSA International when changes are made to the motor which may affect their performance rating. These terms and conditions are designed to protect the integrity of our Marking.

Accompanying Services

After the motor has been initially evaluated and found to comply with the standard, our program includes additional services to ensure that motors bearing the CSA International verification marking continue to meet the applicable requirements. These services are:

(a) Follow-up inspections;
(b) Product re-testing; and
(c) Challenge testing.

Follow-up Inspections

Follow-up inspections are conducted at the point of manufacturing each year to ensure that

(a) our mark is only applied to motors that have been verified for energy efficiency;

(b) the manufacturers' product control measures are continuing to produce marked products that are in compliance with our report and the standard;

(c) samples required for re-testing are selected and sealed by CSA International staff during these visits.

Product Re-testing

Although a report is generated for motors detailing the critical construction features needed for maintaining consistent performance with respect to energy efficiency, our program is supplemented with unannounced motor re-testing to the specified requirement. This facilitates continued compliance with the standard and maintains the integrity of our mark.

Challenge Testing

Another service—challenge testing—is offered to any manufacturer or other party wishing to confirm the motor efficiency rating of a verified motor. This feature assists in ensuring the integrity of our verification program and can lead to the motor efficiency de-rating or a delisting of a series of motors represented by the sample motor.

Corrective Action

When a motor fails to comply with the standards, we take the following steps:

(a) remove the verification mark from the affected motor or motors;

(b) delist the motor(s);

(c) notify the applicable regulatory authorities and government departments of noncompliant motors (*i.e.*, serial number, date code, or equivalent);

(d) re-test and verify the motor efficiency rating after the manufacturer modifies the product.

Sampling Process

The objective of our sampling process is to minimize manufacturers' tests, costs and time to market, while providing sufficient confidence that the series of motors verified meet the applicable energy efficiency standard. The added features of our program such as unannounced follow-up inspections, random motor re-testing, and challenge testing are critical components for demonstrating continued compliance to the standard. As a consequence of our CSA International's continual surveillance, the following sampling process guideline has emerged.

Samples Required for Motor Model Qualification Testing

Test 1 to 5 of each basic motor model type. The efficiency of the sample lot must equal

or exceed the required nominal full load efficiency rating. The individual sample efficiencies must comply with the nominal efficiency tolerance required by the Standard. Manufacturers information indicating efficiency ratings must be in agreement with CSA International's records.

Selection of Basic Model Types To Represent A Series of Motors

A minimum of five (5) basic model types are required to be tested to verify the efficiency ratings of a series of motors. The basic model types are to be selected such that they represent the complete range of motors within the series. This may require that more than 5 basic model types are selected. High volume production motors are to be represented in the basic model types selected.

Samples Required for Scheduled Motor Retesting

A goal for verifying continued compliance with the standard is to re-test high volume motors at least once every 2 years. Other motors of different frame series are to be re-tested as needed to ensure continued compliance.

The initial sample lot shall consist of one motor. If the result equals or exceeds the minimum result from the qualification tests, then no further samples are required. If the result is less than the minimum result from the qualifying tests, then select motor samples per the qualifying test procedure.

Summary of CSA International Section 4 Supporting Documentation

Section 4, Attachment 1, contains a copy of an information letter to ''All Manufacturers, Distributors and Importers of Three Phase Induction Motors Rated 1 hp to 200 hp,'' which is entitled ''CSA Energy Efficiency Verification Program for Three Phase Induction Motors Covered by CSA Standard CAN/CSA C390-M85,'' and provides a table of applicable energy efficiency levels extracted from Table 3 of CSA Standard 390-M85, ''Energy Efficiency Test Methods for Three-Phase Induction Motors.'' On January 28, 2000, CSA International provided to the U.S. Department of Energy a copy of Table 2, ''Minimum Nominal Efficiency (January 1996),'' from CSA Standard C390–93, and made the assertion that its verification program tests to these requirements.

Also, Section 4, Attachment 1, contains a copy of a CSA International information bulletin addressed to ''Manufacturers, Distributors and Importers of Electric Motors,'' dated August 31, 1992, which is entitled ''CSA Energy Efficiency Verification of Electric 3-Phase Induction Motors,'' and provides a ''Guide to the CSA Energy Efficiency Verification Service.''

Section 4, Attachment 2, is a copy of the CSA International Directory, ''List of Products CSA Verified for Energy Efficiency 1999,'' DIR 016–99.

Section 5.—Examples of Other CSA International Accreditations

The certification system and technical capabilities of the Association have enabled CSA International to be accredited nationally and internationally for a wide product spectrum such as electrical safety, energy efficiency, plumbing and gas. See Attachment 1 for examples of accreditations CSA International has received.

Summary of CSA International Section 5 Supporting Documentation

Section 5, Attachment 1, contains copies of the following documents CSA International has received in recognition of its certification system and technical capabilities:

1. Letter of inclusion in the register of Recognized Certification Bodies for Electrical Products (Safety) Regulation, from the Electrical & Mechanical Services Department, Hong Kong, December 27, 1997;

2. Certificate of Accreditation in recognition of being an Accredited Environmental Laboratory from the Canadian Association for Environmental Analytical Laboratories Inc. and the Standards Council of Canada, December 1, 1998;

3. Letter of listing as an administrator for the HUD Building Certification Program for plastic plumbing fixtures, from the U.S. Department of Housing and Urban Development, September 19, 1997;

4. Letter of listing as an approved testing laboratory from the International Association of Plumbing and Mechanical Officials, September 12, 1997;

5. Letter and certificates of accreditation for commercial products testing plumbing fixtures and fixture fittings from the National Voluntary Laboratory Accreditation Program, U.S. Department of Commerce, July 28, 1998;

6. Notice of final decision for recognition of the Canadian Standards Association as a Nationally Recognized Testing Laboratory from the Occupational Safety and Health Administration, U.S. Department of Labor, 61 FR 59110 (November 20, 1996);

7. Letter and certificates of approval as a testing laboratory for electrical and mechanical equipment (gas and plumbing) from the City of Los Angeles, California, December 31, 1996;

8. National Evaluation Service Committee Report of findings that the Canadian Standards Association complies with the requirements for a testing laboratory for HVAC and refrigeration equipment, plumbing fixtures and material, electrical products—including electric motors, natural gas-fired appliance, oil-fired appliances and precast/prestressed concrete products, from the National Evaluation Service, Inc., May 1, 1996;

9. Letter of recognition as an approved testing laboratory for gas, oil and electric appliances and accessories from the Department of Consumer & Industry Services, State of Michigan, March 19, 1998;

10. Letter of accreditation to label electrical and mechanical equipment from the North Carolina Building Code Council, Department of Insurance, State of North Carolina, September 19, 1997;

11. Certificate of Accreditation as a certification organization from the Standards Council of Canada, October 5, 1993; and

12. Letter of renewal of accreditation as an electrical testing laboratory from the Department of Labor and Industries, State of Washington, May 16, 1997.

[FR Doc. 00–8893 Filed 4–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–069–FOR]

Alabama Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposes revisions to and additions of regulations concerning removal of coal incidental to government financed construction and general requirements for reclamation plans. Alabama also corrected citation references. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Alabama program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., May 26, 2000. If requested, we will hold a public hearing on the amendment on May 22, 2000. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on May 11, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Alabama program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282
Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone (205) 221–4130

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the Alabama program at 30 CFR 901.15 and 901.16.

II. Description of the Proposed Amendment

By letter dated April 11, 2000 (Administrative Record No. AL–0631), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letter dated January 13, 1998 (Administrative Record No. AL–0577), that we sent to Alabama under 30 CFR 732.17(c). The amendment also includes changes made at Alabama's own initiative. Alabama proposes to amend the Alabama Surface Mining Commission (ASMC) rules. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. 880–X–2A–.06, Definitions

Alabama proposes to revise the definition of ''government-finance construction'' to read as follows:

> Government-finance construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*, as amended. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

Alabama also corrected citation references in the definitions of ''material damage'' and ''occupied residential dwelling and structures related thereto.''

B. 880–X–2D–.04, Applicability

Alabama proposes to add language to this section to provide that, with the exception of the requirements of new section 880–X–2D–.06, coal extraction which is incidental to government-financed construction is exempt from the Alabama Surface Mining Control and Reclamation Act (ASMCRA) and its implementing regulations.

C. 880–X–2D–.06, Additional Requirements for Coal Removal Incidental to Abandoned Mine Land Projects

Alabama proposes to add this new section to provide additional requirements for coal removal incidental to Abandoned Mine Lands (AML) projects. The requirements of this section apply to coal removal incidental to government financed construction where funding for the project is less than 50 percent and the construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*, as amended. Paragraph (1) requires the AML contractor and any subcontractor involved in the removal of coal from, or processing of coal on, the project site to obtain or possess a valid license under 880–X–6. Paragraph (2) requires the AML contractor to identify the prospective purchasers or end users of all coal that he or she will extract under the project before the ASMC can grant concurrence under 30 CFR 874.17. Paragraph (3) requires the AML contractor to maintain records of the exact tonnage of coal removed, as well as the names and addresses of all purchasers or end users of the coal at the project site. The AML contractor must make these records available to the ASMC upon request. Paragraph (4) provides that this exemption applies only to coal located within the boundaries of the approved construction project. In addition, removal of the coal must be necessary to achieve the objectives of the AML project. Paragraph (5) provides that both the Alabama Department of Industrial Relations and the ASMC must approve the project in accordance with the provisions of 30 CFR 874.17 before the AML contractor can remove coal under this Subchapter. Finally, paragraph (6) provides that all coal removal under this exemption must be under the direct supervision of the AML contractor. He or she is liable for any violations of these regulations.

D. 880–X–8I–.08, Reclamation Plan: General Requirements

Alabama proposes to add two additional sentences to section 880–X–8I–.08(2)(d) to read as follows:

> A demonstration of the suitability of topsoil substitutes or supplements shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

E. 880–X–8I–.10, Subsidence Control Plan

Alabama corrected a citation reference at 880–X–8I–.10(2)(h).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Alabama program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the notice, and explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. AL–069–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Birmingham Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative 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.

Public Hearing: If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on May 11, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at the public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

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

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 13, 2000.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–10389 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–005]

RIN 2115–AA97

Safety Zone: Coast Guard Activities New York Annual Fireworks Displays

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish five permanent safety zones for annual fireworks displays located on Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River.

DATES: Comments and related material must reach the Coast Guard on or before May 26, 2000.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–005), Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this proposed regulation is 30 days. This time period is adequate to allow local input because the event is highly publicized. The shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish five permanent safety zones that will be activated for fireworks displays occurring at the same location and time on an annual basis. The five locations are Highlands, New Jersey in Sandy Hook Bay; Kingston, New York on Rondout Creek; Glen Cove, New York on Hempstead Harbor; Elizabeth, New Jersey on the Arthur Kill; and Yonkers, New York on the Hudson River. Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has received no prior notice of any impact caused by the previous events.

Discussion of Proposed Rule

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 5–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. The five proposed safety zones are:

Clamfest Fireworks, Highlands, New Jersey, Sandy Hook Bay

The Highlands Chamber of Commerce and Seastreak America sponsor this annual fireworks display. The proposed safety zone in Sandy Hook Bay includes all waters of Sandy Hook Bay and the Shrewsbury River Channel within a 150-yard radius of the fireworks barge in approximate position 40°24′34″ N 073°59′45″ W (NAD 1983), about 140 yards south of Shrewsbury River Channel Lighted Buoy 9 (LLNR 35775). The proposed regulation is effective annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on the Saturday before Father's Day. The proposed safety zone closes a portion of southern Sandy Hook Bay and the Shrewsbury River Channel and would prevent marine traffic from transiting a portion of these two areas. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Kingston, New York Fireworks, Rondout Creek

The city of Kingston, New York sponsors this annual fireworks display. The proposed safety zone in Rondout Creek includes all waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3). The fireworks are fired from shore at the Kingston Municipal Docks. The proposed regulation is effective annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on the last Sunday in June. The proposed safety zone closes a portion of Rondout Creek and prevents marine traffic from transiting the area. It is needed to protect boaters from the hazards associated with fireworks launched from shore in the area.

Glen Cove, New York July 4th Fireworks, Hempstead Harbor

The city of Glen Cove sponsors this annual fireworks display. The proposed safety zone in Hempstead Harbor includes all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The proposed regulation is effective annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 1st, 2nd, 3rd, 4th, and 5th. The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of the 1,435 yard wide Hempstead Harbor during the event. Additionally, vessels are not precluded from getting underway from public or private facilities at Glen Cove or Red Spring Point, NY, in the vicinity of this event.

Yonkers, New York Fireworks, Hudson River

The proposed safety zone west of Yonkers includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier, New York. The proposed regulation is effective annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 4th and the third Saturday of September. If either event is canceled due to inclement weather, then this event will be held on July 5th and the third Sunday of September. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 715 yards and eastern 115 yards of the 1550 yard-wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

Elizabeth, New Jersey July 4th Fireworks, Arthur Kill

The city of Elizabeth sponsors this annual fireworks display. The proposed safety zone on the Arthur Kill includes all waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot in Elizabeth, New Jersey, in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). The proposed regulation is effective annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 4th. If the event is canceled due to inclement weather, then this event will be held on July 5th. The proposed safety zone prevents vessels from transiting a portion of the Arthur Kill, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the southern 90 yards of the Arthur Kill opposite the display site in Elizabeth, New Jersey during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

The effective period for each proposed safety zone is from 8 p.m. e.s.t. to 11 p.m. e.s.t. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters during the events, to give the marine community the opportunity to comment on the proposed zones, and to decrease the amount of annual paperwork required for these events.

Regulatory Evaluation

This proposed 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)(3) of that Order. The Office of Management and Budget has not reviewed it 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).

We expect the economic impact of this proposed 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 zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. The sponsors of the displays held in Highlands, NJ and Kingston, NY reported they have not received any objections from the public for these displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and in Kingston, NY for 10 years. The Coast Guard has not received any negative comments on these annual displays. Marine traffic will only be precluded from transiting around these safety zones in southern Sandy Hook Bay and Rondout Creek. There is sufficient open water for expected marine traffic to transit around the other three safety zones. There are no commercial maritime facilities that would be affected by these regulated areas. Vessels may also still transit through Sandy Hook Bay, Hempstead Harbor, the Arthur Kill, and the Hudson River during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. Additionally, marine traffic can plan their transits through Rondout Creek, Sandy Hook Bay, and the Shrewsbury River Channel around the time the Kingston, New York and Highlands, New Jersey safety zones are in effect. The marine community will have advance notice of these two events as they are annual events with local community support. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts, if needed.

The proposed size of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 5–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River during the times these zones are activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit around the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. The sponsors of the displays held in Highlands, NJ and Kingston, NY reported they have not received any objections from the public for these displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and in

Kingston, NY for 10 years. There are no commercial marine facilities that would be affected by any of these regulated areas. These are all annual events with local community support and vessels will normally be precluded from entering any of the zones for only a 45-minute period on an annual basis. Additionally, the Coast Guard has not received any negative reports from small entities affected by these displays.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes six safety zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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 § 165.161 to read as follows:

§ 165.161 Safety Zones: Coast Guard Activities New York Annual Fireworks Displays.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Clamfest Fireworks, Highlands, New Jersey, Sandy Hook Bay*:

(i) *Location.* All waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°24′34″ N 073°59′45″ W (NAD 1983), about 140 yards south of Shrewsbury River Channel Lighted Buoy 9 (LLNR 35775).

(ii) *Effective period.* Paragraph (a)(1)(i) is in effect annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on the Saturday before Father's Day.

(2) *Kingston, New York Fireworks, Rondout Creek Safety Zone:*

(i) *Location.* All waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3).

(ii) *Effective period.* Paragraph (a)(2)(i) is in effect annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on the last Saturday in June.

(3) *Glen Cove, New York July 4th Fireworks Safety Zone:*

(i) *Location.* All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(ii) *Effective period.* Paragraph (a)(3)(i) is in effect annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 1st, 2nd, 3rd, 4th, and 5th.

(4) *Yonkers, New York Fireworks Safety Zone:*

(i) *Location.* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56'14.5''N 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier, New York.

(ii) *Effective period.* Paragraph (a)(4)(i) is in effect annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 4th and the third Saturday of September. If the event is canceled due to inclement weather, then paragraph (a)(4)(i) is effective on July 5th and the third Sunday of September.

(5) *Elizabeth, New Jersey July 4th Fireworks, Arthur Kill, Safety Zone:*

(i) *Location.* All waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot in Elizabeth, New Jersey, in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780).

(ii) *Effective period.* Paragraph (a)(5)(i) is in effect annually from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 4th. If the event is canceled due to inclement weather, then paragraph (a)(5)(i) is effective from 8 p.m. e.s.t. to 11 p.m. e.s.t. on July 5th.

(b) *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 U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 28, 2000.

R. E. Bennis,

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

[FR Doc. 00–10443 Filed 4–21–00; 4:20 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–00–004]

RIN 2115–AA97

Safety Zone; Transit of S/V Amerigo Vespucci, Chesapeake Bay, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone in the Chesapeake Bay and the Port of Baltimore, Maryland during the transit of the sailing vessel *Amerigo Vespucci* through those waters. This action is necessary to provide for the safety of life on navigable waters during the vessel's transit. This action will restrict vessel traffic in portions of the Chesapeake Bay and the Port of Baltimore.

DATES: Comments and related material must reach the Coast Guard on or before May 16, 2000.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791 maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Ron Houck, Port Safety and Security Section, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. The comment period for this proposed regulation is 20 days. This time period is adequate to allow local input because the event is highly publicized. The shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The sailing vessel *Amerigo Vespucci* is planning to transit the waters of the Chesapeake Bay enroute to the Port of Baltimore, Maryland on June 21, 2000 and enroute from the Port of Baltimore, Maryland on June 24, 2000. The transits of this 330-foot sailing vessel are expected to attract a large fleet of spectator vessels. The purpose of these regulations is to promote maritime safety and protect the sailing vessel and the boating public during these transits by establishing a safety buffer around the sailing vessel.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary moving safety zone around the 330-foot sailing vessel, *Amerigo Vespucci,* during her transit of Chesapeake Bay enroute to the Port of Baltimore, Maryland on June 21, 2000 and enroute from the Port of Baltimore on June 24, 2000. The safety zone will include all waters within 150 yards ahead of or 50 yards abeam or astern of the vessel while she is transiting the area. No vessels will be allowed to enter or navigate within this area unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposed 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)(3) of that Order. The Office of Management and Budget has not reviewed it 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

These regulations are limited in duration, affect only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chesapeake Bay and the Port of Baltimore, Maryland. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (Aoax), Fifth Coast Guard District, 431Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. This rule will have no affect on the environment.

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 proposes to amend 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. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T05–004 to read as follows:

§ 165.T05–004 Safety Zone; Transit of S/V Amerigo Vespucci, Chesapeake Bay, Baltimore, MD

(a) *Definitions: Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(b) *Location.* The following area is a moving safety zone: All waters within 150 yards ahead of or 50 yards abeam or astern of the sailing vessel *Amerigo Vespucci,* while the vessel is operating on the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within the regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated areas must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(4) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* These regulations are effective from 6 a.m. to 6 p.m. on June 21, 2000 and June 24, 2000.

Dated: April 21, 2000.

C. L. Miller,

Captain, U.S. Coast Guard, Captain of the Port of Baltimore.

[FR Doc. 00–10500 Filed 4–24–00; 1:23 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110499B]

RIN 0648–AM79

Atlantic Highly Migratory Species; Pelagic Longline Management

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

ACTION: Notice of availability; request for comments.

SUMMARY: On December 15, 1999, NMFS proposed to prohibit pelagic longline fishing at certain times and in certain areas within the Exclusive Economic Zone of the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico (64 FR 69982). The intent of the proposed action is to reduce bycatch and incidental catch by pelagic longline fishermen who target highly migratory species (HMS) and is necessary to address bycatch and incidental catch of overfished and protected species. To address public comment received concerning the proposed closed areas and adjustments to these areas that would help mitigate the potential economic impacts, NMFS requests further comment on an alternative closed area in the Gulf of Mexico (the DeSoto Canyon area), on the Initial Regulatory Flexibility Analysis (IRFA) issued with the proposed rule, and on the extent to which delayed effectiveness of the final rule, if implemented, could mitigate short-term economic impacts.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on May 12, 2000.

ADDRESSES: Written comments on the alternative of closing the DeSoto Canyon

area, on the economic impacts of the proposed closures and alternatives identified in the IRFA, and on the issue of delayed effectiveness for the final rule should be submitted to Rebecca Lent, Chief, HMS Division (SF/1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. For copies of the Draft Supplemental Environmental Impact Statement/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/ RIR/IRFA), contact Steve Meyers at 301–713–2347 or visit our website at www.nmfs.gov/sfa/hmspg.html.

FOR FURTHER INFORMATION CONTACT: Steve Meyers at 301–713–2347, fax 301–713–1917, e-mail steve.meyers@noaa.gov; or Buck Sutter at 727–570–5447, fax 727–570–5364, e-mail buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and the Fishery Management Plan for Atlantic Billfish are implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the Endangered Species Act and the Marine Mammal Protection Act because of documented interactions with sea turtles, marine mammals, and sea birds.

In developing a proposed rule to reduce bycatch and incidental catch in the pelagic longline fishery, NMFS considered alternatives of no action, time-area closures, gear modifications, and effort limitations. NMFS identified a preferred alternative of a year-round time-area closure off the southeast U.S. coast and a seasonal closure in the Gulf of Mexico. Details of the alternatives considered and the analyses conducted are contained in the preamble to the proposed rule and in the DSEIS/RIR/IRFA and are not repeated here. However, supplementary information is available (see **ADDRESSES**) that was prepared to describe and assess a new closed area alternative for the DeSoto Canyon area in the Gulf of Mexico.

DeSoto Canyon Closed Area

During the comment period for the proposed HMS longline bycatch reduction rule, NMFS received many responses indicating that the DeSoto Canyon area located in the eastern Gulf of Mexico should be closed to pelagic longline effort due to the historically high occurrence of undersized swordfish discards in that location. NMFS had considered closure of a larger area of the eastern Gulf of Mexico that included the DeSoto Canyon based on 1995–1997 data, but did not select that closure as the preferred alternative. In developing the proposed rule, the western Gulf of Mexico closed area was preferable, in part due to a focus on reducing billfish bycatch rather than swordfish.

However, in response to those comments received on DeSoto Canyon swordfish bycatch, NMFS examined 1993–1998 logbook data (1998 data became available after the proposed rule was prepared) for the area bounded by 84°W to 90°W longitude and 26°N to 30°N latitude, encompassing the DeSoto Canyon. This 86,400 square mile area was then subdivided into six 2° X 2° (latitude X longitude) blocks, and NMFS examined inter-annual and intra-annual changes of target and discard catch-per-unit-effort and, where appropriate, ratios of target catch to discards (*e.g.,* swordfish retained vs. swordfish discarded).

Following this procedure, two of the ocean area blocks have been identified for potential year-round closure on the basis of potentially reducing discards: 86°W to 88°W longitude and 28°N to 30°N latitude; and 84°W to 86°W longitude and 26°N to 28°N latitude, comprising a total of 32,860 square nautical miles. The following table summarizes expected changes in catch and discards under the ''no redistribution'' and ''full redistribution'' of effort models described in the DSEIS. All values in the table are expressed as a percentage change, by species, of the total Atlantic-wide U.S. catch. Negative percentage changes indicate reductions in the level of catch or discards, while a positive number predicts an increase in the catch/discard of a particular species.

Discards and target species	No effort redistribution model (percent)	Redistribution of effort model (percent)
White Marlin Discards	–1.84	1.07
Sailfish Discards	–5.20	–0.75
Large Coastal Shark Discards	–6.51	–5.42
Swordfish Kept	–2.45	–1.69
BAYS Tunas Kept	–2.04	1.35
Dolphin (Mahi) Kept	–3.69	–1.37
Pelagic Sharks Kept	–2.38	–1.82

NMFS seeks comments on this new alternative area that is being considered for closure; particularly on the ecological impacts on the environment and the social and economic impacts on fishermen and related businesses.

Initial Regulatory Flexibility Analysis (IRFA)

In the interest of obtaining further comment on delayed effectiveness of the final rule as a means of mitigating short-term economic impacts, NMFS provides a summary of the IRFA for the original alternatives considered in the proposed rule and, separately below, for the new DeSoto Canyon area alternative.

In the IRFA issued with the proposed rule, NMFS described a range of fishery management alternatives that could reduce or enhance survival of bycatch and incidental catch of small swordfish, billfish, and other overfished HMS, as well as endangered or threatened species taken by U.S. pelagic longline fishermen in the Atlantic Ocean. NMFS analyzed economic impacts on all swordfish/tuna limited-access permit holders who reported making pelagic longline sets in 1997. NMFS estimated that the proposed time-area closures would result in a decrease in gross ex-vessel revenues of up to $14 million and that approximately 20 percent of the vessel operators would lose half of their gross income.

Alternative Actions

The objectives of the proposed regulatory action are to: (1) Maximize the reduction in finfish bycatch; (2) minimize the reduction in the target

catch of swordfish and other species; (3) ensure that the incidental catch of other species remains unchanged or is also reduced; and (4) maximize the survival rate of released animals. In developing the proposed rule, NMFS considered how several alternative actions could attain these objectives, including: No action; a prohibition on longline gear; four combinations of Gulf of Mexico and southeast U.S. coast time-area closures; four gear or fishing method modifications that would reduce bycatch; two gear or fishing method modifications that would increase survival of released animals; and fishing capacity reduction for the pelagic longline fleet.

Analysis of Alternatives

NMFS made a number of assumptions in analyzing these alternatives. First, NMFS identified and defined the likely actions that pelagic longline fishermen might take if each alternative was implemented. These response actions were identified to determine the maximum impact each alternative could have on pelagic longline fishermen. Second, each action was analyzed as if all participants would follow that behavior. Although it is unlikely all vessels would undertake the same response to any final action, these analyses can help identify the range of possible impacts. Depending on actual responses, additional impacts, either negative or positive, might occur.

NMFS considers all pelagic longline permit holders to be small entities under the meaning of the Regulatory Flexibility Act. In May, 1999, NMFS began the process of issuing limited access permits to qualifying fishermen for participation in the Atlantic swordfish and shark fisheries, and the pelagic longline sector of the Atlantic tuna fishery. As of October 28, 1999, 443 fishermen had received either a directed or incidental swordfish limited access permit, a shark limited access permit, and a tuna longline permit. Additional applications and appeals may increase the number of permit holders to a small extent. Thus, the number of small entities directly affected by this regulation consists of at least 443 vessel owners.

Other sectors of the industry would be affected by this regulation, including dealers, processors, bait houses, and hook manufacturers. NMFS has limited information on the number of small businesses which might be indirectly affected by the regulation. However, using the weigh-out slips submitted by fishermen reporting in the pelagic longline logbook, NMFS estimates that 131 dealers received fish in 1997 from the 443 fishermen who qualify for limited access.

The evidence collected by NMFS and used in these analyses indicates that the majority of pelagic longline fishermen possess fishing permits for several other commercial fisheries, and participate actively in these other commercial fisheries. These observations are based on information contained in several NMFS databases and on comments received during the prior rulemaking to limit access to the shark and swordfish fisheries. The data obtained for these analyses also indicate that dealers tend to operate in a number of commercial fisheries. Thus, fishermen and dealers who could be affected by this action might be able to compensate to some extent by redirecting fishing or processing activities toward other fish species.

Impacts on Vessel Operators

NMFS' permitting and reporting requirements for HMS and other fisheries provide information about the volume and species of fish caught and landed by vessels, and the ex-vessel price received for the species landed. To calculate the impact of time-area closures on vessel owners, NMFS estimated gross revenues for all permitted vessels using 1997 data. NMFS then subtracted the gross revenue received in the proposed closed area from the total gross revenue calculated for each vessel for 1997 to estimate the revenue that might be lost to each vessel if a particular area is closed for the specified time period.

NMFS then counted the number of vessels which were impacted by closing certain areas and times. This analysis estimates the maximum negative impact of the closures on vessel owners for three reasons: (1) It assumes that vessels that normally fish inside the closed area would not redistribute their fishing effort outside the area; (2) it assumes that the sets made in the closed time-area would not be made at other times or in other areas; and (3) it assumes that vessels that fish outside the closed area would not land any additional fish even though the quota could still be available. However, this analysis does not calculate the impact on captains or crew members other than the change in gross revenues which is related to the captain and crew share.

In examining the gross revenue of the 443 vessels that qualified for an incidental or directed swordfish limited access permit, NMFS found that only 331 vessels reported landings of any species in 1997. NMFS estimates that 1997 total gross revenues from all fishing activities for each of these vessels ranged from $82 to over $4 million per vessel and averaged $113,173 per vessel. If the areas proposed for closure were in fact closed, 25 vessels that have revenue before the closure might have no revenue after the closure. Under the several alternative closed areas considered, the number of businesses that could lose all revenues ranged from 36 to 48 vessels.

NMFS considered 4 combinations of Gulf of Mexico and southeastern U.S. Atlantic coast closed areas with variations in size and duration. Any of the four closure alternatives could have a significant economic impact on a substantial number of small entities. For all options, approximately 40 percent of the vessels could experience no change in gross revenues as a result of a time-area closure, and 21 to 39 percent could experience a 50 percent reduction in gross revenues. The estimated impact of the preferred alternative (March–September closure in the western Gulf of Mexico and a year-round closure from Key West, FL to Wilmington Beach, NC) may be the smallest of the four time-area options considered. However, closing any of the areas might force a large number of vessels to either relocate their vessels to open areas or sell their limited access permits to vessels in the open areas and leave the pelagic longline fishery.

Impacts on Dealers

In addition to calculating the change in gross revenue for each vessel issued an incidental or directed swordfish limited access permit, NMFS attempted to calculate the change in revenues for dealers who bought fish from these vessels. To do so, NMFS calculated the total weight sold to each dealer, by species, from each qualifying vessel using the weigh-out slips reported to NMFS, and multiplied this weight by the average wholesale price to determine the gross revenue for each dealer both before and after the closure. As with the vessel gross revenue calculations, the analyses for dealers provides an estimate of the maximum impact this action might have because it does not consider dealers changing the proportion of the species they buy or import, or possible increases in fishing effort and harvest and sale to dealers located near the open areas.

In the database used for this analysis, there were 131 dealers identified by the 443 vessels on their weigh-out slips for the pelagic logbook. A total of 117 dealers obtained revenues from selling swordfish, with individual gross revenues ranging from $175 to over $5 million and averaging $203,679 per dealer. The gross revenues obtained

from selling yellowfin tuna ranged from $170 to over $4 million on an individual basis for 100 dealers and averaged $279,006 per dealer. As with individual vessels, some dealers might not handle any fish if the areas are closed. Under the closed area alternative proposed by NMFS, 28 dealers of the 131 which were identified might not handle any fish. Under the alternative closed areas considered, the number of businesses that would lose all revenues ranged from 34 to 45 dealers.

Any of the four closure options could have a significant economic impact on a substantial number of dealers who operate primarily in coastal ports adjacent to the potential closed areas. Approximately 21 to 33 percent of the dealers could experience no change in total weight of fish handled, and 35 to 57 percent of the dealers could experience a 50-percent reduction in the amount of fish handled due to a time-area closure. Approximately 23 to 38 percent of the dealers could experience no change in gross revenues from swordfish and 34 to 46 percent of the dealers could experience a 50-percent reduction in gross revenue from swordfish due to a time-area closure. Approximately 26 to 40 percent of the dealers could experience no change in gross revenue from yellowfin tuna, and 23 to 52 percent of the dealers could experience a 50-percent reduction in gross revenues from yellowfin tuna due to a time-area closure. However, dealers outside the closed areas are likely to obtain additional fish from pelagic longline fishermen and therefore might experience an increase in gross revenues.

Gear Modification and Capacity Reduction Impacts

The other bycatch reduction alternatives considered also would have impacts on gross revenues of vessels and dealers. However, their impacts are not likely to be as great as those from the time-area closure alternatives. A quantitative analysis of revenues is difficult because it is unknown how much the other alternatives could alter the landings of pelagic longline fishermen. It is possible that the use of circle hooks, frozen bait, a change in gear deployment, or the reduction in soak time might reduce the target catch per set, but it is equally likely the fishermen could fish additional sets to make up the difference. Thus, the impacts of the other alternatives, except for capacity reduction, on gross revenues for individual fishermen is unknown but most likely would not be as significant as closures. Limiting the capacity in the pelagic longline fleet could have a significant impact on gross revenues for individual fishermen if fishermen who are dependent on the fishery are forced out of business. The impact of capacity reduction would depend largely on the type of program implemented.

Impacts on Fishing Costs

All of the alternatives examined, except for no action, could have an impact on the fishing costs of individual vessels. A detailed analysis of costs for each individual vessel cannot be performed due to the lack of trip-level economic data as well as the difficulty in predicting the response strategy of individual fishermen. However, some generalizations can be made on potential impacts based on examination of the voluntary cost/earnings reports submitted by some vessels.

The preferred closure alternative, or any of the time-area closure options, could have a large impact on fishing costs. A number of fishermen could be required to move their operations to different areas either permanently or for part of the year in order to continue fishing. The open fishing areas might be unfamiliar to displaced fishermen and fishing might not be as productive until they adapt to weather and oceanographic conditions in the new area. Moving operations could likely increase the cost of fuel, bait, ice, food, and crew wages, as the number of days at sea traveling to and from fishing grounds might increase. Likewise, requiring gear modifications would increase costs for fishermen who currently use gear and/or fishing methods that would be prohibited. Increased costs might force some vessel operators to exit the fishery.

Mitigating Impacts

NMFS considers all permit holders in the pelagic longline fisheries to be small entities. Thus, in order to meet the objectives of the HMS FMP and address bycatch concerns, NMFS cannot exempt small entities or change the requirements for small entities. The preferred time-area closure alternative does not involve any additional reporting requirements, and NMFS has determined that clarifying or changing the reporting requirements for small entities could not address the management concerns at issue. The gear modification and fishing methods alternatives NMFS examined might have less economic impact on small entities but were considered to have less certain effects relative to reduction of bycatch and incidental catch by pelagic longlines.

NMFS concludes that the proposed time-area closures for the Gulf of Mexico and the southeast U.S. Atlantic coast could have a significant impact on a substantial number of small entities. In fact, a number of small entities, both fishermen and businesses related to fishing (*e.g.,* dealers and bait houses), might be forced out of business. However, the bycatch mortality reductions achieved by time-area closures should contribute to rebuilding overfished stocks of swordfish, billfish, and other species. This could benefit small businesses though increased landings quotas for the commercial fisheries and increased recreational fishing opportunities. The IRFA provides further discussion of the economic impacts of all the alternatives considered and is available from NMFS (see **ADDRESSES**).

IRFA: Supplementary Information for DeSoto Canyon

The economic analyses for the DeSoto Canyon closure alternative follow the same methods as the analyses for the other closure alternatives. However, the 1998 data have become available since the IRFA was issued, and these data were used instead of 1997 data. In addition, NMFS used updated information on vessels qualifying for limited access permits. As of March 23, 2000, 450 vessels had qualified for a swordfish directed or incidental limited access permit and NMFS estimates that in 1998, 125 dealers received fish from these 450 vessels.

Of the 450 vessels that qualified for a swordfish limited access permit, 242 did not report landings in the pelagic logbook. Additionally, 413 did not report landings of fish caught within the DeSoto Canyon area. Total gross revenues from all fishing activities in the Atlantic of the 208 vessels that reported in the pelagic logbook in 1998 totaled $28 million, ranged from $435 to $667,576, and averaged $136,830 per vessel. Total gross revenues from all fishing activities in the DeSoto Canyon of the 37 vessels that reported in the pelagic logbook in 1998 totaled $636,984, ranged from $681 to $84,959, and averaged $17,216 per vessel. If the DeSoto Canyon is closed, NMFS estimates that the total gross revenue from the fleet of 208 vessels would decrease by 2.2 percent to $27.8 million and the average gross revenue per vessel would decrease by 1.8 percent to $134,413. Absent redistribution of fishing effort, approximately 14 percent of the vessels that reported landings in 1998 would experience a five percent decrease in gross revenues if the DeSoto Canyon is closed and four percent of the vessels would experience a 50 percent decrease in gross revenues.

NMFS estimates that 125 dealers received fish in 1998 from the 450 vessels that qualified for swordfish limited access permits. Only 25 dealers reported receiving swordfish that was caught in the DeSoto Canyon by limited access permit holders. These dealers received a total of 286,994 pounds that ranged from 397 to 61,470 pounds and averaged 11,480 pounds per dealer. Absent increased purchases of fish captured in other areas, NMFS estimates that if the DeSoto Canyon area is closed, the total weight of fish handled by the 125 dealers who bought fish from swordfish limited access qualifiers would decrease by 2.8 percent to 10.0 million pounds, and the average weight handled by each dealer would decrease by 0.4 percent to 82,761 pounds. NMFS estimates that 11 percent of the swordfish dealers and 10 percent of the yellowfin tuna dealers would have a reduction of five percent or greater in gross revenues from swordfish or yellowfin tuna, respectively, if the DeSoto Canyon area is closed. Additionally, NMFS estimates that 6 percent of the swordfish dealers and 3 percent of the yellowfin tuna dealers would have a reduction of 50 percent in gross revenues from swordfish or yellowfin tuna, respectively.

The potential impacts on fishing costs of closing the DeSoto Canyon are similar to those described for the other closure alternatives. However, as this potential closed area is smaller, is farther offshore, and is not fished as heavily as the western Gulf of Mexico closure previously proposed, it is likely that the impacts on fishing costs would be smaller. Only 37 vessels reported fishing in the DeSoto Canyon in 1998 and might incur costs to change current fishing practices.

In conclusion, the economic impacts of a DeSoto Canyon closure would not be not as great as the western Gulf of Mexico closed area which was the preferred alternative in the proposed rule. The DeSoto Canyon closure alone would not have a significant impact on the fishery as a whole, and total gross revenues from the vessels fishing in that area would decrease by only 2.2 percent. However, this closure could have a significant economic impact on a substantial number of small entities, including both fishermen and dealers. Absent a shift to other fishing areas, 4 percent of the vessels now fishing in the DeSoto Canyon could lose 50 percent or more of their income. Likewise, without alternative sources of swordfish or yellowfin tuna, approximately 5 percent of the permitted dealers could go out of business as a result of this closure.

The same alternatives and mitigating measures addressed in the IRFA for the proposed rule and summarized above also apply to an evaluation of the impacts of the DeSoto Canyon closed area.

Delayed Effectiveness

During the comment period on the proposed rule, NMFS received written comments and oral testimony at public hearings that the pelagic longline fleet would require time to adjust given the large geographic scale and duration of the proposed closed areas. NMFS recognizes that relocation of vessels, families, and shoreline support services is not without cost and may require time for adjustment, depending upon the measures in the final rule. Industry participants commented that the economic impacts identified in the IRFA could be mitigated to some extent by allowing sufficient time for vessel relocation and suggested that the effective date of the final rule be delayed to reflect this. While the Administrative Procedures Act normally requires a 30-day delay in effective date for a final rule, some commenters suggested that up to a one year delay would be needed to mitigate the effects of dislocation. NMFS, therefore, requests further comment on specific information related to industry adjustment and on the potential for delayed effectiveness to mitigate the short-term economic impact of area closures. In addition to descriptions of adjustments that would be required, specific comments are solicited on whether a 30, 60, or 90-day delay in effective date would be adequate to achieve any mitigating effect. Comments received prior to the close of the comment period (see **DATES**) will be considered in developing the final rule.

Dated: April 20, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–10310 Filed 4–20–00; 4:52 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 81
Wednesday, April 26, 2000

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. 00–039–1]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a program for the control of the Asian longhorned beetle, *Anoplophora glabripennis* (Motschulsky). The environmental assessment provides a basis for our conclusion that the implementation of our proposed program to contain the Asian longhorned beetle will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect these documents are requested to call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle, *Anoplophora glabripennis*, an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of one-half inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and overwinter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately 3/8-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of Asian longhorned beetle is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industries could experience severe economic losses.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51–9) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of Asian longhorned beetle to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of Cook County, Du Page County, and the village of Summit in the State of Illinois are already designated as quarantined areas.

APHIS' current Asian longhorned beetle eradication activities are limited to the removal and destruction of trees that are determined to be infested with Asian longhorned beetle. Because current eradication efforts have been unsuccessful, APHIS has evaluated additional control methods available to help eradicate this destructive pest from the United States.

To provide the public with APHIS' review and analysis of environmental impacts associated with these control methods, we have prepared an environmental assessment and finding of no significant impact entitled, ''Asian Longhorned Beetle Program,'' dated February 2000. The environmental assessment considers various methods to protect trees against the harmful effects of the Asian longhorned beetle and provides a basis for our conclusion that there would be no significant impact on the quality of the human environment from implementation of soil or trunk injection insecticide treatments of trees.

The environmental assessment and finding of no significant impact may be viewed on the Internet at http://www.aphis.usda.gov/ppd/ead/alb.html. You may request paper copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 19th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–10386 Filed 4–25–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Survey and Manage Strategy for National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The original notice of intent (NOI) was published in **Federal Register** on November 25, 1998 (63 FR 65167).

This notice stated that the Forest Service and Bureau of Land Management (BLM) were in the process of preparing a Supplemental EIS (SEIS) considering alternatives to make changes in mitigation measures first adopted in the Standards and Guidelines for Management of habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan), and incorporated into planning documents for administrative units of the Forest Service and BLM. This revised NOI changes how the Record of Decision will be issued; changes the Responsible Official; changes what Forest Service planning documents are being amended, corrects the statements concerning appeal procedures; and changes the title of the SEIS. The Final SEIS is expected to be released in May 2000.

FOR FURTHER INFORMATION CONTACT: Hugh Snook, EIS Team Coordinator, P.O. Box 3623, Portland, Oregon 97208–3623, telephone (503) 808–2197.

SUPPLEMENTARY INFORMATION: A single Record of Decision will be issued and will apply to public lands within the range of the Northern Spotted Owl that are administered by the BLM and the Forest Service. This includes lands in Oregon, Washington, and northern California. The Record of Decision will be signed jointly by the two responsible officials.

The responsible officials for this document have been changed. The responsible official for lands administered by the Forest Service will be the Secretary of Agriculture. The responsible official for public lands administered by the BLM will be the Secretary of Interior.

In addition to Land and Resource Management Plans for National Forests and Resource Management Plans for BLM Districts as listed in the original NOI, selection of an alternative of this SEIS would amend Forest Service Regional Guides for the Pacific Northwest and Pacific Southwest Regions.

The Record of Decision for this SEIS will not be subject to appeal under either Forest Service or BLM appeal procedures. A decision by the Secretary of Agriculture is not subject to administrative appeal under the Forest Service appeal regulations (36 CFR Part 217). A decision by the Secretary of Interior is not subject to administrative appeal under BLM protest procedures (43 CFR 4.410). Therefore, the Record of Decision will be the final agency for amendment of these standards and guidelines in the applicable planning documents.

In the original NOI, the title for the SEIS was identified as ''Survey an Manage Strategy for National Forests and Bureau of Land management Districts Within the Range of the Northern Spotted Owl''. The changed title more accurately reflects the analysis and decision to be made. Therefore, this title is revised to: ''For Amendment to the Survey and Manage, Protection Buffer, and Other Mitigation Measures Standards and Guidelines''.

Dated: April 19, 2000.

Harv Forsgren,

Regional Forester, Pacific Northwest Region, Forest Service.

April 14, 2000.

Elaine Y. Zielinski,

State Director, Oregon and Washington, Bureau of Land Management.

[FR Doc. 00–10345 Filed 4–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Thursday, May 18, 2000, at the Mt. Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA. The meeting will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered include: (1) Review and discussion of the Finney Adaptive Management Area (AMA), (2) Formulation and evaluation of options for the Finney AMA, (3) Determining how to better utilize active watershed groups, (4) Chilliwack River Monitoring Project, and (5) Salmon of the Skagit River.

In addition to the Advisory Committee meeting, a field trip for Advisory Committee members will take place the previous day, Wednesday, May 17, 2000. Members will tour portions of the Finney basin on the Darrington Ranger District, commencing at 9 a.m. at the Darrington District Office, 1405 Emens Street, Darrington, Washington, and ending back at the same Office about 4:30 p.m. The purpose of the trip is to orient Advisory Committee members to the Finney Adaptive Management Area issues and opportunities. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Interested citizens are also welcome to join the May 17 field trip; however, they must provide their own transportation.

The Provincial Advisory Committee provides advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, 2105 State Route 20, Sedro-Woolley, Washington 98284 (360–856–5700, Extension 321).

Authority: 5 U.S.C. appendix.

Dated: April 20, 2000.

Ronald R. DeHart,

Designated Federal Official.

[FR Doc. 00–10428 Filed 4–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–2000]

Foreign-Trade Zone 149—Freeport, Texas, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Brazos River Harbor

Navigation District, grantee of FTZ 149, requesting authority to expand its zone in the Freeport, Texas area, adjacent to the Freeport Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 14, 2000.

FTZ 149 was approved on June 28, 1988 (Board Order 385, 53 FR 26096, 7/11/88). The zone project currently consists of the following sites (1,957 acres) within the Port of Freeport and at the Brazoria County Airport: *Site 1* (280 acres)—on F.M. Route 1495 at the Freeport Harbor on the west side of the Brazos River Harbor Channel; *Site 2* (154 acres)—on Holly Street in Quintana, south of the Gulf Intracoastal Waterway; *Site 3* (1,063 acres)—at the intersection of Highway 288 and F.M. Route 1495; *Site 4* (242 acres)—on F.M. Route 1495, north of the Gulf Intracoastal Waterway and south of the Brazos River Harbor Channel; *Site 5* (213 acres)—on County Road 723 south of Site 4 and the Gulf Intracoastal Waterway; and, *Site 6* (5 acres)—located east of the main runway at the Brazoria County Airport.

The applicant is now requesting authority to expand its general-purpose zone to enlarge Site 6 at the Brazoria County Airport; add 3 new sites (Proposed Sites 7–9) in the City of Pearland (Brazoria/Harris Counties), 38 miles north of Port Freeport; and, add a new site (Proposed Site 10) in the City of Alvin (Brazoria County), 30 miles north of Port Freeport. *Site 6* will be expanded from 5 acres to 146 acres within the 665-acre Brazoria County Airport/Industrial Park complex. The four new proposed sites are as follows: *Proposed Site 7* (506 acres)—Northern Industrial Complex, adjacent to Highway 35, Pearland (Brazoria County); *Proposed Site 8* (832 acres)—Southern Industrial Complex, 4 miles from the Sam Houston Parkway/Beltway 8, Pearland (Brazoria County); *Proposed Site 9* (146 acres)—Bybee-Sterling Complex, Hooper Road and Sam Houston Parkway, Pearland (Harris County); and, *Proposed Site 10* (8 acres)—Santa Fe Industrial Park, 200 Avenue I, Alvin (Brazoria County). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 26, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 10, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 2350 N. Sam Houston Parkway East, Suite 1000, Houston, TX 77032

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230

Dated: April 14, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–10415 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Michigan Technological University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–004. *Applicant:* Michigan Technological University, Houghton, MI 49931. *Instrument:* Automatic Thin Section Machine. *Manufacturer:* Dansk Beton Teknik A/S, Denmark. Intended Use: See notice at 65 FR 11986, March 7, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a horizontally mounted rotating diamond impregnated drum under which specimens are repeatedly passed on a sliding platform to minimize damage to cement and asphalt concrete thin sections for microscopic examination. The Federal Highway Administration advises that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–10416 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ohio State University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–005. *Applicant:* Ohio State University, Wooster, OH 44691. *Instrument:* Electron Microscope, Model H–7500–1. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* See notice at 65 FR 14245, March 16, 2000. *Order Date:* October 19, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–10417 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 91–A0002.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Automotive Services Industry Association (''ASIA'') on March 1, 1994. Notice of issuance of the original Certificate was published in the **Federal Register** on March 14, 1994 (59 FR 11775).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 91–00002 was originally issued to ASIA on March 1, 1994 (59 FR 11775, March 14, 1994). ASIA consolidated with the Automotive Parts and Accessories Association to form the Automotive Aftermarket Industry Association (''AAIA'').

The Export Trade Certificate of Review has been amended to:

1. Change the name of the Certificate holder cited in this paragraph to the new name cited in this paragraph in parenthesis as follows: Automotive Service Industry Association (Automotive Aftermarket Industry Association);

2. Change the listing of the ''Member'' cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Triangle Auto Parts Co., Inc. (Triangle Auto Parts Co.); and

3. Delete the following companies as ''Members'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(1): Federal Mogul Corporation; A.E. Clevite, Inc.; JS Products, Inc.; KSG Industries, Inc.; Kwik-Way Manufacturing, Inc.; and Sealed Power Division of Sealed Power Technologies Limited Partnership.

Pursuant to 15 CFR 325.7, these amendments will be effective as of February 23, 2000, the date application was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: April 20, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–10375 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: I.D. 021400C]

RIN 0648–AM28

Notice of Continuing Effect of List of Fisheries

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

ACTION: Notice of list of fisheries for 2000.

SUMMARY: NMFS provides notification that the List of Fisheries (LOF) published on February 24, 1999, remains in effect.

Under the Marine Mammal Protection Act (MMPA), NMFS must place all U.S. commercial fisheries on the LOF, which categorizes those fisheries based upon the level of incidental mortality and serious injury of marine mammals that occurs in that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. The intent of this action is to provide notice that the LOF remains in effect.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for addresses of NMFS Regional Offices, where fishery participants may obtain information on registering and reporting.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 978–281–9138; Kathy Wang, Southeast Region, 727–570–5312; Irma Lagomarsino, Southwest Region, 562–980–4016; Brent Norberg, Northwest Region, 206–526–6733; Brian Fadely, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Section 118 of the MMPA requires that NMFS place all U.S. commercial fisheries into one of three categories (I, II, III) based on the level of incidental mortality and serious injury of marine mammals that occurs in that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. The most recent LOF was published in the **Federal Reister** on February 24, 1999 (64 FR 9067).

Participants in a Category I or II Fishery are required to be registered under MMPA section 118. This section requires that such participants provide the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used.

NMFS generally provides registration and reporting forms to fishery participants for their use. However, the Office of Management and Budget(OMB) approval for NMFS registration and reporting forms expired on December 31, 1999. Accordingly, NMFS may not require that participants in a fishery use its forms to register until OMB approval has been received. NMFS expects to have OMB approval by May 2000 and will publish notice in the **Federal Register** of OMB approval when received. Nonetheless, under section 118 of the MMPA, fishery participants still remain obligated to register and report as required by MMPA section 118. Failure to register or report. Failure to register or report in accordance with MMPA section 118 is a violation of the MMPA. Some states have integrated the

NMFS registration process into the existing state fishery registration progran and are exempt from submitting a registration packet. For a list of fisheries that have integrated registration programs, see 64 FR 9068 (February 24, 1999). Fishery participants that do not have an intergrated registration program maay register with and report to the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla;

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Joyce Mochrie;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Ursula Jorgensen.

The following tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. When possible, we express the estimated number of vessels in terms of the number of active participants in the fishery. If this information is not available, we provide the estimated number of vessels or persons licensed for a particular fishery. If no recent information is available on the number of participants in a fishery, we use the number from the 1998 LOF. The tables also list the marine mammal species/stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers reports. This list includes all species or stocks known to incur injury or mortality for a given fishery; however, not all species or stocks identified are necessarily independently responsible for a fisheries categorization. There are a few fisheries that are in Category II that do not have any recently documented interactions with marine mammals; the justification for categorization of these fisheries are by analogy to similar gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996 (60 FR 45086, December 28, 1995).

Commercial fisheries in the Pacific Ocean are listed in Table 1—commercial fisheries in the Atlantic Ocean are listed in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 1.—LIST OF FISHERIES

Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally killed/injured
	Category I	
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
	Category II	
GILLNET FISHERIES:		
Prince William Sound salmon drift gillnet	509	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Pacific white-sided dolphin, central North Pacific Harbor porpoise, GOA Dall's porpoise, AK

TABLE 1.—LIST OF FISHERIES—Continued

Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally killed/injured
AK Peninsula/ Aleutian Islands salmon drift gillnet	163	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/ Aleutian Islands salmon set gillnet	110	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
AK Southeast Alaska salmon drift gillnet	439	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, central North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+
AK Cook Inlet salmon drift gillnet	560	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Dall's porpoise, AK Beluga, Cook Inlet*
AK Cook Inlet salmon set gillnet	604	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Beluga, Cook Inlet* Dall's porpoise, AK
AK Yakutat salmon set gillnet	139	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
AK Kodiak salmon set gillnet	172	Harbor seal, GOA* Harbor porpoise, GOA Sea otter, AK
AK Bristol Bay salmon drift gillnet	1,884	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, central North Pacific
AK Bristol Bay salmon set gillnet	941	Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Metlakatla/ Annette Island salmon drift gillnet	60	None documented
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
AK Southeast Alaska salmon purse seine	357	Humpback whale, central North Pacific*+
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	4	None documented
LONGLINE FISHERIES:		
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
	Category III	
GILLNET FISHERIES:		
AK Prince William Sound salmon set gillnet	26	Steller sea lion, Western U.S.*+ Harbor seal, GOA*
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,491	None documented
AK roe herring and food/bait herring gillnet	1,687	None documented
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet perch, rockfish gillnet.	913	None documented
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast

TABLE 1.—LIST OF FISHERIES—Continued

Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally killed/injured
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
AK miscellaneous finfish set gillnet	4	Steller sea lion, Western U.S.*+
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK salmon purse seine (except Southeast Alaska, which is in Category II).	586	Harbor seal, GOA*
AK salmon beach seine	6	None documented
AK roe herring and food/bait herring purse seine	517	None documented
AK roe herring and food/bait herring beach seine	1	None documented
AK Metlakatla salmon purse seine	10	None documented
AK octopus/squid purse seine	2	None documented
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
AK miscellaneous finfish purse seine	4	None documented
AK miscellaneous finfish beach seine	1	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA (all species) beach seine or drag seine	235	None documented
HI purse seine	18	None documented
HI opelu/akule net	16	None documented
HI throw net, cast net	47	None documented
DIP NET FISHERIES:		
WA, OR smelt, herring dip net	119	None documented
CA squid dip net	115	None documented
MARINE AQUACULTURE FISHERIES:		
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
TROLL FISHERIES:		
AK salmon troll	1,149	Steller sea lion, Eastern U.S.*+
CA/OR/WA salmon troll	4,300	None documented
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	None documented
HI trolling, rod and reel	1,795	None documented
Guam tuna troll	50	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
American Samoa tuna troll	<50	None documented
HI net unclassified	106	None documented
LONGLINE/SET LINE FISHERIES:		
AK state waters groundfish longline/set line	840	None documented
Miscellaneous finfish/groundfish longline/set line	594	Harbor seal, GOA* Harbor seal, Bering Sea Dall's porpoise, AK Steller sea lion, Western U.S, Harbor seal, Southeast AK Northern elephant seal, CA breeding
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Hawaiian monk seal*+ Humpback whale, Central North Pacific*+ Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI
WA, OR North Pacific halibut longline/set line	350	None documented
AK southern Bering Sea, Aleutian Islandsand Western Gulf of Alaskasablefish longline/set line (federally regulated waters).	762	Northern elephant seal, CA breeding Killer whale, resident Killer whale, transient Steller sea lion, Western U.S. Pacific white-sided dolphin, central North Pacific Dall's porpoise, AK
AK halibut, longline/set line (state and Federal waters)	2,882	Steller sea lion, Western U.S.
WA, OR, CA groundfish, bottomfish longline set line	367	None documented

TABLE 1.—LIST OF FISHERIES—Continued

Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally killed/injured
AK octopus/squid longline	2	None documented
CA shark/bonito longline/set line	10	None documented
TRAWL FISHERIES:		
WA, OR, CA shrimp trawl	300	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	62	None documented
AK Gulf of Alaska groundfish trawl	201	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Dall's porpoise, AK Northern elephant seal, CA breeding
AK Bering Sea and Aleutian Islands groundfish trawl	193	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Killer whale, resident Killer whale, transient Pacific white-sided dolphin, central North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA* Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, Southwest AK Pacific Walrus , AK
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	5	None documented
AK miscellaneous finfish otter or beam trawl	312	None documented
AK food/bait herring trawl	4	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Eastern U.S.*+ Northern fur seal, Eastern Pacific* Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
POT, RING NET, AND TRAP FISHERIES:		
AK crustacean pot	1,496	Harbor porpoise, Southeast AK
AK Bering Sea, Gulf of Alaska finfish pot	274	Harbor porpoise, SDoutheast AK Harbor seal, GOA* Harbor seal, Bering Sea Sea otter, Southwest AK
WA, OR, CA sablefish pot	176	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR shrimp pot & trap	254	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
HI lobster trap	15	Hawaiian monk seal*+
HI crab trap	22	None documented
HI fish trap	19	None documented
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK North Pacific halibut handline and mechanical jig	266	None documented
AK miscellaneous finfish handline and mechanical jig	258	None documented
AK octopus/squid handline	2	None documented
WA groundfish, bottomfish jig	679	None documented
HI aku boat, pole and line	54	None documented
HI inshore handline	650	Bottlenose dolphin, HI
HI deep sea bottomfish	434	Hawaiian monk seal*+
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal*+
Guam bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
American Samoa bottomfish	<50	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		

TABLE 1.—LIST OF FISHERIES—Continued

Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally killed/injured
AK Southeast AK Alaska herring food/bait pound net	154	None documented
WA herring brush weir	1	None documented
BAIT PENS		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	106	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	9	None documented
AK dungeness crab	3	None documented
AK herring spawn-on-kelp	200	None documented
AK urchin and other fish/shellfish	442	None documented
AK clam hand shovel	62	None documented
AK clam mehanical/hydraulic	19	None documented
WA herring spawn-on-kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI squiding, spear	267	None documented
HI lobster diving	6	None documented
HI coral diving	2	None documented
HI handpick	135	None documented
WA shellfish aquaculture	684	None documented
WA, CA kelp	4	None documented
HI fish pond	10	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:.		
AK, WA, OR, CA commercial passenger fishing vessel	>4,000	None documented
AK octopus/squid ≥other≥	19	None documented
HI ''other''	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

[1] * Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1999.
[2] + stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA.
[3] List of Abbreviations Used in Table 1 AK - Alaska GOA - Gulf of Alaska CA - California OR - Oregon HI - Hawaii WA - Washington

TABLE 2—LIST OF FISHERIES

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated ı of vessels/ persons	Marine mammal species/stocks incidentally injured/killed
	Category I	
GILLNET FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	15	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Sperm whale, WNA*+ Dwarf sperm whale, WNA* Cuvier's beaked whale, WNA* True's beaked whale, WNA* Gervais' beaked whale, WNA* Blainville's beaked whale, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Spinner dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF*

TABLE 2—LIST OF FISHERIES—Continued

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated ι of vessels/ persons	Marine mammal species/stocks incidentally injured/killed
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA * Fin whale, WNA *+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	361	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES—LOBSTER:		
Gulf of Maine, U.S. mid-Atlantic lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast White-sided dolphin, WNA* Harbor seal, WNA Harbor seal, WNA
	Category II	
GILLNET FISHERIES:		
U.S. mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Maine small pelagics surface gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Atlantic herring midwater trawl (including pair trawl)	17	None documented
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL SEINE FISHERIES:		
Mid-Atlantic haul seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
	Category III	
GILLNET FISHERIES:		

TABLE 2—LIST OF FISHERIES—Continued

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated ι of vessels/ persons	Marine mammal species/stocks incidentally injured/killed
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Chesapeake Bay inshore gillnet	45	None documented
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker).	unknown	None documented
Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet.	1,285	Minke whale, Canadian east coast Harbor porpoise, GME/BF* Bottlenose dolphin, WNA coastal*+
Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).	unknown	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine*
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.	271	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine*
TRAWL FISHERIES:		
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	>18,000	Bottlenose dolphin, WNA coastal*+
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Calico scallops trawl	200	None documented
Bluefish, croaker, flounder trawl	550	None documented
Crab trawl	400	None documented
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line.	46	Harbor seal, WNA Gray seal, Northwest North Atlantic
Southeastern U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line.	3,800	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	124	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	None documented
Southeastern U.S. Atlantic, Gulf of Mexico & U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES—LOBSTER, CRAB, AND FISH:		

TABLE 2—LIST OF FISHERIES—Continued

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species/stocks incidentally injured/killed
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	North Atlantic right whale, WNA*+, Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
U.S. mid-Atlantic eel trap/pot	>700	None documented
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	Bottlenose dolphin, WNA coastal* Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.	4,847	West Indian manatee, FL*+ Bottlenose dolphin, WNA coastal*+
STOP SEINE/WEIR/POUND FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net).	500	None documented
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented
DREDGE FISHERIES:		
Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	None documented
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented
Gulf of Maine mussel	>50	None documented
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
HAUL SEINE FISHERIES:		
Southeastern U.S. Atlantic, Caribbean haul seine	25	None documented
BEACH SEINE FISHERIES:		
Caribbean beach seine	15	West Indian manatee, FL+
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/ mechanical collection.	20,000	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:.		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

[1] * Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1998.
[2] *+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA.
[3] *List of Abbreviations Used in Table 2 FL - Florida NC - North Carolina GA - Georgia SC - South Carolina GME/BF - Gulf of Maine/Bay of Fundy TX - Texas GMX - Gulf of Mexico WNA - Western North Atlantic

List of Fisheries for 2001

NMFS is currently conducting a thorough review of the current fisheries classifications and will publish proposed changes to the LOF in the summer of 2000.

Dated: April 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 00–10438 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041200B]

Incidental Take of Marine Mammals; Taking of Ringed Seals Incidental to On-ice Seismic Activities

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and with implementing regulations, notification is hereby given that a letter of authorization (LOA) to take ringed and bearded seals incidental to an on-ice shallow-water seismic survey in the Beaufort Sea off Alaska was issued on April 20, 2000, to Western Geophysical of Anchorage, AK.

DATES: This letter of authorization is effective from April 20, 2000, through May 31, 2000.

ADDRESSES: The application letters and LOA are available for review in the

following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, ext 128 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed and bearded seals incidental to on-ice seismic surveys were published on February 2, 1998 (63 FR 5277), and remain in effect until December 31, 2002.

Summary of Request

NMFS received requests for letters of authorization from Western Geophysical on September 23, 1999, and October 14, 1999. LOAs for these activities were issued on January 28, 2000 (see 65 FR 4949, February 2, 2000). A third application from Western Geophysical was received on January 31, 2000, and amended by letter on February 21, 2000. The letters requested a take by mortality, injury, and harassment of a small number of ringed seals incidental to conducting shallow-water seismic surveys on the ice in the Beaufort Sea off Alaska.

Issuance of this new letter of authorization is based on findings that the total takings by this activity will have a negligible impact on the ringed seal stocks of the Western Beaufort Sea and that the applicants have met the requirements contained in the implementing regulations, including monitoring and reporting requirements.

Dated: April 20, 2000.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–10385 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042100A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Council's Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held May 11, 2000, from 8:30 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the fifth meeting of the RFDTF which will discuss the following topics: review of minutes from fourth Task Force meeting, review of proposal for redefining commercial fishermen, review of a rapid survey instrument to establish total pelagic catch in Hawaii, review of longer term strategies for obtaining recreational fishery data in Hawaii, and an update on the recent (sixth) meeting to establish an international management regime for tuna and tuna-like species in the Central-Western Pacific.

Although non-emergency issues not contained in this agenda may come the RFDTF for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 21, 2000.

Richard W. Surdi,

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

[FR Doc. 00–10437 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

April 20, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 20, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 1, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339/639	1,299,419 dozen.
342/642	603,326 dozen.
347/348/647/648	2,747,189 dozen of which not more than 1,356,395 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–10373 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

April 20, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 is being increased for carryover and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70217, published on December 16, 1999.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 20, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 27, 2000, you are directed to increase the limit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,704,252 dozen of which not more than 1,235,960 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–10374 Filed 4–25–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Meeting of Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission announces the first meeting of the Chronic Hazard Advisory Panel (CHAP) on diisononyl phthalate (DINP). The Commission appointed this CHAP to advise the Commission on any chronic hazards of cancer, birth defects, and gene mutations associated with children's products containing DINP.

DATES: The meeting will be held from 8:30 am to 5:00 pm on May 10 and from 8:30 am to 4:00 pm on May 11, 2000.

ADDRESSES: The meeting will be held in the fourth floor hearing room in the Commission's offices at 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207;

telephone (301) 504–0477, ext. 1205; email.

SUPPLEMENTARY INFORMATION: The Commission has been concerned with potential risks posed to children under 3 years of age by the plasticizer diisononyl phthalate (DINP), which is used to soften some children's teethers, rattles, and toys made from polyvinyl chloride (PVC). DINP can leach from such products when they are mouthed by children, causing some DINP to be ingested. DINP has been shown to cause liver and other organ toxicity in laboratory animals. The Commission has also received a petition (No. HP 99–1) from the National Environmental Trust and eleven other organizations asking that the Commission ban PVC in children's products.

The Commission appointed a seven-member CHAP to evaluate the existing scientific information regarding the mechanism by which DINP may cause cancer and the implications of this on the potential cancer risk to children. The CHAP members were selected from scientists recommended by the National Academy of Sciences. *See* 15 U.S.C. 2077, 2030(b).

The first meeting of the CHAP on DINP will be held on May 10 and 11, 2000, in the fourth floor hearing room at the Commission's offices at 4330 East-West Highway, Bethesda, Maryland. The meeting will begin at 8:30 am both days and is scheduled to end at 5:00 pm on May 10 and 4:00 pm on May 11.

The meeting is open to the public, space permitting, but no opportunity for public participation in the meeting is scheduled. Such participation shall be permitted only in the discretion of the Chairman of the CHAP. There will be an opportunity in connection with the second meeting of the CHAP for presentation of oral and written data and views (date to be announced).

At the first CHAP meeting, the CHAP will choose its Chair and Vice Chair and the CPSC staff will present information on the history of the DINP project, the provisions of the Federal Hazardous Substances Act, the CPSC's Chronic Hazard Guidelines, the CPSC staff's toxicity review and risk assessment for DINP, and other work in progress on DINP. During the remainder of the meeting, the CHAP will consider how it will proceed and begin its deliberations.

Dated: April 20, 2000.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–10318 Filed 4–25–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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 May 26, 2000.

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 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: April 20, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Learning Anytime Anywhere Partnerships Annual Progress Report Guidelines Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29;

Burden Hours: 580.

Abstract: These guidelines instruct LAAP grantees on how to organize and describe the progress of their projects over the past year so that Federal administrators can evaluate progress and approve or disapprove continuation of the projects for the coming year.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–10341 Filed 4–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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 May 26, 2000.

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 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: April 20, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: First and Second Year Annual Progress Reports for the European Community/U.S. Joint Consortia Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 20; Burden Hours: 400.

Abstract: First and Second Year Annual Progress Report Forms: The forms will enable staff to collect information that will promote better program management and allow for better communications among U.S. and European partner institutions. These forms provide the formats for a web-based collection of information from the annual reports.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–10342 Filed 4–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–179–A]

Application To Export Electric Energy; California Power Exchange Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: California Power Exchange Corporation (CaLPX) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 26, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 29, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CaLPX to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company. That two-year authorization will expire on May 29, 2000. On March 29, 2000, CaLPX filed an application with FE for renewal of this export authority and requested that the order be issued for a 5-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–179. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–179 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the CaLPX application to export electric energy to Mexico should be clearly marked with Docket #EA–179–A. Additional copies are to be filed directly with Scott Rasmussen, General Counsel, California Power Exchange Corp., 200 South Robles Avenue, Suite 400, Pasadena, CA 91101 *and* Edwin F. Feo, Esq., Milbank, Tweed, Hadley & McCloy LLP, 601 South Figueroa, Suite 3000, Los Angeles, CA 90017.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'', then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on April 20, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–10367 Filed 4–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–174–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Application

April 20, 2000.

Take notice that on April 11, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP00–174–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities located in the States of Texas and Oklahoma comprising the eastern portion of KMIGT's Buffalo Wallow Pipeline System by sale to OkTex Pipeline Company (OkTex), an affiliate/division of ONEOK, Inc., as more fully set forth in the application while is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

KMIGT proposes to abandon to OkTex the eastern portion of the Buffalo Wallow Pipeline System extending from milepost 11.4 located in Hemphill County, Texas, to the Aledo delivery point located in Oklahoma. It is stated that the eastern portion consists of 52.5 miles of 20-inch pipe and interconnects with various other pipelines located in Hemphill County, Texas, and Roger Mills, Custer, and Dewey Counties, Oklahoma.

KMIGT declares that OkTex will be separately filing an application to acquire and operate the subject facilities proposed to be abandoned by KMIGT to OkTex. KMIGT states that OkTex has agreed to assume all service obligations and economic responsibilities for the subject facilities. KMIGT asserts that upon approval of the authorization requested herein, OkTex will operate the facilities as an additional segment of its interstate pipeline system and will provide open access transportation service to shippers requesting service on these facilities pursuant to the terms and conditions of its FERC Gas Tariff.

KMIGT states that the facilities to be sold to OkTex will be conveyed at $700,000, which will be adjusted for certain additional capital expenditures, if any, incurred by KMIGT on the subject facilities prior to the closing date of the sale of these assets.

Any questions regarding the application should be directed to Bentley W. Breland, Vice President, Certificates and Rates, at (303) 763–3581, Kinder Morgan Interstate Gas Transmission LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304.

Any person desiring to be heard or to make any protest with reference to said Application should on or before May 11, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 of 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10330 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–19–001]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

April 20, 2000.

Take notice that on March 29, 2000, Kinder Morgan Interstate Gas Transmission LLC (KM Interstate) tendered for filing as part of its FERC Gas Tariff, the following tariff revised sheets, to be effective December 28, 1999:

Fourth Revised Volume No. 1–A
Substitute Original Sheet No. 3
Second Revised Volume No. 1–C
Substitute Original Sheet No. 3

KM Interstate states that the filing is being made in compliance with the Commission's Letter order dated March 16, 2000 in Docket No. GT00–19–000.

KM Interstate states that copies of the filing have been served upon all interested parties and affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in 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. 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).

David P. Boergers,

Secretary.

[FR Doc. 00–10334 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–250–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Request for Waiver

April 20, 2000.

Take notice that on April 14, 2000, Kinder Morgan Interstate Gas Transmission LLC (KM Interstate) filed a request for a one-time waiver of certain notice and timing requirements of Section 18 of its FERC Gas Tariff, Volume No. I–B, relating to the Right of First Refusal process with respect to two contracts with KN Energy, a division of Kinder Morgan, Inc. that expire on May 31, 2000.

KM Interstate requests that it be allowed (1) to use an iterative bidding process limited to two rounds, if necessary, (2) to shorten the required time frame between the end of the bidding process and contract expiration from 45 days to the number of days in the period between the end of the bidding process and May 30, 2000, and (3) to shorten the required time frame for the execution and tendering of a service agreement by the original shipper, it necessary, from 15 days to a period to expire no later than May 30, 2000.

KM Interstate states that copies of the filing have been served upon mainline transportation and storage shippers and affected state regulatory bodies.

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, N.E., Washington, D.C. 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 on or before April 24, 2000. 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).

David P. Boergers,

Secretary.

[FR Doc. 00–10339 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2046–000]

Montana Power Company; Notice of Filing

April 20, 2000.

Take notice that on March 3, 2000, Montana Power Company tendered for filing a certificate of concurrence 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 May 1, 2000. 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. 00–10340 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–000]

New York Power Authority; Notice of Public Information Meetings

April 20, 2000.

Citizens, civic organizations, and local governments continue to demonstrate an overwhelming interest in how they can participate effectively in the Federal Energy Regulatory Commission's (Commission) relicensing process for the New York Power Authority's (NYPA) Robert Moses Niagara Project No. 2216. NYPA's current license for this project expires in August 2007. Consequently, Commission staff will continue to hold public information meetings in the project area to familiarize the public with the Commission's hydropower relicensing process. The next two such meetings will be held as indicated below.

While there will be an opportunity for questions and answers about the Commission staff's presentation, questions and discussions on the merits of the Robert Moses Niagara Project are discouraged.

Interested persons are invited to attend either or both sessions scheduled as follows:

Thursday, May 4, 2000, 1 to 3 p.m., Earl W. Brydges Library, 1425 Main Street, Auditorium, Niagara Falls, NY 14301, (716) 286–4894

Thursday, May 4, 2000, 6:30 to 9 p.m., Niagara County Community College, Building E, Room E142, 3111 Saunders Settlement Road, Sanborn, NY 14132, (716) 614–6222

Please direct any questions regarding these meetings to Patti Leppert-Slack, Commission staff, at (202) 219–2767, or e-mail *patricia.leppertslack@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–10336 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–138–000]

Northwest Natural Gas Company; Notice of Application

April 20, 2000.

Take notice that on March 27, 2000 Northwest Natural Gas Company (NW Natural), 220 N.W. Second Avenue, Portland, Oregon 97209, filed in Docket No. CP00–138–000 an application pursuant to Section 7 of the Natural Gas Act and Section 284.224 of the Commission's Regulations for the issuance of a blanket certificate of public convenience and necessity authorizing NW Natural as a Hinshaw natural gas company to provide FERC jurisdictional storage and related transportation services in interstate commerce and approval of market-based rates, all as more fully set forth in the application on file with the Commission and open to pubic inspection.

NW Natural, an Oregon corporation, states that it is an interstate gas distribution company serving retail customers via separate facilities located in the States of Oregon and Washington. NW Natural states that it is a public utility under statutes of Oregon and Washington and is subject to the jurisdiction of the Public Utility

Commission of Oregon and the Washington Utilities and Transportation Commission.

NW Natural proposes to offer, pursuant to the blanket certificate, firm and interruptible storage and related transportation services, to be effective in the summer of 2000. Additionally, NW Natural requests, pursuant of Sections 284.122 and 284.123 of the Commission's regulations, approval of market-based rates. NW Natural asserts that its application includes a Market Power Analysis which demonstrates that market-based rates for NW Natural's services are fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules, a hearing will be held without further notice before the Commission on its designee on this application if no motion to intervene in filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NW Natural to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–10329 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2147–000]

PowerGasSmart.com, Inc.; Notice of Filing

April 20, 2000.

Take notice that on April 3, 2000, PowerGasSmart.com, Inc. filed a name change with their quarterly report for the quarter ending March 31, 2000. The quarterly report was noticed on April 10, 2000, but the name change was not.

The legal name change was as follows:

Old: Wilson Power & Gas Smart, Inc.
New: PowerGasSmart.com, Inc.

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, 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 May 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10333 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–190–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

April 20, 2000.

Take notice that on April 18, 2000, Reliant Energy Gas Transmission Company (REGT), 1111 Louisiana Street, Houston, Texas 77210, filed a request with the Commission in Docket No. CP00–190–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct, own and operate delivery tap facilities to a new customer located in Arkansas, authorized in blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request 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).

REGT proposes to construct, own and operate a two-inch delivery tap, four-inch meter station, and electronic flow control equipment which would provide firm deliveries to Acme Brick Company, a new customer, located on REGT's Line B in Johnson County, Arkansas. REGT reports that these transportation deliveries would constitute a by-pass of Arkansas Western Gas Company, a local distribution company.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–10331 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–249–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 20, 2000.

Take notice that on April 14, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on May 15, 2000:

Sixteenth Revised Sheet No. 48

Original Sheet No. 97
Sheet No. 98

Transwestern states that the purpose of this filing is to provide that Transwestern may contract for natural gas transportation services on Public Service Company of New Mexico (PNM) in order to expand and enhance its own transportation service.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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, N.E., Washington, D.C. 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).

David P. Boergers,

Secretary.

[FR Doc. 00–10338 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1055–010, et al.]

Merchant Energy Group of the Americas, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 19, 2000.

Take notice that the following filings have been made with the Commission:

1. Merchant Energy Group of the Americas, Inc.

[Docket No. ER98–1055–010]

Take notice that on April 14, 2000, Merchant Energy Group of the Americas, Inc. (MEGA), tendered for filing a Notification of Change in Status to reflect its new affiliation with a Canadian utility. The change in status will occur upon completion of a transaction whereby TransAlta USA Inc., will acquire 50 percent of the capital stock of MEGA. The filing concludes that this transaction does not alter the characteristics that the Commission relied upon in approving the market-based pricing for MEGA.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Potomac Electric Power Company

[Docket No. ER00–2202–000]

Take notice that on April 14, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and Tractebel Energy Marketing, Inc., an effective date of June 28, 1999 for this service agreement, with waiver of notice, is requested.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER00–2203–000]

Take notice that on April 14, 2000, the New England Power Pool Participants Committee submitted changes to Market Rule 4 and Request for Expedited Acceptance.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER00–2204–000]

Take notice that on April 14, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing as an initial rate schedule pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 35, an Interconnection Agreement (IA) with Canal Emirates Power International, Inc., (Canal).

The IA provides for interconnection service to Canal at the rates, terms, charges, and conditions set forth therein. NYSEG is requesting that the IA becomes effective as of April 3, 2000.

Copies of this filing have been served upon the New York State Public Service Commission and Canal.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER00–2205–000]

Take notice that on April 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and ARCO CQC Kiln (ARCO) for acceptance by the Commission.

The ISO states that this filing has been served on ARCO and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective March 17, 2000.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER00–2206–000]

Take notice that on April 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and ARCO CQC Kiln (ARCO) for acceptance by the Commission.

The ISO states that this filing has been served on ARCO and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective March 17, 2000.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PPL Montana, LLC, PPL Colstrip I, LLC and PPL Colstrip II, LLC

[Docket No. ER00–2207–000]

Take notice that on April 14, 2000, PPL Montana, LLC, PPL Colstrip I, LLC and PPL Colstrip II, LLC tendered for filing a Request for Waiver of FERC Reporting Requirements and for Expedited Consideration.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER00–2208–000]

Take notice that on April 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 28) to the ISO Tariff. Amendment No. 28 includes proposed changes to the ISO Tariff that provide for the recovery of costs incurred in contracts executed pursuant to Section

2.3.5.1 of the ISO Tariff, in connection with the implementation of a trial demand participation program for the summer of 2000.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER00–2209–000]

Take notice that on April 14, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement and an executed umbrella short term firm point-to-point service agreement with PPL Montana, LLC (PPL Montana) under Deseret's open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of April 5, 2000. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

PPL Montana has been provided a copy of this filing.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Merchant Energy Group of the Americas, Inc.

[Docket No. ER00–2210–000]

Take notice that on April 14, 2000, Merchant Energy Group of the Americas, Inc. (MEGA), tendered for filing an amendment to its FERC Electric Rate Schedule No. 1 to reflect (1) a change in the prohibition on certain affiliate transactions; and (2) other minor editing changes. Accompanying the Rate Schedule, MEGA also submitted a Code of Conduct to govern MEGA's new affiliate relationship with a Canadian utility, TransAlta Utilities Corporation.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Great Bay Power Corporation

[Docket No. ER00–2211–000]

Take notice that on April 14, 2000, Great Bay Power Corporation (Great Bay), tendered for filing revisions to its Market-Based Rate Power Sales Tariff and for certain waivers typically granted to market-based rate sellers such as Great Bay. Great Bay's Market-Based Rate Power Sales Tariff is on file with the Commission as Great Bay Power Corporation Tariff No. 2. The version of Great Bay's Market-Based Rate Power Sales Tariff currently on file was accepted for filing by the Commission by letter order dated July 22, 1998, effective as of July 24, 1998, in Docket No. ER98–3470–000.

Great Bay requests an effective date of May 14, 2000, for its revised tariff.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER00–2212–000]

Take notice that on April 14, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing compliance generator imbalance agreements, in accordance with the Commission's order in Entergy Services, Inc., 90 FERC ¶ 61,272 (2000).

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER00–2213–000]

Take notice that on April 14, 2000, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Southern Company Energy Marketing L.P.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company and Conectiv Delmarva Generation, LLC

[Docket No. EC00–77–000]

Take notice that on April 13, 2000, Delmarva Power & Light Company (Delmarva) and Conectiv Delmarva Generation, LLC (CDG) (collectively, the Applicants) submitted a joint application under Section 203 of the Federal Power Act to request authorization and approval for Delmarva to transfer by assignment to CDG rights in two interconnection agreements related to the Keystone and Conemaugh generating plants and related transmission facilities, which will also be transferred to CDG. The Applicants' proposed closing date for the assignment is June 1, 2000. The Applicants request approval of the assignment during May 2000.

The Applicants have stated that this filing is related to the filing which they made on March 31, 2000 in Docket No. EC00–69–000 for the transfer of Delmarva's ownership interest in the Keystone and Conemaugh generating facilities and appurtenant transmission facilities from Delmarva to CDG. The applicants state that they rely on the filing in Docket No. EC00–69–000 to show that the transfer of the two interconnection agreements is consistent with the public interest.

The Applicants state that copies of this joint application have been served upon Delmarva's wholesale requirements customers, the transmission dependent utilities with whom Delmarva has interconnection agreements, the signatories to the two interconnection agreements and the state regulatory commissions of Delaware, Maryland, Pennsylvania and Virginia and on the PJM Interconnection, LLC.

Comment date: May 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Merchant Energy Group of the Americas, Inc.; Gener S.A. and TransAlta USA Inc.

[Docket No. EC00–78–000]

Take notice that on April 13, 2000, Merchant Energy Group of the Americas, Inc. (MEGA), Gener S.A. (Gener), and TransAlta USA Inc. (TAUSA) tendered for filing a joint application pursuant to Section 203 of the Federal Power Act (FPA) for authorization of a transaction whereby Gener will sell 50 percent of the capital stock in MEGA to TAUSA. MEGA, a wholly-owned subsidiary of Gener, has a nationwide business in electricity, natural gas coal and fuel oil, and is a power marketer subject to the Commission's jurisdiction under Section 201 of the FPA.

Comment date: May 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy St. Lucie, LLC

[Docket No. EG00–132–000]

Take notice that on April 17, 2000, Duke Energy St. Lucie, LLC (Duke St. Lucie) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

Duke St. Lucie is a Delaware limited liability company that will be engaged directly and exclusively in the business

of owning and operating all or part of one or more eligible facilities to be located in St. Lucie County, Florida. The eligible facilities will consist of an approximately 608 MW gas-fired, combined-cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

Comment date: May 10, 2000, 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.

17. Midwest Independent Transmission; System Operator, Inc.

[Docket No. ES00–25–000]

Take notice that on April 17, 2000, Midwest Independent Transmission System Operator, Inc. submitted an application under Section 204 of the Federal Power Act seeking Commission authorization to issue notes in an amount not to exceed $200 million.

Comment date: May 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Daniel L. Mineck

[Docket No. ID–3456–001]

Take notice that on April 6, 2000, Daniel L. Mineck (the Applicant) filed an Amendment to his Application for Authority to Hold Interlocking Positions in the above-referenced docket.

Comment date: May 8, 2000, 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).

David P. Boergers,

Secretary.

[FR Doc. 00–10328 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1796–000]

Roswell Energy, Inc.; Notice of Issuance of Order

April 20, 2000.

Roswell Energy, Inc. (Roswell) submitted for filing a rate schedule under which Roswell will engage in wholesale electric power and energy transactions as a marketer. Roswell also requested waiver of various Commission regulations. In particular, Roswell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Roswell.

On April 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Roswell 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).

Absent a request for hearing within this period, Roswell is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Roswell's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10332 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License, and Soliciting Comments, Motions to Intervene, and Protests

April 20, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license for non-project use of project lands and waters for the Middle Chattahoochee Project.

b. *Project No:* 2177–039.

c. *Dated Filed:* March 31, 2000.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee Hydroelectric Project.

f. *Location:* On the Chattahoochee River, in Harris and Muscogee Counties, Georgia and Lee and Russell Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Larry Wall, Georgia Power, 241 Ralph McGill Boulevard, Atlanta, GA 30308–3374, (404) 506–2054.

i. *FERC Contact:* Any questions on this notice should be addressed to R. Feller at (202) 219–2796 or by e-mail at rainer.feller@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 30 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.

Please include the project number (2177–039) on any comments or motions filed.

k. *Description of Filing:* Georgia Power proposes to withdraw up to 32 million gallons of water per day from the Goat Rock Development impoundment. The water would be

used to for cooling tower make-up, non-contract cooling water, and other plant uses for a proposed natural gas-fired combustion turbine combined-cycle power plant in Lee County, Alabama, outside the project boundary.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20436, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Response Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'' as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comment, it will be presumed to have no comments. One copy of an agency's comments must be also sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–10335 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Motions to Intervene and Protests

April 20, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11835–000.

c. *Date filed:* January 14, 2000.

d. *Applicants:* Colorado Springs Utilities and Southeastern and Colorado Water Conservancy District.

e. *Name of Project:* Pueblo Dam Hydro Project.

f. *Location:* At the existing U.S. Bureau of Reclamation's Pueblo Dam and Reservoir on the Arkansas River, near the Town of Pueblo, Pueblo County, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Philip C. Saletta, Managing Engineer, Colorado Springs Utilities, 30 South Nevada Avenue, Suite 703, Colorado Springs, CO 80903, (719) 448–8713 or E-mail at psaletta@CSU.org

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline Date:* 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 service a copy of that document on each person whose name appears to 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. *Competing Application:* Project No. 11812–000, date filed September 2, 1999, comment due date December 16, 1999.

l. This application is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed would utilize the existing U.S. Bureau of Reclamation's Pueblo Dam and Reservoir, and would consist of the following facilities: (1) Four new steel penstocks; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 10,600 kilowatts; (3) a new 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 37.2 gigawatthours. the cost of the studies under the permit will not exceed $200.00.

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction by contacting the applicant in Item h. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notice of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-names documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–10337 Filed 4–25–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34196A; FRL–6556–7]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, coumaphos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34196A, must be received by EPA on or before June 26, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34196A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on coumaphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34196A. 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 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 Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34196A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. 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 computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34196A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

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 listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, coumaphos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the coumaphos preliminary risk assessments, which were released to the public September 2, 1999 (64 FR 170) (FRL–6380–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for coumaphos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific coumaphos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before June 26, 2000 at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 20, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–10434 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6584–8]

The National Advisory Council for Environmental Policy and Technology, (NACEPT); Standing Committee on Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT Standing Committee on Sectors meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on Sectors will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below.

NACEPT Standing Committee on Sectors; May 10–11, 2000

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Sectors on Wednesday, May 10, 2000 from 1 pm–5:30 pm, and Thursday, May 11, 2000 from 9 am–3:30 pm. The meeting will be held at RESOLVE, Suite 275, 1255 23rd

St., NW, Washington, DC, 20037, phone (202) 965–6387.

The agenda for the meeting will be focused primarily on development of a 5-yr strategy for Sector-Based Environmental Protection. Members of the public are invited to observe the plenary sessions. In addition, on May 10, from 3pm to 5:30pm, the draft meeting agenda calls for breakout sessions. During this time, three workgroups will meet concurrently, and the public is invited to participate in workgroup discussions. The workgroups are: Sector Strategy Workgroup—focused on development of the 5-yr strategy; Co-implementers Workgroup (regions, state, and local government)—focused on their role in selection and implementation of sector programs/projects; and the Measurement and Message Workgroup—focused on performance measurement and evaluation of sector-based projects/programs, and communication of the payoff and potential for sector-based approaches. Public comment at the plenary session is planned for 2:45pm on May 11th. A final Agenda can be obtained at the meeting, or by contacting the Designated Federal Officer, as noted below.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

In follow-up to completion of work by EPA's Common Sense Initiative (CSI) Council, the Administrator asked NACEPT to create a Standing Committee on Sectors. This Committee began its work in March 1999 and provides a multi-stakeholder forum through which the Agency can continue to receive advice and recommendations on sector-based approaches to environmental protection. (A sector is generally defined a discrete production system of the economy, *e.g.*, petroleum refining, printing, metal finishing.) Further information on sectors is available electronically on our web site at http.//www.epa.gov/sectors.

For further information concerning the NACEPT Standing Committee on Sectors, including the upcoming meeting, contact Kathleen Bailey, Designated Federal Officer (DFO), on (202) 260–3413, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting. Thereafter, key documents and the minutes of the meeting will be available electronically on the web site, or by calling the DFO.

Dated: April 20, 2000.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 00–10421 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6584–9

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on May 30–31, 2000. On Tuesday, May 30, the meeting will begin at 1 p.m., and will recess at 5 p.m. On Wednesday, May 31, the meeting will reconvene at 8:45 a.m. and adjourn at approximately 4:30 p.m. All times noted are Eastern Time.

ADDRESSES: The meeting will be held at the Washington Monarch Hotel, 2401 M Street, NW, Washington, DC, (202) 429–2400.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: Discussion on ORD's Particulate Matter$^{2.5}$ Research Program and BOSC Subcommittee Draft Reports on Particulate Matter, The SAB and BOSC Subcommittee Final Report on the Review of ORD's Science to Achieve Results (STAR) Program, and The State of ORD. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Office, Office of Research and Development (8701R), 1200 Pennsylvania Avenue NW, Washington, DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street NW, Washington, DC 20460, (202) 564–6853.

Dated: April 18, 2000.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 00–10420 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00655; FRL 6553–5]

Notice of Availability of Pesticide Data Submitters List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

FOR FURTHER INFORMATION CONTACT: By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 226, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *By mail:* Microfiche copies of the document are available from the National Technical Information Service

(NTIS) ATTN: Order Desk 5285 Port Royal Road, Springfield, VA 22161. Telephone: 1–800–553–6847. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB 2000–102113.

2. *Electronically:* The Pesticide Data Submitters List is available of EPA's World Wide Web (WWW) site on the Internet. The Internet address of EPA's web site is www.epa.gov. To Access the Data Submitters List from the EPA Home Page, select ''Databases and Software.'' From the next page, select ''Media Specific.''

The Pesticide Data Submitters list may be found by searching for the keywords ''datasubmitterslist'' from the EPA Home Page, or may be access directly on the EPA web site, by going directly to the address listed below. Note that this address is case sensitive. http://www.epa.gov./oppmsd1/datasubmitterslist/index.html.

II. What Action is the Agency Taking?

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

List of Subjects

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

Dated: April 5, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–10189 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–938; FRL–6554–2]

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 amended filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–938, must be received on or before May 26, 2000.

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.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–938 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5218; e-mail address: stanton.susan@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	111 112 311 32532	Crop production Animal production Food manufacturing 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 under **FOR FURTHER INFORMATION CONTACT.**

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–938. 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–938 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, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–938. 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 under **FOR FURTHER INFORMATION CONTACT.**

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. Make sure to submit your comments by the deadline in this notice.

7. 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 a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 14, 2000.

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 view of the petitioners. 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.

Novartis Crop Protection, Inc.

PP 7F4924

Amended Pesticide Petition

On June 5, 1998, EPA published a notice that it had received a pesticide petition (PP 7F4924) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing tolerances for the herbicide clodinafop-propargyl (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-2-propynyl ester; CGA–184927) in or on the raw agricultural commodities of wheat. EPA has received an amendment to PP 7F4924 from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to increase, as requested by EPA, the original proposed tolerances; thereby establishing tolerances for the combined residues of clodinafop-propargyl and its acid metabolite, CGA–193469 ((R)-2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-propanoic acid), in or on the raw agricultural commodities wheat, grain at 0.1 ppm; wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm and wheat, straw at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clodinafop-propargyl in wheat is understood for the purposes of the proposed tolerances. Two studies, one with the racemic mixture of the R (+) and S (−) forms and the other with the pure R (+) form (CGA–184927 pyridyloxy labeled), gave similar results. Metabolism involves hydrolysis of the parent to the resulting acid followed by conjugation, arylhydroxylation at the 6 position of the pyridyl ring followed by sugar conjugation, and cleavage of the pyridinyloxy-phenoxy ether bridge which forms the breakdown products 2-(4-hydroxyphenoxy) propanoic acid and 2-hydroxy-3-fluoro-5-chloropyridine.

2. *Analytical method.* Novartis has submitted practical analytical methods for the determination of clodinafop-propargyl and its major plant metabolite CGA–193469 in wheat raw agricultural commodities (RACs). Clodinafop-

propargyl is extracted from crops with acetonitrile, cleaned up by solvent partition and solid phase extraction and determined by column switching high performance liquid chromotography (HPLC) with ultra violet (UV) detection. CGA–193469 is extracted from crops with an acetone-buffer (pH=3) solution, cleaned up by solvent partition and solid phase extraction, and determined by HPLC with UV detection. The limits of quantitation (LOQ) for the methods are 0.02 ppm for clodinafop-propargyl in grain and forage, 0.05 ppm for clodinafop-propargyl in straw, and 0.05 ppm for CGA–193469 in forage, straw and grain.

3. *Magnitude of residues*. Both Canadian and U.S. spring wheat residue trials were conducted. Twelve residue trials were conducted from 1989–1992 in the major spring wheat growing areas of Manitoba, Alberta and Saskatchewan, which share compatible crop zones with the major spring wheat growing areas of the United States (MT, ND, SD, MN). Nine trials were conducted in 1989–91 with a tank mix of clodinafop-propargyl and a safener as separate EC formulations, and three trials in 1992 were conducted with clodinafop-propargyl and the safener as a pre-pack EC formulation. All trials had a single post-emergence application of clodinafop-propargyl at a rate of 80 gram active ingredient/hectacre (g a.i./ha).

In 1998, an additional six spring wheat trials were conducted in the major growing areas of the United States. In these trials, clodinafop-propargyl was applied as a single application of a 240EC formulation at a rate of 70 g a.i./ha. Samples of 30–day forage and hay, and mature straw and grain treated 60 days prior to harvest were taken for analysis. Grain treated at an exaggerated rate in one trial was processed under simulated commercial processing conditions.

At pre-harvest intervals (PHIs) of 30 days for forage and hay in the U.S. trials, and 60–97 days for mature straw and grain in all trials, no detectable residues of clodinafop-propargyl were found. Residues of the metabolite CGA–193469 were detected in mature straw from four trials, with a maximum Highest Average Field Trail (HAFT) residue of 0.35 ppm. Separate decline studies on green forage in both the United States and Canada showed no detectable residues of clodinafop-propargyl or the metabolite CGA–193469 beyond the 7 days after application interval. No residues of clodinafop-propargyl or the metabolite CGA–193469 were found in mature grain or grain processed fractions in any trial.

A freezer storage stability study indicated reasonable stability of both analytes for a period of 1 year, with clodinafop-propargyl showing a decline to 56% in grain and 47% in straw after 2 years. CGA–193469 remained stable for at least 2 years.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral and dermal LD_{50} values for clodinafop-propargyl are 1,829 milligrams/kilograms (mg/kg) and greater than 2,000 mg/kg for rats of both sexes, respectively. Its acute inhalation LC_{50} in the rat is greater than 2.33 milligram/liter (mg/L), the highest attainable concentration. Clodinafop-propargyl is slightly irritating to the eyes, minimally irritating to the skin of rabbits, but was found to be sensitizing to the skin of the guinea pig. This technical will carry the EPA signal word ''Caution.''

2. *Genotoxicity*. The mutagenic potential of clodinafop-propargyl was investigated in six independent studies covering different end points in eukaryotes and prokaryotes *in vivo* and *in vitro*. These tests included: Ames reverse mutation with *Salmonella typhimurium* and Chinese hamster V79 cells *in vitro*; chromosomal aberrations using human lymphocytes *in vitro* and the mouse micronucleus test *in vivo*; and DNA repair using rat hepatocytes and human fibroblasts *in vitro*. Clodinafop-propargyl was found to be negative in all these tests and, therefore, is considered devoid of any genotoxic potential at the levels of specific genes, chromosomes, or DNA primary structure.

3. *Reproductive and developmental toxicity*. Dietary administration of clodinafop-propargyl over 2–generations at levels as high as 1,000 ppm did not affect mating performance, fertility, or litter sizes. Body weight was reduced in parental animals at 500 and 1,000 ppm. The physiological developmental and the survival of the pups during the last week of the lactation period were slightly reduced at levels equal to or greater than 500 ppm during the first generation only. Target organs were liver (adults) and kidney (adults and pups). The treatment had no effect on reproductive organs. The NOAEL for toxicity to the parental rats and offspring was 50 ppm, corresponding to a mean daily intake of 3.2 mg/kg clodinafop-propargyl. The NOAEL for reproductive toxicity was 1,000 ppm (64.2 milligram/kilogram body weight/day (mg/kg bw/day)).

In a developmental toxicity study in rats, the highest dose level of 160 mg/kg resulted in reduced body weight gain of the dams and signs of retarded fetal body weight and incomplete ossification of vertebrae and sternebrae. No teratogenic activity of the test article was detected. Novartis concluded that the NOAEL for dams and fetuses was 40 mg/kg/day. The EPA's Hazard Identification Assessment Review Committee (HIARC) concluded that based on an increase in bilateral distension and torsion of the ureters and delayed ossification in the fetuses, the developmental LOAEL was 40 mg/kg/day and the NOAEL was 5 mg/kg/day.

In a developmental toxicity study in rabbits, mortality was observed in dams at dose levels of 125 and 175 mg/kg. No teratogenic or fetotoxic effects were noted. Novartis concluded that the maternal NOAEL was 25 mg/kg/day and the fetal NOAEL was 175 mg/kg/day. The HIARC considered that the developmental NOAEL was 125 mg/kg/day due to significant mortality at 175 mg/kg/day.

4. *Subchronic toxicity*. A 90–day feeding study in rats at 1,000 ppm resulted in reduced body weight gain, increased liver weights, hematological changes, and increased serum activities of the alkaline phosphatase. Target organs were liver (increased weight), thymus (atrophy) and spleen (reduced weight). The changes were reversible during 4 weeks of recovery. The NOAEL was 15 ppm (0.92 mg/kg in males and 0.94 mg/kg in females). The EPA HIARC suggested the NOAEL in female rats was 8.24 mg/kg bw/day.

In a 90-day feeding study in mice, 400 ppm resulted in reduced activity, one death, markedly increased activities of aminotransferases, alkaline phosphatase, and albumin concentration, increased liver weights, hepatocellular hypertrophy, and single cell necroses in all mice. Other findings included intrahepatic bile duct proliferation, Kupffer cell hyperplasia, and higher incidence of inflammatory cell infiltration. These findings were considered to be secondary to the hepatocyte necrosis. The NOAEL of 6 ppm was equivalent to a daily dose of 0.9 mg/kg in males and 1.05 mg/kg in females.

In a 90–day study in beagle dogs, levels of 500 and 1,000 ppm fed over 2 weeks clearly exceeded a maximum tolerated dose and led to mortality and severe toxicity. Effects at 50 and 200 ppm were limited to dermatitis and clinical chemistry changes, which were generally mild and transient. The NOAEL of 10 ppm was equivalent to a mean daily intake of 0.36 mg/kg in males. The HIARC concluded that in

females the NOAEL was 50 ppm (1.9 mg/kg bw/day).

5. *Chronic toxicity*. In a 12-month feeding study in dogs, 500 ppm resulted in transient dermatitis and reduced body weight gain. Two females were more severely affected and showed inappetence, body weight loss, tremors, and severe dermatitis, and necessitated an interruption of the treatment in order to avoid mortality. Histopathology revealed slight hepatocellular hypertrophy in one male and one female. The NOAEL of 100 ppm was equivalent to a mean daily intake of 3.38 mg/kg in males and 3.37 mg/kg in female.

Lifetime dietary administration of clodinafop-propargyl to mice resulted in reduced body weights and reduced survival in males treated at 250 ppm. Severe hepatotoxicity was noted at 100 and 250 ppm in both sexes. Based on markedly increased liver weights, enhanced serum activities of hepatic enzymes and hepatocellular necroses, dietary levels of 100 ppm and 250 ppm clearly exceeded maximum tolerated doses in males and females, respectively. The increased incidence of benign liver tumors that occurred in males treated at 250 ppm was, therefore, considered a toxicologically irrelevant response as the livers of these animals were damaged significantly and this finding was not interpretable. The toxicity to liver can be associated with the peroxisomal proliferating activity of clodinafop-propargyl in the mouse. Despite this mode of action, the incidence of hepatocellular carcinoma, in these clearly compromised mice, remained within the historical control range, although the incidence was slightly increased in comparison to the concomitant controls. Tumor incidences in females were generally low and well within the range of the historical controls. The NOAEL of 10 ppm was equivalent to a mean daily dose of 1.10 mg/kg in males and 1.25 mg/kg in females.

Dietary treatment of rats with concentrations over 2 years resulted in initial inappetence in males and reduced body weight development in both sexes treated at 750 ppm. The main target organ of toxicity was the liver. Changes in plasma protein and lipid levels, strongly enhanced serum activities of liver enzymes, increased liver weights, and severe liver necroses were observed at dietary doses of 300 and 750 ppm in males and at 750 ppm in females. The degenerative lesions provide strong evidence that these dose levels exceeded a maximum tolerated dose (MTD). Top dose group males showed a higher incidence of prostate adenoma, while prostate hyperplasia was reduced. However, the total incidence of proliferative changes in the prostate remained unchanged indicating a progression from prostate hyperplasia to adenoma. Females treated at the same high dose had higher incidences of ovary tubular adenoma. The slightly enhanced incidences of these lesions are likely a consequence of the severe disturbance of the general metabolic balance due to excessive liver toxicity. In fact, male rats fed 750 ppm exhibited a marked increase in peroxisomalβ oxidation, and an increase in cytochrome P450 4A1/ A3 and 4A2 in their livers. Further, a decrease in cytochrome P450 isoenzymes including CYP 2A, CYP 3A, and male-specific CYP 2C11 was observed. The total oxidation rate of testosterone, aromatase (CYP 19A1) activity plasma estradiol concentration and plasmaβ—dihydrotestosterone are altered at this level of treatment. Clodinafop-propargyl is a potent peroxisome proliferator in the rat liver and this peroxisomal prolifering activity manifests itself by altering Cytochrome P450-dependent monooxygenses which are involved in steroid hormone homeostasis. The NOAEL of 10 ppm was equivalent to a mean daily dose of 0.32 mg/kg in males and 0.37 mg/kg in females. The EPA HIARC concluded that based on hepatocellular hypertrophy and kidney findings, the NOAEL was 1 ppm (0.031 in males and 0.034 in females.

Carcinogenicity. The EPA HIARC recommended, based on the increased incidence of prostate and ovarian tumors in rats and hepatocellular tumors in mice, that the Cancer Assessment Review Committee review clodinafop-propargyl. A Q1* value based on the combined incidence of liver tumors in male mice has been calculated by the EPA Science Analysis Branch. The Q1* value estimate is $1.29 \times E^{-1}$ $(mg/kg/day)^{-1}$ in human equivalents.

6. *Animal metabolism*. In rats, clodinafop-propargyl was rapidly absorbed through the gastrointestinal tract. Absorption through the skin of rats is considerably slower with 15% of a dermally applied dose being absorbed within 8 hours. The EPA HIARC estimated the dermal absorption rate for clodinafop-propargyl to be 2.5% derived by taking the ratio of the LOAEL from the 28-day oral toxicity study in rats (5 mg/kg/day) and 28-day dermal toxicity study in rats (200 mg/kg/day). Female rats excreted single doses more rapidly than males. Most likely due to enzyme induction, differences were much less pronounced after repeated treatment. Both sexes excreted clodinafop-propargyl with urine and feces mainly in the form of its propionic acid derivative, CGA–193469. Simultaneous administration of the safener, cloquintocet-mexyl, did not alter the rate of excretion of clodinafop-propargyl or its metabolite pattern.

7. *Metabolite toxicology*. Clodinafop-propargyl acts as a typical peroxisome proliferator in the rodent liver, which is most likely induced by its propionic acid derivative metabolite, CGA–193469. Like other known well-characterized substances with this property, CGA–193469 caused peroxisome proliferation *in vitro* in hepatocytes of the mouse and rat, but not of the Guinea pig, marmoset, or human. In addition, clodinafop-propargyl was unable to activate the PPAR α-dependent human ACYL CoA oxidase promoter which further supports the evidence that humans are refractory to peroxisome proliferation and related changes. The scientific evidence available amply demonstrates that exposure to substances that produce tumors by a peroxisome proliferator mode of action does not represent a risk of tumor development in man. Novartis, therefore, has concluded that clodinafop-propargyl is not a carcinogen of relevance to humans.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or endocrine effects of clodinafop-propargyl have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. Although prostate adenomas and ovarian adenomas were observed to be statistically increased in rats at the highest feeding level with clodinafop-propargyl, this feeding level clearly exceeded the MTD and the livers in these rats were severely compromised. These findings in the endocrine organs were considered to be secondary to the severe liver effects.

C. Aggregate Exposure

1. *Dietary exposure*. Chronic and acute dietary exposure were calculated for the use of clodinafop-propargyl and the corresponding hydrolysis product, CGA–193469 on wheat. Analyses were conducted using the Dietary Exposure Evaluation Model (DEEM™) by Novigen Sciences and the 1994–96 Continuing Survey of Food Intake (CSFII). Chronic and acute tier three assessments were conducted to account for the consumption of commodities containing

wheat grain and residues were adjusted with a projected percent of crop treated value of 4%. Residues of parent clodinafop-propargyl were below the limit of quantitation (LOQ) of 0.02 ppm in all grain samples. Residues of the acid (CGA–193469) were also below the LOQ (LOQ = 0.05 ppm) in grain. Since no residues were observed in any of the samples, a statistical limit of detection (sLOD) was calculated for parent and the corresponding acid metabolite and one-half of the sLOD of each were summed and entered into the chronic and the acute assessments. Although wheat fractions may be fed to livestock and poultry, calculation of dietary burden with subsequent transfer to animal commodities shows secondary residues are extremely negligible and do not impact risk. Tolerances of 0.1 ppm are being proposed for clodinafop-propargyl and the acid metabolite, CGA–193469, for wheat grain, forage, and hay and 0.5 ppm for straw. Tolerances for meat, milk and eggs are not required.

i. *Food*—a. *Chronic*. Chronic exposure was compared to a chronic reference dose (RfD) of 0.00003 mg/kg/day based on a no-effect level of 0.03 mg/kg/day from a 2-year chronic toxicity/carcinogenicity study in rats and a 1,000X uncertainty factor. Exposure results are compared against the aforementioned reference dose as well as the Agency's $Q1^*$ value of 0.129. Since all residues in grain were below the LOQ, an sLOD was calculated for parent and CGA–193469. One-half sLOD values for parent clodinafop-propargyl and the corresponding acid were 0.0049 ppm and 0.0147 ppm, respectively. These values were summed and adjusted with a market share value of 4% for the calculation of exposure. The exposure results show that the U.S. population utilizes 4.3% of the chronic RfD. The most sensitive subpopulation is children (1–6 years old) with an exposure of 9.9% of the chronic RfD. Using the Agency's $Q1^*$ value of 0.129, a lifetime risk of 1.35×10^{-7} was calculated. These results indicate there is more than a reasonable certainty that exposure to residues of clodinafop-propargyl and its corresponding acid metabolite (CGA–193469) will result in no harm.

b. *Acute*. Acute exposure to females greater than 13 years old was compared to an acute reference dose (aRfD) of 0.005 mg/kg/day based on a NOAEL of 5 mg/kg/day from a developmental study in rats and a 1,000x uncertainty factor. As in the chronic assessment, one-half sLOD was used for parent clodinafop-propargyl and the corresponding acid (0.0049 ppm and 0.0147 ppm for parent and acid, respectively). These values were summed and zeroes were added to the residue distribution file corresponding to the percent of crop not treated (96% not treated). For all female populations in the DEEM™, exposure ranged from 3.0% – 4.2% of the aRfD at the 99.9th percentile of exposure. The most sensitive female population was nursing females (13+ years old) with an exposure of 4.2% of the aRfD (99.9th percentile). Acute exposure for the general population excluding females (> 13 years old), was compared to an aRfD of 0.025 mg/kg/day based on a NOAEL of 25 mg/kg/day from a developmental study in rabbits and a 1,000x uncertainty factor (UF). Acute exposure at the 99.9th percentile for the general population, children and males (all populations excluding females) ranged from 0.18% (seniors, 55+) to 0.62% of the aRfD for children (1–6 years old). These results demonstrate that there is a high degree of certainty of no harm resulting from acute exposure to dietary residues of clodinafop-propargyl.

ii. *Drinking water*. Another potential route of exposure to residues of pesticides includes drinking water. Field and laboratory study results have demonstrated that clodinafop-propargyl and its degradation products have slight to medium mobility in soil. However, due to rapid degradation of the product under field conditions and its low application rate, the potential for it to reach surface and ground water is considered to be negligible. Thus, drinking water exposure to clodinafop-propargyl and its degradation products was not included in the aggregate risk assessment. Also, since clodinafop-propargyl is not intended for uses other than the agricultural use on wheat, there is no potential for nonoccupational exposure.

The estimated exposures of clodinafop-propargyl and its main environmental degradate were combined and the hazards for both compounds were based on the RfD values determined for clodinafop-propargyl alone. The estimated water concentrations for clodinafop-propargyl and the degradate were estimated, weighted and combined based on applications rates adjusted for the maximum concentration of the degradate present in the aerobic soil metabolism studies.

The Screening Concentration in Ground Water (SCI–GROW) model was used to provide the estimated ground water concentration of the combined clodinafop-propargyl and degradate residues, 0.006688 ppb. The Pesticide Root Zone Model/Exposure Analysis Modeling Systems (PRZM/EXAMS) model using the Index Reservoir scenario and the Percent Cropped Area provided the estimated surface water concentrations of the combined clodinafop-propargyl and degradate residues for a wheat application in North Dakota. The estimated 90th percentile acute peak concentration for the combined residues was 0.792 part per billion (ppb). The estimated 36-year mean-yearly chronic concentration for the combined residues was 0.0519 ppb.

Concerning the acute and chronic exposures to clodinafop-propargyl and the degradate, an additional 10×-safety factor has been proposed by the EPA HIARC for the protection of infants and children. This additional safety factor was applied to the acute and chronic non-cancer RfD values for all sub-populations as a worse case estimate of exposure. This resulted in an acute RfD for females 13+ years of 0.005 mg/kg/day and 0.025 mg/kg/day for all other subgroups. This also resulted in a chronic RfD for infants and children of 0.00003 mg/kg/day. A chronic lifetime cancer risk exposure of 0.129 mg/kg/day has also been proposed by the EPA. This was applied to the adult population exposures only.

For ground water, the acute dietary assessment provided drinking water levels of comparison (DWLOC) ranging from 140 to 873 ppb. The estimated ground water concentration, 0.006688 ppb, represented from 0.0008% to 0.0048% of the acute RfD for all sub-populations. The chronic dietary exposures provided DWLOC values of 0.16 ppb (infants), 0.31 ppb (children), and 0.2026 to 0.2363 ppb (lifetime cancer risk for adults). The estimated ground water concentration represented 3.98%, 1.93% and 2.5 to 2.9% of the chronic risk, respectively.

For surface water, the acute dietary assessment provided DWLOC values ranging from 140 to 873 ppb. The estimated acute surface water concentration, 0.792 ppb, represented from 0.09% to 0.57% of the acute RfD for all sub-populations. The chronic dietary exposures provided DWLOC values of 0.16 ppb (infants), 0.31 ppb (children), and 0.2026 to 0.2363 ppb (lifetime cancer risk for adults). The estimated surface water concentration, 0.0519 ppb, represented 31%, 15% and 19.1–to–22.3% of the chronic risk, respectively. Therefore, the acute and chronic drinking water exposures for clodinafop-propargyl and its main environmental degradate did not exceed the exposures allowed by the risk cup.

2. *Non-dietary exposure*. Exposure to clodinafop-propargyl for the mixer/loader/ground-boom/aerial applicator

and flagger was calculated using the Pesticide Handlers Exposure Database (PHED). It was assumed that the product would be applied 6 days per year by ground-boom application to a maximum of 80 acres per day by the grower, 15 days per year by ground-boom application to a maximum of 80 acres per day by the commercial ground-boom applicator and 15 days per year to a maximum of 350 acres per day by the aerial applicator, at a maximum use rate of 28.3 grams active ingredient per acre. For purposes of this assessment, it was assumed that an applicator would be wearing a long sleeved shirt and long pants and the mixer/loader would, in addition, wear gloves. Daily doses were calculated for a person weighting 70 kg assuming 100% dermal penetration. Short-term and intermediate-term dermal and inhalation risk assessments were performed. Doses and endpoints used for risk assessments were based on Agency determined toxicological endpoints recommended by the HIARC. The NOAEL of 50 mg/kg/day from the 28–day rat dermal study was used for short- and intermediate-term dermal risk assessments. The NOAEL of 5 mg/kg/day from the developmental toxicity study in rats was used for short-term inhalation risk assessments. The NOAEL of 0.9 mg/kg/day based on a subchronic oral toxicity study in rats was used for intermediate-term inhalation risk assessments. Based on the use pattern of clodinafop-propargyl, no long-term dermal or inhalation exposure is expected to occur and long-term risk assessments are not required.

Large margins of exposure (MOEs) exist for all occupational exposure scenarios. Short-term dermal exposure MOEs ranged from 4.0E+03 for the commercial open mixer-loader to 1.8E+05 for the commercial or grower ground-boom enclosed-cab applicator. Intermediate-term dermal exposure MOEs ranged from 9.7E+04 for the commerical open mixer-loader to 1.1E+07 for the grower ground-boom enclosed-cab applicator. Short-term inhalation exposure MOEs ranged from 3.6E+04 for the commercial open mixer-loader to 1.7E+06 for the commercial or grower ground-boom enclosed-cab applicator. Intermediate-term inhalation exposure MOEs ranged from 1.6E+05 for the commercial open mixer-loader to 1.8E+07 for the grower ground-boom enclosed-cab applicator.

Although there are no residential uses of clodinafop-propargyl, there is potential for residential exposure to spray drift resulting from aerial application. No standard operating procedure exists for performing this risk assessment; however, a very conservative risk assessment was performed assuming dermal exposure equal to total deposition to outside clothing for a flagger as well as inhalation exposure equivalent to a pesticide flagger, as reflected in PHED. A dermal absorption factor of 2.5%, as estimated by HIARC, was assumed. Offsite drift was assumed to be 15% and the area assumed to be adjacent to the sensitive area was one acre. Large MOEs exist for this potential exposure scenario. Dermal exposure MOEs were 6.0E+07 for a 15 kg child and 2.8E+08 for a 70 kg adult. Inhalation MOEs were 2.3E+07 for a 15 kg child and 1.1E+8 for a 70 kg adult.

D. Cumulative Effects

A cumulative exposure assessment for effects of clodinafop-propargyl and other substances with the same mechanism of action is not appropriate because there is ample evidence to indicate that humans are not sensitive to the effects of clodinafop-propargyl and other peroxisome proliferators. Thus, the calculations outlined below were done for clodinafop-propargyl alone.

E. Safety Determination

1. *U.S. population.* Acute and chronic dietary exposure is minimal for clodinafop-propargyl and the corresponding acid metabolite. Both chronic and acute exposure estimates showed that less than 10% of the RfD is utilized in all populations.

Exposure through the consumption of drinking water is minimal from both surface water and ground water model estimates and in all cases less than 35% of the risk cup is utilized. The estimated water concentrations are very conservative since conservative model parameters were assumed.

There are no residential uses of clodinafop-propargyl that would result in non-dietary exposure. However, there is a remote possibility that spray drift resulting from aerial application could lead to residential exposure. Since exposure from spray drift would be an unlikely event, it is not appropriate to include non-dietary exposure into the aggregate assessment. Therefore, it is concluded that there is more than a reasonable certainty that no harm will result from aggregate exposure to residues of clodinafop-propargyl.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clodinafop-propargyl, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals and data on systemic toxicity.

Retarded fetal body weight and incomplete ossification of vertebrae and sternebrae were observed at a maternally toxic dose of 160 mg/kg/day in rats; however, no developmental toxicity of the test article was detected. Novartis believes that the NOAEL for dams and fetuses was 40 mg/kg/day. The EPA's HIARC concluded that based on an increase in bilateral distension and torsion of the ureters and delayed ossification in the fetuses, the developmental LOAEL was 40 mg/kg/day and the NOAEL was 5 mg/kg/day. Although mortality was observed in rabbit dams at dose levels of 125 and 175 mg/kg, no teratogenic or fetotoxic effects were noted. The maternal NOAEL was 25 mg/kg/day and the fetal NOAEL was 175 mg/kg/day.

Clodinafop-propargyl fed over 2-generations to rats at levels as high as 1,000 ppm did not affect mating performance, fertility, or litter sizes. Body weight was reduced in parental animals at 500 and 1,000 ppm. Physiological developmental and the survival of the pups during the last week of the lactation period were slightly reduced at levels equal to or greater than 500 ppm during the first generation only. Target organs were liver (adults) and kidney (adults and pups). The NOAEL for toxicity to the parental animals and offspring was 50 ppm, corresponding to a mean daily intake of 3.2 mg/kg bw/day of clodinafop-propargyl. The NOAEL for reproductive toxicity was 1,000 ppm (64.2 mg/kg bw/day).

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to prenatal and postnatal effects for children is complete. The results from the 2-generation reproduction study and the rabbit developmental toxicity study would indicate there is no additional sensitivity of infants and children to clodinafop-propargyl. The HIARC selected the developmental NOAEL of 5 mg/kg/day from the rat developmental toxicity as opposed to the maternal NOAEL of 40 mg/kg bw/day. Therefore, the HIARC recommended the 10x safety

factor should be retained based on this increased susceptibility.

Using conservative exposure assumptions, dietary exposure to the most sensitive subpopulation, children (1–6 years old) utilizes 9.9% of the chronic reference dose. Chronic dietary exposure to infants (non-nursing, 1–6 years old) is 2.0% of the chronic RfD. Acute exposure for all infants and children is less than 1.0% of the acute RfD (0.62% of the RfD for the most sensitive subpopulation, children 1–6 years old). Exposure to drinking water for children (1–6 years old) utilizes 31% of the chronic RfD (surface water estimate). Children (1–6 years old) utilize 15% of the chronic RfD (surface water estimate). For acute exposure to drinking water, the worst case estimates (surface water) for infants show that only 0.57% of the aRfD is utilized and children (1–6 years old) utilize 0.27% of the aRfD. These results show that aggregate exposure to residues of clodinafop-propargyl in the diet and drinking water is negligible. Based on the completeness and reliability of the toxicity data and the conservative nature of the exposure assumptions, it is concluded that there is a more than reasonable certainty that no harm will result to infants and children from exposure to residues of clodinafop-propargyl.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of clodinafop-propargyl in or on raw agricultural commodities.

[FR Doc. 00–10432 Filed 4–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–66276; FRL–6552–8]

Notice of Receipt of Requests To Voluntary Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 23, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone number: (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 224, Arlington, VA., telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday thru Friday, excluding legal holidays.

II. What Action Is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 163 pesticide products registered under section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000070–00179	Kill-Ko Seed Treater	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000070–00190	Kill-Ko Fruit Tree Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000100 OR–98–0021	Supracide 25WP Insecticide-Miticide	*O,O*-Dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-
000100 OR–99–0022	Maxim – MZ Potato Seed Protectant	Gas cartidge (as a device for burrowing animal control) Zinc ion and manganese ethylenebisdithiocarbamate, coordination product 1*H*-Pyrrole-3-carbonitrile, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)- (9CI)
000264 OR–81–0055	Rovral Fungicide	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264 WA–81–0052	Rovral Fungicide	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000270–00053	Farnam Ready-To-Use Stable & Horse Fly Spray	Pine oil 2,2-Dichlorovinyl dimethyl phosphate
000270–00284	Security Brand Cygon* 2-E Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
000270–00285	Security Brand Fungi-Gard	Tetrachloroisophthalonitrile
000270–00287	Security Brand Systemic Rose & Flower Booster	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
000270–00291	Security Brand Malathion Multi-Purpose Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000270–00292	Chacon Systemic Granular Insecticide for House Plants	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
000352 OR–78–0004	DuPont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl) oxy)thioacetimidate
000352 TX–90–0008	DuPont Asana XL Insecticide	4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
000400–00093	Vitavax–300 Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 5,6-Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide
000400–00136	Vitavax-Captan HBM–25	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 5,6-Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide
000400–00225	Depester Soybean Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000400 TX–78–0043	Mathieson Terraclor 10% Granular	Pentachloronitrobenzene
000400 TX–79–0017	Olin Terraclor 75% Wettable Powder	Pentachloronitrobenzene
000400 TX–84–0015	Terraclor 2 Lb Emulsifiable Soil Fungicide	Pentachloronitrobenzene
000400 TX–94–0004	Terraclor Flowable Fungicide	Pentachloronitrobenzene
000499–00210	Whitmire PT 1300	*O,S*-Dimethyl acetylphosphoramidothioate
000499–00272	Whitmire PT 265a Knox Out Plus	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000527–00128	Hydro-Cide Residual	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000707–00201	Kelthane 4F Flowable Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 MS–99–0006	Confirm 2F Agricultural Insecticide	Benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide
000802–00537	Lilly / Miller Whack Dust	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
000829–00225	SA–50 Brand Eptam Granules	*S*-Ethyl dipropylthiocarbamate
001100–00070	Fungitrol 11	*N*-((Trichloromethyl)thio))phthalimide
001100–00078	Fungitrol 11–50 Dispersion	*N*-((Trichloromethyl)thio))phthalimide
001203–00069	Foremost 4891–ES Fly-Kill	*S*-Methyl *N*-((methylcarbamoyl)oxy) thioacetimidate (*Z*)-9-Tricosene
001304–00063	McNess Rabon 7.76 Oral Larvicide Premix Cattle and Swin	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
001304–00066	McNess Stock Cow Vitamin & Mineral Mix with Rabon	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
001304–00068	McNess Stock Cow Vitamin & Mineral Mix with Magnesium A	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
001685–00094	State Formula 401 Ready Kill with Dursban	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
001812 WA–95–0025	Kocide DF	Copper hydroxide
001812 WA–97–0035	Super Tin 80WP	Triphenyltin hydroxide
002217–00038	PCS Pyrenone Emulsion Concentrate	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002217–00143	57% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002217–00282	New DDVP Fly Bait	2,2-Dichlorovinyl dimethyl phosphate
002217–00345	50% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002217–00355	50% Malathion Garden Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002217–00366	Sevin 50W Insecticide	1-Naphthyl-*N*-methylcarbamate
002217–00383	Sevin Dust 5%	1-Naphthyl-*N*-methylcarbamate
002217–00389	Gordon Chemicals Sevin 50W Spray A Wettable Powder	1-Naphthyl-*N*-methylcarbamate
002217–00450	Vapona Show-Coat Dairy Cattle Spray	2,2-Dichlorovinyl dimethyl phosphate
002217–00470	Alfa-Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002217–00572	Gordon's Sevin Dust 5% A Multi-Purpose Insecticide	1-Naphthyl-*N*-methylcarbamate
002217–00600	Liquid Sevin Spray	1-Naphthyl-*N*-methylcarbamate
002217–00638	Gordon's Diazinon 25% Emulsifiable	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
002217–00664	Spreader King Dursban Lawn Insecticide	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002217–00777	Pre-San Emulsifiable	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
002935–00084	Red-Top Malathion 25 Spray Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002935–00284	Dibrom 8 Spray	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
002935–00431	Diazinon 50W	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
002935–00435	Wilbur Ellis Systemic 10G	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
002935–00517	Cygon 2-E Systemic Insecticide-Miticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935–00518	Cygon 267 Systemic Insecticide-Miticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
002935–00519	Cygon Systemic 25 Insecticide-Miticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–97–0001	Cygon 400 Systemic Insecticide-Miticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–88–0025	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
003125–00126	Di-Syston Systemic	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00176	Baygon Household Insect Residual Spray (Pressurized)	*o*-Isopropoxyphenyl methylcarbamate
003125–00177	Baygon Household Insect Spray	*o*-Isopropoxyphenyl methylcarbamate
003125–00262	Baygon 1% Household Insect Residual Spray (Pressurized)	*o*-Isopropoxyphenyl methylcarbamate
003125–00344	Baygon 0.5% Aqueous Insecticide	*o*-Isopropoxyphenyl methylcarbamate
003125–00345	Baygon 0.5% Aqueous Pressurized Insect Spray	*o*-Isopropoxyphenyl methylcarbamate
003125 ID–83–0035	Di-Syston 15% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125 OR–79–0042	Di-Syston 15% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125 OR–83–0057	Di-Syston 15% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
004691–00114	Anchor Insecticidal Ear Tags	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
004691–00126	Flea Collar for Dogs	2,2-Dichlorovinyl dimethyl phosphate
004691–00127	Flea Collar for Cats	2,2-Dichlorovinyl dimethyl phosphate
004822–00309	Raid Yard Guard Outdoor Fogger Formula V	*d-cis-trans*-Allethrin 2-Hydroxyethyl octyl sulfide Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
005887–00094	Slug & Snail Killer	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane 1-Naphthyl-*N*-methylcarbamate
005905–00252	Helena 70–3 Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007001–00329	Turf Disease Control 5% Granular	Tetrachloroisophthalonitrile
007173 MT–91–0001	Rozol Treated Oats for Controlling Ground Squirrels	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
007173 UT–77–0002	Rozol Ground Squirrel Grain Bait	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
007501–00008	Gustafson Captan 300 Seed Protectant Agricultural Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00077	Evershield C Captan Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00092	Gustafson Captan 75% Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00111	Gustafson 4-Way Seed Protectant	Manganese ethylenebis(dithiocarbamate) Pentachloronitrobenzene cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole
007501–00116	Capt'n Moly	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00129	Gustafson Captan T Flowable Systemic Soybean Seed Treat	2-(4'-Thiazolyl)benzimidazole cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00130	Gustafson Captan T Flowable Systemic Soybean Seed Treat	2-(4'-Thiazolyl)benzimidazole cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501–00150	Baytan Captan HB Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol
007501–00153	4-Way Peanut Seed Protectant Fungicide	Manganese ethylenebis(dithiocarbamate) Pentachloronitrobenzene cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole
007501 ID–81–0010	Treat & Grow Sjl Seed Protectantcaptan 30%	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501 MN–79–0011	Treat & Grow Sjl Seed Protectantcaptan 30%	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501 TX–91–0007	Tops PC Peanut Seed Treatment	Pentachloronitrobenzene cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide Dimethyl ((1,2-phenylene) bis (iminocarbonothioyl)) bis (carbamate)
007501 WA–80–0035	Treat & Grow SJL Seed Protectantcaptan 30%	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007969 SC–90–0005	Ronilan Fungicide 50W	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
008177–00032	Solid tone Oil Wood Stain Preservative	*N*-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
008177–00036	Valspar Semi-Transparent Oil Stain & Preservative–6515	*N*-((Trichloromethyl)thio)phthalimide Bis(tributyltin) oxide
008660–00015	Turf Insect Control W/fertilizer	1-Methylethyl 2-((ethoxy((1-methylethyl) amino)phosphinothioyl) oxy)benzoate
008660–00131	Grub Pruf contains 1.5% Oftanol Insecticide Granules	1-Methylethyl 2-((ethoxy((1methylethyl) amino)phosphinothioyl) oxy)benzoate
008660–00137	Vertagreen Grub-Pruf-Plus T.M.	1-Methylethyl 2- ((ethoxy((1-methylethyl)amino) phosphinothioyl) oxy)benzoate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
008660–00142	VG Lawn Food Plus Oftanol Insecticide	1-Methylethyl 2- ((ethoxy((1-methylethyl)amino) phosphinothioyl) oxy)benzoate
008660–00180	Green Turf 1.5% Oftanol Insecticide	1-Methylethyl 2- ((ethoxy((1-methylethyl)amino) phosphinothioyl)oxy) benzoate
008660–00181	Green Turf Lawn Food W/1.25% Oftanol Insecticide	1-Methylethyl 2-((ethoxy ((1-methylethyl)amino) phosphinothioyl) oxy)benzoate
009250–00030	United 481 Ground Zero	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3- (2-methylpropenyl) cyclopropanecarboxylate
009779–00098	Riverside Gro-Bean	cis-*N* -Trichloromethylthio-4- cyclohexene-1,2-dicarboximide
009779 OR–98–0004	Chlorothalonil 90 DF	Tetrachloroisophthalonitrile
009779 OR–98–0005	Terranil 6L	Tetrachloroisophthalonitrile
010088–00087	Banish Residual Insect Spray	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- *N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
010107–00094	Seed Shield Potato Seed Treater	Streptomycin sulfate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010107–00097	Seed Shield Potato Seed Treater No. 7.5 with Bark	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010163 OR–94–0022	Botran 75 W	2,6-Dichloro-4-nitroaniline
010163 OR–96–0043	Botran 5F	2,6-Dichloro-4-nitroaniline
010182–00171	Ordram 6E	*S*-Ethyl hexahydro-1*H*-azepine-1-carbothioate
010182–00174	Ordram 10-G	*S*-Ethyl hexahydro-1*H*-azepine-1-carbothioate
010182–00294	Chevron Folpet Technical	*N*-((Trichloromethyl)thio)phthalimide
010350–00038	Duratrol Plus Household Flea Spray with Nylar	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl- *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate 2-(1-Methyl-2-(4-phenoxyphenoxy)ethoxy)pyridine
019713–00197	Drexel Soygro	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
033912–00002	Wagnol 40 57% Malathion Lawn and Ornamental Garden Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
033955–00408	Acme Fruit Tree Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
033955–00450	Acme Sevin 50 W	1-Naphthyl-*N*-methylcarbamate
033955–00537	Acme Chinchbug Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate Xylene range aromatic solvent
033955–00541	Acme Dursban Granular Insecticide	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
033955–00544	Acme Diazinon Granules Lawn Insect Control	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
033955–00546	Acme Ant Granules contains Diazinon Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
033955–00548	Acme Dursban Insecticide 8.70%	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
033955–00554	Acme Stopit Crabgrass Preventer	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
034704–00149	Captan 7.5 Dust	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00342	Captan 10 Dust	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00567	Hopkins 25% Captan Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00649	Captan 300 Flowable Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00650	Captan-Methoxychlor 300–20 Undyed Flowable Seed Protect	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00651	Captan 70–WP Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00652	Captan-Methoxychlor 75–3 WP Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00655	Captan 300–DD Flowable Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00659	Captan 300 Undyed Flowable Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00668	Potato Seed Treater	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00681	Captan 15% Potato Seed Treater	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00760	Fruit Tree Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
042056–00001	Triple Noctin	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
050534 NY–95–0005	Bravo 720	Tetrachloroisophthalonitrile
051036 WA–95–0032	Endosulfan 3 EC	6,7,8,9,10-Hexachloro-1,5,5α,6,9,9α-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
059144–00018	Lawn and Garden Fungicide	Tetrachloroisophthalonitrile
062719–00325	Pendimax 3.3	*N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine
062719–00326	Technical Pendimethalin	*N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
062719 WA–95–0045	Transline	3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and
064240–00010	Combat Roach Control System Formula 18984	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
065135 WA–91–0026	Vinco Formaldehyde Solution	Formaldehyde
066330–00001	Captan 75 Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00002	Stauffer Captan 65 Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00004	Captan-Methoxychlor 75–5 Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00005	Captan Sprills Seed Protectant Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00006	Captan Methoxychlor 75–3 Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00007	Captan Methoxychlor Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00008	Captan Methoxychlor 65–10 Seed Protectant	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00010	Captan 10 Dust	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00012	Captan Moly Soybean Seed Protectant with Molybdenum	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00013	Captan 75 Seed Protectant Dust (fungicide)	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00016	Captan 7.5 Dust Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00023	Captan 4 Flowable	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
066330–00033	Chevron Captan Technical	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
068119–00010	Agrox 2–Way	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
068119–00019	Actellic 5E Insecticide	*O*-(2-(Diethylamino)-6-methyl-4-pyrimidinyl) *O,O*-dimethyl phosphorothioate
071949–00002	Diazinon 25%	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
071949–00003	Ford's Diazinon 5 Granules	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
071949–00014	Best 50% Malathion Insect Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

Unless a request is withdrawn by the registrant within 180 days (30 days when requested by registrant) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant during this comment period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
000070	Verdant Brands, Inc., Agent For: Verdant Brands, Inc., 213 S.W. Columbia St., Bend, OR 97702.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd, Bethany, CT 06524.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122.
000527	Rochester Midland, 333 Hollenbeck Street Box 1515, Rochester, NY 14603.
000707	Rohm & Haas Co., Attn: Robert H. Larkin, 100 Independence Mall W., Philadelphia, PA 19106.
000802	The Garden Grow Co., 6500 Hanna Rd., Box 100, Independence, OR 97351.
000829	Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 34220.
001100	Creanova Inc., Turner Place Box 365, Piscataway, NJ 08855.
001203	Delta Foremost Chemical Corp., 3915 Air Park St., Memphis, TN 38118.
001304	Furst McNess Co., 120 E. Clark St., Freeport, IL 61032.
001685	The State Chemical Mfg. Co., 3100 Hamilton Ave, Cleveland, OH 44114.
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St Joseph, MO 64506.
004822	Kelly K. Rahn, Agent For: S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
005887	Verdant Brands, Inc., Agent For: Verdant Brands, Inc., 213 S.W. Columbia St., Bend, OR 97702.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	Company name and address
007001	J.R. Simplot Co., Box 198, Lathrop, CA 95330.
007173	Liphatech, Inc., 3101 W. Custer Ave, Milwaukee, WI 53209.
007501	Gustafson LLC, 1400 Preston Rd., Suite 400, Planos, TX 75093.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
008177	Valspar Corp., 1101 Third St. South, Minneapolis, MN 55415.
008660	Pursell Industries, Inc., Box 540, Sylacauga, AL 35150.
009250	United Laboratories, Inc., 320 37th Ave., St. Charles, IL 60174.
009779	Cenex/Land-O-Lakes Agronomy Co., 5600 Cenex Drive, Box 64089, Inver Grove Heights, MN 55164.
010088	Athea Laboratories Inc., Box 240014, Milwaukee, WI 53224.
010107	Van Diest Supply Co., 1434 220th Street Box 610, Webster City, IA 50595.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010350	3M/Animal Care Products, Attn: Susan M. Price, Corp. Product Resp., 3M Center, Bldg 290–04–01, St. Paul, MN 55144.
019713	Drexel Chemical Co., 1700 Channel Ave., Box 13327, Memphis, TN 38113.
033912	Wagnol Inc., 541 Oak Street St., Mandeville, LA 70448.
033955	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
034704	Jane Cogswell, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
042056	Trace Chemicals LLC, 839 Brenkman Dr., Pekin, IL 61554.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800 Concord Pike, Box 15458, Wilmington, DE 19850.
051036	Micro-Flo Co., Box 772099, Memphis, TN 38117.
059144	Gro Tec Inc., Box 290, Madison, GA 30650.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/3E, Indianapolis, IN 46268.
064240	Combat Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.
065135	Lefeber Bulb Co., Inc., 15379 State Route 536, Mount Vernon, WA 98273.
066330	Tomen Agro Inc., 100 First Street, Suite 1610, San Francisco, CA 94105.
068119	Wilfarm L.L.C., Attn: Kent Kutnink, 5401 N. Oak Trafficway, Gladstone, MO 64118.
071949	OMS Investments, Inc., c/o Delaware Corporate Management, 1105 N. Market Street, Wilmington, DE 19899.

III. What is the Agency's Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 23, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 5, 2000.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–10188 Filed 4–25–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

April 17, 2000.

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, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 26, 2000. 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, 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.: 3060–0384.

Title: Section 64.904, Independent Audits.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14.

Estimated Time Per Response: 250 hours per audit.

Frequency of Response: Biennial reporting requirement.

Total Annual Burden: 3,500 hours.

Total Annual Cost: $1,200,000.

Needs and Uses: Local exchange carriers (LECs) and dominant interexchange carriers are required to submit an auditor's attestation biennially demonstrating the application of the Commission's cost allocation standards to their particular operations. The independent audit requirement is imposed to ensure that the carriers are properly implementing their cost allocation manual. The independent audits serve as an important aid in the Commission's monitoring program.

OMB Control No.: 3060–0470.

Title: Sections 64.901—64.903, Allocation of Cost, Cost Allocation Manual and RAO Letters 19 and 28.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 18 respondents; 36 responses.

Estimated Time Per Response: 300 hours per filing (approximately 2 per year).

Frequency of Response: Annual and on occasion reporting requirement.

Total Annual Burden: 10,800 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 64,903(a) requires LECs with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR 32.9000 to file a cost allocation manual containing the information specified in Section 64.903(a)(1)–(6). Section 64.903(b) requires that carriers update their cost allocation manuals at least annually, except changes to the cost apportionment table and the description of time reporting procedures must be filed at time of implementation. The FCC uses the manual to ensure that all costs are properly classified.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group Manager.

[FR Doc. 00–10358 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 20, 2000.

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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0893.

Title: Universal Licensing Service (ULS) Pre-Auction Database Corrections.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and individuals or households.

Number of Respondents: 4,442 respondents, 21,000 responses.

Estimated Time Per Response: .50 hours (30 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10,500 hours.

Total Annual Cost: $157,500.

Needs and Uses: This collection is necessary to ensure that the ULS database is as accurate as possible. It involves the correction of licensing data errors detected through integrity reports obtained by searching the ULS database. This data must be corrected to prepare for specific auctions of certain radio services that has been placed in the ULS but have not yet been auctioned. This data aids in spectrum management and provides for an efficient graphical user interface for each potential auction participant.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group Manager.

[FR Doc. 00–10359 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–895]

700 MHz Guard Band Pre-Auction Seminar Thursday, April 27, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a free pre-auction seminar scheduled for Thursday, April 27, 2000. This seminar will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC remote bidding software.

DATES: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Garland of the Auctions Operations Branch at (717) 338–2888, or for Press Inquiries, Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 20, 2000. The complete text of the public notice, including the registration form, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

1. The free seminar for the 700 MHz Guard Band Auction (Auction No. 33) is scheduled for Thursday, April 27, 2000. Interested parties must pre-register using the attached form or by calling the FCC's Auctions Hotline at (888)–225–5322, and select option #2, or (717) 338–2888.

2. The seminar will be held at the Federal Communications Commission, 445 12th Street SW, Washington, D.C. Registration will begin at 8:30 a.m. and the program will end by 4 p.m. Potential bidders in the auction are strongly encouraged to attend. This seminar provides an opportunity for hands-on demonstrations of the FCC filing and bidding software and access to the FCC staff responsible for the 700 MHz band licensing and auction conduct procedures.

It is strongly advised that all potential bidders review the public notices released for this auction prior to the seminar.

3. The following is a timeline of the important events prior to the auction start date:

Deadline to register for Pre-Auction Seminar: April 25, 2000, 5:30 p.m. ET
Seminar Date: April 27, 2000
FCC Form 175 Application Deadline: May 9, 2000, 6:00 p.m. ET
Upfront Payment Deadline: May 26, 2000, 6:00 p.m. ET
Orders for Remote Bidding Software: May 30, 2000, 6:00 p.m. ET
Mock Auction: June 12, 2000
Auction Start Date: June 14, 2000

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Division.

[FR Doc. 00–10355 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–878]

747–762 and 777–792 MHz Band Pre-Auction Seminar Monday, April 24, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a free pre-auction seminar scheduled for Monday, April 24, 2000. This seminar will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC remote bidding software.

DATES: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Garland of the Auctions Operations Branch at (717) 338–2888, or for Press Inquiries, Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 18, 2000. The complete text of the public notice, including the registration form, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov.

1. The free seminar for the 747–762 and 777–792 MHz Band Auction (Auction No. 31) is scheduled for Monday, April 24, 2000. Interested parties must pre-register using the attached form or by calling the FCC's Auctions Hotline at (888)-225–5322, and select option #2, or (717) 338–2888.

2. The seminar will be held at the Federal Communications Commission, 445 12th Street SW, Washington, D.C. Registration will begin at 8:30 a.m. and the program will end by 4 p.m. Potential bidders in the auction are strongly encouraged to attend. This seminar provides an opportunity for hands-on demonstrations of the FCC filing and bidding software and access to the FCC staff responsible for the 700 MHz band licensing and auction conduct procedures.

It is strongly advised that all potential bidders review the public notices released for this auction prior to the seminar.

3. The following is a timeline of the important events prior to the auction start date:

Deadline to register for Pre-Auction Seminar: April 21, 2000, 5:30 p.m. ET
Seminar Date: April 24, 2000
FCC Form 175 Application Deadline: May 8, 2000, 6:00 p.m. ET
Upfront Payment Deadline: May 22, 2000, 6:00 p.m. ET
Orders for Remote Bidding Software: May 23, 2000, 6:00 p.m. ET
Mock Auction: June 2, 2000
Auction Start Date: June 7, 2000

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–10356 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–34–B (Auction No. 34); DA 00–877]

Auction of Additional Licenses for 800 MHz Specialized Mobile Radio (SMR) Service To Be Included in Auction No. 34 Scheduled for August 23, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides additional information concerning the 800 MHz licenses being offered in Auction No. 34 scheduled to commence August 23, 2000. This document also seeks comment on procedural issues

related to the auctioning of these licenses in Auction No. 34.

DATES: Comments are due on or before April 28, 2000, and reply comments are due on or before May 5, 2000.

ADDRESSES: To file formally, parties must submit an original and four paper copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 12th Street, SW, TW—A325, Washington, D.C. 20554. In addition, parties must submit one copy to M. Nicole Oden, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 4–A337, 445 12th Street SW, Washington, D.C. 20554. One copy to Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 4–A628, 445 12th Street SW, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nicole Oden, Auctions and Industry Analysis Division, (Legal Branch) at (202) 418–0660; Kathy Garland or Bob Reagle, Auctions and Industry Analysis Division, (Auction Operations) at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 18, 2000. The complete text of the public notice, including Attachment A is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. This Public Notice provides additional information about the 800 MHz licenses being offered in Auction No. 34. *See* DA 00–667, Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service General Category Frequencies in the 851–854 MHz Band Scheduled for August 23, 2000 (*Auction No. 34 Comment Public Notice*) 65 FR 17268 (March 31, 2000). Specifically, Auction No. 34 will include three 800 MHz Upper Band licenses (861–865 MHz). Attachment A contains a listing of the three additional licenses that will be offered in Auction No. 34. This Public Notice also seeks comment on procedural issues related to the auctioning of these licenses in Auction No. 34.

2. The frequencies and channels numbers associated with each spectrum block are listed below. Spectrum block A is allocated 20 channels, spectrum block B is allocated 60 channels, and spectrum block C is allocated 120 channels.

Spectrum block	Channel Nos.	Frequencies (Base & Mobile)
A	401–420	861.0–861.5 MHz 816.0–816.5 MHz
B	421–480	861.5–863.0 MHz 816.5–818.0 MHz
C	481–600	863.0–866.0 MHz 818.0–821.0 MHz

I. Reserve Price or Minimum Opening Bid

3. The Bureau proposes to utilize the same minimum opening bids previously established for the 800 MHz Upper Band licenses in Auction No. 16, rounded to the nearest hundred dollars. *See* DA 97–2147, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices (*SMR Order*) 62 FR 55251 (October 23, 1997). A list of the three additional licenses, including the related geographic service area population and minimum opening bid, is attached hereto as Attachment A. The Bureau believes minimum opening bids, rather than reserve prices, will help to regulate the pace of the auction and provide greater flexibility. Comment is sought on this proposal. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act of 1997, the public interest would be served by having no minimum opening bid or reserve price.

II. Upfront Payments and Initial Maximum Eligibility for Each Bidder

4. The Bureau proposes to use the same upfront payments as previously established for the 800 MHz Upper Band licenses in Auction No. 16. *See* DA 97–1672, Auction of 800 MHz Specialized Mobile Radio Service Licenses (*Auction No. 16 Public Notice*) 62 FR 49228 (September 19, 1997). A list of these licenses, including the related geographic service area population and upfront payment, is attached hereto as Attachment A. We seek comment on this proposal.

5. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

III. Other Auction Procedural Issues

6. In the *Auction No. 34 Comment Public Notice*, the Bureau set forth and sought comment on the following proposals relating to auction structure and bidding procedures: (1) Simultaneous multiple round auction design; (2) upfront payments and initial maximum eligibility; (3) activity rules; (4) activity rule waivers and reducing eligibility; (5) information relating to auction delay, suspension or cancellation; (6) round structure; (7) reserve or minimum opening bid; (8) minimum accepted bids and bid increments; (9) information regarding bid withdrawal and bid removal; and (10) the stopping rule. The Bureau proposes to utilize the same auction structure and procedures for the additional licenses listed in Attachment A that it utilizes for the auction of all other licenses in Auction No. 34. We seek comment on these proposals as they relate to the licenses listed in Attachment A.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–10357 Filed 4–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. North Georgia Community Financial Partners, Inc., Calhoun, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of North Georgia National Bank, Calhoun, Georgia.

Board of Governors of the Federal Reserve System, April 20, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10326 Filed 4–25–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. PBOC Holdings, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of People's Bank of California, Los Angeles, California, upon its conversion from a savings association to a bank.

Board of Governors of the Federal Reserve System, April 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10379 Filed 4–25–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health

Notice of a Cooperative Agreement With the Interamerican College of Physicians and Surgeons (ICPS)

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of a Cooperative Agreement with the Interamerican College of Physicians and Surgeons (ICPS).

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the Interamerican College of Physicians and Surgeons (ICPS). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist the organization in expanding and enhancing its activities in the following areas: service delivery, disease prevention, health promotion, and health services research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to ICPS. During the last five years, ICPS has successfully demonstrated the ability to work with its organizational membership and health agencies on mutual education, service, and research endeavors. The ICPS is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It is a national organization whose membership consists exclusively of Hispanic physicians, surgeons, and future health care providers.
- It has an established infrastructure to develop, expand, and manage various health education and medical training programs within local communities and physician groups that deal extensively with Hispanic health issues. These programs are aimed at preventing and reducing mortality rates among Hispanic populations.
- It has established itself as an organization with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education curricula, and client-based health prevention programs aimed at reducing excessive mortality and adverse health behaviors among Hispanic populations.
- It has developed databases and directories of health care providers and Hispanic medical students interested in primary care, including funding mechanisms to continue graduate, medical, and scientific education.
- It has an inventory of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems.

This cooperative agreement will be continued for an additional 3-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative

agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: April 11, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–10319 Filed 4–25–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–21–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of NIOSH Fire Fighter Alert (Structural Collapse)—New—The National Institute of Occupational Safety and Health (NIOSH). An Alert documents the scientific research about an occupational health and safety hazard and provides recommendations for assessing, avoiding, or reducing the hazard. The Alert is probably the National Institute for Occupational Safety and Health's (NIOSH) best tool for addressing risks of great immediate danger involving hazards to life and health. Even though the Alert can be termed an important tool, prior to 1999 no rigorous test of Alert efficacy had ever been conducted. During the past year, NIOSH began the first rigorous test of one NIOSH Alert on the dangers of structural collapse among fire fighters. This testing was done with a sample of fire fighters, and on the basis of this sample, a national distribution strategy for the Alert will follow.

This Alert contains recommendations with important safety and health implications for more than one million fire fighters in over 36,000 fire fighter units. Morbidity and mortality rates are relatively high for this occupation, which increases the need for effective communication strategies when reporting safety and health recommendations.

The formative research phase done this year by NIOSH's Health Communication Research Branch and Division for Safety Research will produce data with strong levels of internal and external validity. However, the formative phase is only aimed at designing effective messages and not aimed at understanding the impact of those messages in the final distribution of the Alert. NIOSH believes that it is reasonable to: (1) Conduct an evaluation of the national distribution of the Alert to determine its final impact and (2) identify the characteristics of those fire fighter units that may not have met optimal levels of communication effect (receiver awareness, comprehension, acceptance, and use).

The specific goals of this investigation are to: (1) Assess the communication effect of NIOSH recommendations contained within the Alert on structural collapse and (2) identify the characteristics (behavioral, normative, and control beliefs, and demographics) of receivers who fail to meet minimum levels of communication effect.

A standardized questionnaire developed and approved for the formative research phase will be used to assess communication effect. Items will identify the extent of receiver awareness, comprehension, acceptance, and use of the Alert. The Theory of Planned Behavior will be used to help identify the factors that mediate this communication effect, and relevant questions will be added to the existing questionnaire.

The data collected in this study will be used to assess the communication effect of the national distribution of the Alert by comparing the means between the respondents in the formative evaluation and the respondents in the national distribution. This data also will be used to identify the characteristics of those fire fighter units that may not have met optimal levels of communication effects. Total annual burden hours are 250.

Respondents	Number of respondents	Number of responses/ respondent	Average burden response (in hours)
Fire Fighters	1,000	1	.25

Dated: April 20, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 00–10350 Filed 4–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–22–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Assessment of Exposure to Arsenic through Household Water—New—National Center for Environmental Health (NCEH). Arsenic is a naturally occurring element present in food and water as both inorganic and organic complexes. Epidemiologic evidence shows a strong link between ingestion of water containing inorganic arsenic and an increase in a wide variety of cancers (*e.g.,* bladder cancer). Consumption of contaminated food is the major source of arsenic exposure for the majority of United States citizens. There are some areas of the United States where elevated levels of arsenic in water occur with appreciable frequency. In such areas, ingestion of water can be the dominant source of arsenic exposure. Currently, the preferred method of treatment of private, domestic well water containing elevated levels of arsenic is point-of-use (POU) devices. The acceptability of bottled water and POU treatment systems as effective means of managing arsenic exposure is based on the assumption that other water exposures such as bathing, brushing of teeth, cooking, and occasional water consumption from other taps contribute relatively minor amounts to a person's total daily intake of arsenic.

We propose to conduct a study to methodically test the validity of the commonly-made assumption that secondary exposures such as bathing will not result in a significant increase in arsenic intake over background dietary levels. Specifically, we are interested in assessing urine arsenic levels among individuals where ingestion of arsenic-containing water is controlled by either POU treatment or use of bottled water, combined with use of short-term diaries to record diet, water consumption, and bathing frequency. Total annual burden is 510.

Respondents	Number of respondents	Responses/ respondent	Average burden response (in hours)
Prescreening postcard completion	1,000	1	5/60
Recruiting telephone interview	320	1	15/60
Survey interview (in person)	520	1	30/60
Biologic specimen collection	520	1	10/60

Dated: April 20, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10351 Filed 4–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–HS–2000–03B]

Fiscal Year 2000 Discretionary Announcement of the Availability of Funds and Request for Applications for Nationwide Expansion Competition of Early Head Start; Correction

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Tuesday, February 29, 2000.

On page 10797, in the State of Colorado, Arapahoe County, in the local community column the following service area should be added: Colfax Avenue (county line) on the North, Mississippi Avenue on the South, Chambers Road on the East and Yosemite Street (county line) on the West. This area is currently being served and is not open for competition to new Early Head Start programs. The remaining part of Arapahoe County is not currently being served and is open to competition to new Early Head Start programs.

On page 10797, in the State of Colorado, in Denver County, in the local community column for the city of Denver, after the service areas numbered (1)–(4), the following service areas should be added in the city of Denver: ''(5) the area bounded by 52nd Avenue on the North, Alameda Boulevard on the South, Broadway Avenue on the East and Sheridan Boulevard on the West.'' ''(6) Beginning at north Broadway and 38th avenue, go east to Yosemite; Yosemite south to 11th Avenue, 11 Avenue west to Quebec; Quebec south to Hampden, Hampden west to Broadway; Broadway north to 35th Avenue.'' ''(7) Beginning at north 54th Avenue and Peoria, go 54th east to Chambers; Chambers south to I–70, I–70 West to Peoria, Peoria north to 54th Avenue.'' These three areas (5) (6) and (7) are currently being served in the city of Denver in addition to service areas (1) through (4). These seven service areas in the city of Denver are not open to competition to new Early Head Start programs.

On page 10802, of the State of Minnesota, Hennepin County, in the local community column delete ''City of North Minneapolis'' and replace with ''Minneapolis, Brooklyn Park, Golden Valley, and Richfield.''

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 or send an email to *ehs@lcgnet.com*. You can also contact Judith Jerald, Early Head Start, Head Start Bureau at (202) 205–8074.

Dated: April 20, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–10378 Filed 4–25–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0314]

Prescription Drug Products; Levothyroxine Sodium; Extension of Compliance Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of compliance date.

SUMMARY: The Food and Drug Administration (FDA) is announcing that manufacturers who were marketing orally administered drug products containing levothyroxine sodium on or before August 14, 1997, may continue to market these products without approved applications until August 14, 2001. FDA is extending by 1 year the compliance date given in the notice published in the **Federal Register** of August 14, 1997 (62 FR 43535). The agency is taking this action to give manufacturers additional

time to conduct studies and to prepare applications.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that orally administered drug products containing levothyroxine sodium are new drugs and required manufacturers to have approved applications as a condition of marketing. The notice advised that manufacturers who were marketing levothyroxine sodium drug products on or before August 14, 1997, may continue to market their products until August 14, 2000.[1] The notice stated that a manufacturer who marketed a levothyroxine sodium drug product without an approved application after that date would be subject to regulatory action.

FDA permitted this period of continued marketing because it regards levothyroxine sodium products as medically necessary and, therefore, wanted to allow sufficient time for manufacturers to conduct the required studies and to prepare and submit applications, as well as to allow the agency sufficient time to review these applications. FDA has now concluded that manufacturers may need additional time to conduct studies and to prepare applications. Therefore, the agency extends by 1 year the compliance date given in the **Federal Register** notice of August 14, 1997, to permit continued marketing of these products until August 14, 2001.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under authority delegated to the Associate Commissioner for Regulatory Affairs (21 CFR 5.20).

Dated: April 18, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–10322 Filed 4–25–00; 8:45 am]

BILLING CODE 4160–01–F

[1] After August 14, 1997, a new levothyroxine drug product may not be introduced into the market unless FDA has approved an application for that product.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic 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 is open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 19, 2000, 10 a.m. to 2 p.m.

Location: Holiday Inn, Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, 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, 301–827–7001, email: reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear a presentation of the data and rationale for the regulatory action regarding the withdrawal from the U.S. market of Rezulin™ (troglitazone, Parke-Davis Pharmaceutical Research, a Division of Warner-Lambert) for the treatment of type 2 diabetes mellitus.

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 May 15, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 15, 2000, 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: April 17, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–10321 Filed 4–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB 0915–0174)—EXTENSION

The Division of Facilities and Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under Section 621 of Title VI and Section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	150	1	1	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 19, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–10320 Filed 4–25–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; a Nested Case-Control Study of Lung Cancer and Diesel Exposure Among a Cohort of Non-Metal Miners

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* A Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among a Cohort of Non-Metal Miners. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This nested case-control study will examine lung cancer in non-metal miners and its association, if any, with diesel exhaust exposure. The study will involve approximately 160 deaths from lung cancer (the actual number will depend on the number of deaths occurring,but based on national rates we expect 160), and four controls matched to each death, identified from the cohort. Controls will be matched on mine, gender, race/ethnicity and year of birth (within 5 years). Detailed information regarding exposure to diesel exhaust will be obtained from employment records and measurements of diesel exhaust surrogates. Information on potential confounders will be obtained by interview and from environmental measurements. This information will be used in a study by the National Cancer Institute and the National Institute for Occupational Safety and Health to examine risk of mortality from lung cancer for various measures of diesel exhaust exposure, adjusted for smoking and other potential confounders. *Frequency of Response:* One-time study. *Affected Public:* Individuals. *Type of Respondents:* Workers or next of kin of workers. The annual reporting burden is as follows: *Estimated number of Respondents:* 227; *Estimated Number of Responses per Respondent:* One; *Average Burden Hours per Response:* 1.0; and *Estimated Total Annual Burden Hours Requested:* 227. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Debra Silverman, NCI Project Director, National Cancer Institute, Executive Plaza South, Room 8108, Rockville, Maryland 20892–7240, or call non-toll-free number (301) 435–4716, or FAX your request to (301) 402–1819, or E-mail your request, including your address, to Silvermd@exchange.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 26, 2000.

Dated: April 18, 2000.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–10403 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: June 5, 2000.

Time: 9 a.m. to 1:30 p.m.

Agenda: For discussion of planning and operational issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10404 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 meeting of the National Cancer Advisory Board.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the review of applications, and information concerning NCI and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Advisory Board and Subcommittee on Cancer Centers.

Dates: June 12–14, 2000.

Name of Committee: Subcommittee on Cancer Centers.

Open: June 12, 7:00 p.m. to Recess.

Agenda: Cancer Centers Support Guideline Update.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814, (301) 657–1234.

Contact Person: Dr. Brian Kimes, Executive Secretary, Office of Centers, Training, and Resources, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 700, Bethesda, MD 20892, (301) 496–8537.

Name of Committee: National Cancer Advisory Board.

Open: June 13, 8:45 a.m. to 3:45 p.m. and June 14, 9:00 a.m. to 3:00 p.m.

Agenda: Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups, *http://deainfo.nci.nik.gov/ADVISORY/boards.htm.* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Closed: June 13, 2000, 4:00 p.m. to Recess.

Agenda: Review of Grant Applications.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8022, Bethesda, MD 20892–8327, (301) 496–5147.

(Catalogue of Federal Domestic Assistance Program Nos. 92.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10413 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 National Advisory Eye Council.

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 section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 8, 2000.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the institute and discussions concerning institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Closed: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lois DeNinno, National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., MSC 7167, Bethesda, MD 20892, 301–496–9110.

(Catalogue of Federal Domestic Assistance Program NOs. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10409 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Family Study of Nasopharyngeal Carcinoma and Oral Cancer.

Date: May 17, 2000.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: C. James Scheirer, Chief, Review Branch, DEA, NIH, NHLBI, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, (301) 435–0206.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Biology of Hematopoietic Stem Cells RFA.

Date: June 7–8, 2000.

Time: 7 a.m. 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Columbia Sheraton, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Terry Rogers Bishop, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7210, Bethesda, MD 20892–7924, (301) 435–0303.

(Catalog of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resource Research, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10405 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Sibling Donor Cord Blood Banking and Transplantation.

Date: May 9, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert B. Moore, Scientific Review Administrator, National Heart, Lung, and Blood Institute, Rockledge Building II, Suite 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–3541.

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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10406 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 a meeting of the Board of Scientific Counselors, NHLBI.

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 Heart, Lung, and Blood Institute, 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, NHLBI.

Date: June 1–2,2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Elizabeth G. Nabel, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10407 Filed 4–25–00; 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 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, NIAAA.

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 Institute on Alcohol Abuse and Alcoholism, 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, NIAAA.

Date: June 1–2, 2000.

Open: June 1, 2000, 8:30 a.m. to 9 a.m.

Agenda: To discuss administrative details.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 1, 2000, 9 a.m. to 11 a.m.

Agenda: To review and evaluate the laboratory of neurogenetics.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Benedict J. Latteri, Acting Deputy Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, 9000 Rockville Pike, Room 1B58, Building 31—MSC 2088, Bethesda, MD 20892–2088, 301–402–1227.

(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: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10408 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: June 9, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Lillian M. Pubols, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, ip28e@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A

Date: June 22–23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Katherine M. Woodbury, Scientific Review Administrator, NINDS/NIH/DHHS, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: June 22–23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Paul A. Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10410 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 National Advisory Council on Drug Abuse.

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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 16–17, 2000.

Open: May 16, 2000, 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 17, 2000, 9 a.m. to 11:30 a.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Teresa Levitin, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10412 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in 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: April 28, 2000.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 4, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 4, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 5, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 8, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 8, 2000.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93–846–93.878, 93–892, 93–893, National Institutes of Health, HHS)

Dated: April 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10402 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in 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: April 27, 2000.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 2, 2000.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 4, 2000.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 9, 2000.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcelina B. Powers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–8 (03).

Date: May 10, 2000.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISB (01).

Date: May 10, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Leonard Jakubczak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–10411 Filed 4–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Meeting of the NTP Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina, on May 24, 2000.

The NTP Board of Scientific Counselors is composed of scientists from the public and private sector. The Board provides primary scientific oversight to the NTP.

Agenda

The meeting is open to the public from 8:30 a.m. to adjournment with attendance limited only by space available. A draft agenda with a tentative schedule is provided below. There are three primary agenda topics: (1) An update on the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) including a discussion of its progress, the phthalates review, and its procedures for nomination, selection and review of chemicals; (2) presentations about current initiatives for NTP toxicology studies; and (3) recommendations of substances by the Interagency Committee for future NTP studies. Also in the afternoon, there will be reports on activities of the Report on Carcinogens and Technical Reports Review Subcommittees. The Board will review a concept proposal for the continued use of a contract mechanism to perform NTP toxicology and carcinogenesis studies.

Information about the CERHR including the chemicals currently under consideration for Expert Panel evaluation and the evaluation process are described in a **Federal Register** notice [March 20, 2000, Volume 65, Number 54, pages 14997–14998]. The opportunity for submission of written public comments on those candidate chemicals is provided through May 4, 2000. A copy of this notice is available on-line at the NTP web site (http://ntp-server.niehs.nih.gov) and CERHR web site (http://cerhr.niehs.nih.gov) or by contacting the Executive Secretary (address given below). The chemicals under consideration include: 1-Bromopropane, 2-Bromopropane, Dimethyl Methyl Phosphonate, Ethylene glycol, Glycol ethers, Glyphosate, Methanol, Nicotine, Phenol, Thimerosal, and Toluene. This meeting provides an additional opportunity for the public to present any comments to the NTP Board of Scientific Counselors and NTP staff. However, if written comments were submitted in response to the March 20th **Federal Register** announcement they are being considered and do not need to be resubmitted or readdressed.

The NTP has a broad mandate to provide toxicological characterization for chemicals and agents of public health concern and strives to balance the selection of agents for study. Current NTP initiatives include water disinfection by-products, DNA-based products, herbal/dietary supplements, phototoxicology studies and occupational exposures and mixtures.

Information about substances nominated to the NTP for toxicology studies and recommendations for testing by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) are provided in the **Federal Register** notice dated March 2, 2000 (Volume 65, Number 42, Pages 11329–11331). The opportunity for submission of written public comments on those candidate chemicals is provided through April 30, 2000. Substances currently under consideration include: Substances recommended for testing: 1-Bromopropane and 2-Bromopropane, Chitosan, DNA-based products, Juglone, Potassium ferricyanide, and Radio frequency radiation emissions of wireless communication devices; Substances for which no testing is recommended at this time: Cafestol and Plumbagin; Substances for which a testing recommendation is deferred pending receipt and consideration of additional information: Ethylenebis(tetrabromo-phthalimide), Terpinolene, Tetrabromophthalic anhydride, and Texanol benzyl phthalate. Testing recommendations from the ICCEC are given in the referenced **Federal Register** notice. This meeting provides an additional opportunity for the public to comment to the NTP Board and staff. However, if written comments were submitted in response to the March 2nd **Federal Register** announcement, they are under consideration and do not need to be resubmitted or readdressed.

Public Comment Encouraged

Public input at the meeting is welcome and time is set aside in the agenda for presentation of public comments on any agenda topic. Seven minutes are allotted for each formal oral presentation. To facilitate planning for the meeting, persons interested in providing formal written or oral comments are asked to notify the Executive Secretary, Dr. Mary S. Wolfe, NIEHS, P.O. Box 12233 MD A3–07, Research Triangle Park, NC 27709 (telephone 919/541–3971, fax 919/541–0295, and email wolfe@niehs.nih.gov). Written comments submitted for consideration by the Board and NTP staff prior to the meeting must be received by May 15, 2000. Persons wishing to register to make a formal presentation during a public comment period are asked to notify the Executive Secretary preferably no later than May 22, 2000, and, if possible, to provide a copy of the statement in advance of the meeting for distribution to the Board and NTP staff. Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 25 copies of the statement to the meeting for distribution to the Board and NTP staff and to supplement the record. Persons registering to make oral comments or submitting written comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any).

Additional Information About Meeting

Prior to the meeting, a copy of the agenda and a roster of the Board members will be available from the Executive Secretary. Following the meeting, summary minutes will be prepared and available upon request to Central Data Management, NIEHS, P.O. Box 12233 MD E1–02, Research Triangle Park, NC 27709; telephone 919/541–3419; fax 919/541–3687; and email CDM@niehs.nih.gov.

Dated: April 19, 2000.

Samuel H. Wilson,

Deputy Director, National Institute for Environmental Health Sciences.

Draft Agenda; National Toxicology Program (NTP) Board of Scientific Counselors

May 24, 2000

Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park, North Carolina

8:30 a.m.—Welcome
8:50 a.m.—NTP Update
9:00 a.m.—NTP Center for the Evaluation of Risks to Human Reproduction (CERHR)
- Role of CERHR in meeting the goals of the NTP
- Response to last years Board Review of CERHR

9:30 a.m.—CERHR Processes and Criteria
- Nomination and selection of agents for review
- Evaluation of selected agents
- Communication with public

10:00 a.m.—Break
10:15 a.m.—Public Comments
10:30 a.m.—Board Discussion
11:00 a.m.—Perspectives on the Process (e.g. Phthalates Review)
- Expert Panel
- Regulatory Agencies
- NTP Board of Scientific Counselors
- Public Comments

Noon—Lunch
1:00 p.m.—Current Trends in NTP Toxicology Testing
- Water disinfection by-products
- DNA-based products
- Herbals/dietary supplements

2:15 p.m.—Break
2:30 p.m.—Current Trends in NTP Toxicology Testing (continued)
- Phototoxicology studies and the NTP Center
- Occupational chemicals and mixtures

3:20 p.m.—Concept Review
- Board Discussion and ACTION

3:50 p.m.—Testing Recommendations from the Interagency Committee for Chemical Evaluation and Coordination
- Public Comments
- Board Discussion

4:35 p.m.—NTP Board Subcommittee Reviews—Updates
- Report on Carcinogens
- Technical Reports
- Board Discussion

5:20 p.m.—Adjourn

Substances Nominated to the NTP for Study and Testing Recommendations Made by the ICCEC on December 13, 1999

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING

Substance [CAS No.]	Nominated by	ICCEC recommendations	Study rationale; other information
1-Bromopropane [106–94–5] and 2-Bromopropane [75–26–3].	OSHA NIOSH	*1-Bromopropane* —Carcinogenicity —Reproductive and developmental toxicity. —Toxicokinetics —Mechanistic studies —Neurotoxicity —Genotoxicity —Exposure studies in workers *2–Bromopropane* —Subchronic toxicity.	Reported increasing production and use in many industrial applications as an alternative to ozone depleting substances; available data from limited repeat dose studies indicate toxicity to multiple organ systems. 2-Bromopropane is a contaminant in reagent grade. 1-Bromopropane with known reproductive toxicity.
Chitosan [9012–76–4]	NCI	—Mechanistic studies to evaluate vitamin E and mineral depletion.	Significant human exposure through use as a dietary supplement and other commercial applications; potential for toxicity from interference with dietary fat absorption.
DNA-based products	FDA	—Establish joint NIEHS/FDA program to evaluate long-term toxicity in anticipation of regulatory needs.	Rapidly growing market for DNA-based therapeutic agents and a lack of adequate mechanisms and methodologies for evaluating safety.
Juglone [481–39–0]	NCI	—Mechanistic studies —Metabolism studies —Mouse lymphoma assay —Mammalian mutagenicity —Carcinogenicity testing pending results of preliminary studies.	Potential human exposure resulting from use of walnut-based products as dietary supplements and natural dyes and stains; suspicion of carcinogenicity based on quinone structure.
Potassium ferricyanide [13746–66–2]	NCI	—Genotoxicity —Subchronic toxicity	Potential consumer and worker exposure resulting from use in photographic processing; suspicion of toxicity based on potential for redox cycling; inadequate toxicity information available.
Radio frequency radiation emissions of wireless communication devices.	FDA	—Establish interagency program to design studies assessing cancer and non-cancer health effects to fulfill regulatory needs.	Widespread consumer and worker exposure; available data is inadequate to properly assess safety.

TABLE 2.—SUBSTANCES FOR WHICH NO TESTING IS RECOMMENDED AT THIS TIME

Substance [CAS No.]	Nominated by	Nominated for	Rationale for not testing
Cafestol [469–83–0] and Kahweol [6894–43–5].	Private individual.	—Toxicity and carcinogenicity testing.	Anti-carcinogenic effects demonstrated in animal studies; limited data indicate low potential for toxicity; other natural products with higher potential for toxicity and human exposure exist; ongoing research efforts as opposed to new testing may provide basis for determining relevance of metabolic modulatory effects to chronic toxicity.
Plumbagin [481–42–5]	NCI	—Mechanistic studies —Metabolism studies —Mouse lymphoma assay —Mammalian mutagenicity —Carcinogenicity	Structurally similar to Juglone which is selected for study; low magnitude and/or prevalence of human exposure; adequate evidence of acute and reproductive toxicity.

TABLE 3.—SUBSTANCES FOR WHICH A TESTING RECOMMENDATION IS DEFERRED PENDING RECEIPT AND CONSIDERATION OF ADDITIONAL INFORMATION

Substance [CAS No.]	Nominated by	Nominated for	Additional information needed
Ethylenebis(tetrabromo-phthalimide) [32588–76–4].	NIEHS	—Toxicity and carcinogenicity testing.	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Terpinolene [586–62–9]	NIEHS	—Toxicity and carcinogenicity testing.	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures; study results for structurally related compounds.
Tetrabromophthalic anhydride [632–79–1]	NIEHS	—Toxicity and carcinogenicity testing.	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Texanol benzyl phthalate [16883–83–3] or [32333–99–6].	NIEHS	—Toxicity and carcinogenicity testing.	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.

[FR Doc. 00–10414 Filed 4–25–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of a joint meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) five advisory committees (SAMHSA National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, and the Advisory Committee for Women's Services) in May 2000.

The organizing theme of the Year 2000 Joint Council Meeting is ''Spirit of Collaboration from Prevention through Treatment.'' The session on May 10 will be open and will include presentations by several representatives from the Department of Health and Human Services Programs. On May 11, there will be presentations by the U.S. Department of Education and the Department of Justice, a presentation on the effects of the Olmstead Decision and its relationship to the Institute for Mental Disease exclusion, a presentation on economic analysis and depression and an update on the National Congress for Hispanic Mental Health.

Attendance by the public will be limited to space available. Public comments are welcome, and interested persons may present information or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should contact Toian Vaughn, Executive Secretary, Office of Extramural Programs, SAMHSA, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857, prior to April 28, 2000, and submit a brief statement of: the general nature of the information or arguments they wish to present, the names, addresses, and telephone number of proposed participants, identification of organizational affiliation, and an indication of the approximate time required to make their comments. Time for presentations may be limited by the number of requests. Photocopies, up to five pages of material, may be distributed at the meeting through the SAMHSA National Advisory Council Executive Secretary, if provided by April 28.

A summary of the meeting and/or a roster of committee members may be obtained from Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone (301) 443–4266, e-mail: tvaughn@samhsa.gov.

Substantive program information and information pertaining to special accommodations for persons with disabilities may be obtained from the contact whose name and telephone number are listed below.

Committee Names: Substance Abuse and Mental Health Services Administration National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National

Advisory Council, Advisory Committee for Women's Services.

Meeting Date(s): May 10–11, 2000.

Place: Bethesda Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: May 10, 2000, 1 p.m.—5:30 p.m.; May 11, 2000, 8:30 a.m.—5:00 p.m.

Contact: Toian Vaughn, M.S.W., Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, Telephone (301) 443–4266.

Dated: April 18, 2000.

Toian Vaughn,

Committee Management Officer/Executive Secretary, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–10360 Filed 4–25–00; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in May 2000.

The meeting will be open and will include the Administrator's update, follow up to the January 20–21 SAMHSA National Advisory Council meeting and the May 10–11 SAMHSA Joint Council Meeting, status reports by the Council's workgroups on Parity and Co-occurring Addictive and Mental Health Disorders, discussion on the Household Survey on Drug Abuse and the fiscal year 2001 Budget, and a discussion on SAMHSA's Technical Assistance Project (a process for collecting customer satisfaction and outcome data being provided through the Block Grants), and other issues of interest.

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: May 12, 2000, 9 a.m. to 2:50 p.m.

Place: Bethesda Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: May 12, 2000, 9 a.m. to 2:50 p.m.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–4266; FAX: (301) 443–1587 and e-mail: tvaughn@samhsa.gov.

Dated: April 18, 2000.

Toian Vaughn,

Committee Management Officer/Executive Secretary, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–10361 Filed 4–25–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in May 2000.

The meeting will be open and will include a presentations of CSAP's Director's Report, updates on CSAP's programs and budget, discussions of administrative matters and announcements. Public comments are welcome during the open session. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Executive Secretary, Rockwall II building, Suite 901, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the person whose name and telephone number is listed above.

Committee Name: Center for Substance Abuse Prevention, National Advisory Council.

Meeting Date: May 12, 2000.

Place: Bethesda Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact: Yuth Nimit, 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455 and fax: (301) 443–6394.

Dated: April 18, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–10362 Filed 4–25–00; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in May 2000.

The meeting of the Advisory Committee for Women's Services will be open and will include discussions of policy and program issues relating to women's substance abuse and mental health services needs, children and violence matters, priority of committee goals for the current year and other policy issues.

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 the committee members, may be obtained from the Contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: May 12, 2000.

Meeting Time: 9 a.m. to 5 p.m.

Place: Bethesda Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Type: Open.

Contact: Nancy P. Brady, Executive Secretary, Parkland Building, Room 13–99, Telephone: (301) 443–8964, Fax: (301) 443–8964, E-mail: nbrady@samhsa.gov.

Dated: April 18, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–10363 Filed 4–25–00; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–00–1320–EL; COC 61209, CO–933–00–1320–EL; COC 61357]

Amended Notice of Coal Lease Offerings By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Corrected sale date.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice to correct the sale date for two notices of coal lease offering by sealed bid published in 65 FR 20827–20828 on April 18, 2000.

On page 20827, second column, middle of page, the paragraph reading ''**DATES:** The lease sale will be held at 10 a.m., Tuesday, May 23, 2000. Sealed bids must be submitted no later than 9 a.m., Tuesday, May 23, 2000.'', change both dates to ''Wednesday, May 31, 2000.''

On page 20828, first column, bottom third of page, the paragraph reading ''**DATES:** The lease sale will be held at 1 p.m. Tuesday, May 23, 2000. Sealed bids must be submitted no later than 12 noon, Tuesday, May 23, 2000.'', change both dates to ''Wednesday, May 31, 2000.''

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

Dated: April 20, 2000.

Matthew R. McColm,

Mining Engineer, Branch of Solid Minerals, Resource Services.

[FR Doc. 00–10352 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1320–05; NMNM 99144]

Notice of Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the tract described below in San Juan County, New Mexico, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.)

DATES: The lease sale will be held at 10:00 a.m., Friday, May 12, 2000. Sealed bids must be submitted on or before 9:00 a.m., on May 12, 2000.

ADDRESSES: The lease sale will be held in the BLM Conference Room, located at 1474 Rodeo Road, Sante Fe, NM 97505. Sealed bids must be submitted on or before 9:00 a.m. on May 12, 2000, to: Cashier, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115.

FOR FURTHER INFORMATION CONTACT: Ida T. Viarreal at (505) 438–7603.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder(s) submitting the highest cash offer provided that the high bids meet or exceed the fair market value of the tracts as determined by the authorized officer after the sale. Each bid should be clearly identified by tract number or serial number on the outside of the envelope containing the bid(s). No bid that is less than $100.00 per acre, or fraction thereof, will be considered. This $100.00 per acre is a regulatory minimum, and is not intended to reflect the fair market value of the tract.

Sealed bids clearly marked ''Sealed Bid for NMNM 99144 Coal Sale—Not to be opened before 10 a.m. Friday, May 12, 2000.'' must be received on or before 9 a.m., Friday, May 12, 2000. Bids should be sent by certified mail, return receipt requested, or should be hand delivered. The cashier will issue a receipt for each hand delivered sealed bid. Bids received after 9 a.m., on May 12, 2000, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. If identical high sealed bids are received, the tying bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be within 15 minutes following the sale official's announcement at the sale that identical sealed bids have been received.

Coal Tract To Be Offered

The coal resources to be offered consist of all recoverable reserves in the following described lands located in San Juan County, New Mexico and are described as follows:

T. 30 N., R. 14 W., NMPM
Sec. 17, ALL;
Sec. 18, ALL;
Sec. 19, ALL;
Sec. 20, ALL;
Sec. 29, ALL;
Sec. 30, ALL;
Sec. 31, Lots 1–4, N½N½S½.

Containing 4,483.99 acres, more or less.

The tract is covered with existing oil and gas leases. There are several oil and/or gas wells on the tract. The estimate of the bonus value of the coal will include consideration of future oil and gas production from these wells, as well as the value of undeveloped reserves. An economic analysis of this future income stream will determine whether a well, or reserves, is purchased by the coal operator prior to mining. Other costs considered will include moving and removing roads, pipelines, power lines and surface facilities.

Rental and Royalty

The lease issued as a result of this lease offering will require payment of an annual rental of $3.00 per acre or a fraction thereof, and a royalty payable to the United States of 12½ percent of the value of the coal removed by surface method and 8 percent of the value of the coal removed by underground methods. The value of the coal will be determined in accordance with 30 CFR § 206.250.

Notice of Availability

Bidding instructions for the offered tract is included in the Detailed Statement of Coal Lease Sale. Copies of the Statement and the proposed coal lease are available upon request in person or by mail from the BLM New Mexico State Office at the address shown above. The case files are available for inspection during normal business hours only at the Santa Fe, New Mexico location.

Dated: April 19, 2000.

Stephen D. Salzman,

Acting, State Director.

[FR Doc. 00–10273 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET, GP0–0193; OR–5565]

Notice of Proposed Withdrawal and Public Meeting, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 17,056.10 acres of public lands from settlement, sale, location, or entry under the general land laws including the mining laws, but not from leasing under the mineral leasing laws, to protect and preserve the geological and biological resources of the Diamond Craters Outstanding Natural Area and Area of Critical Environmental Concern. This notice identifies the time, date, and place of a public meeting to discuss issues relative to the proposed withdrawal.

DATES: Comments must be received by July 25, 2000.

ADDRESSES: Comments should be sent to the Burns District Manager, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Skip Renchler, BLM, Burns District Office, 514–573–4443.

SUPPLEMENTARY INFORMATION: The Diamond Craters Outstanding Natural Area and Area of Critical Environmental Concern was withdrawn for a 20 year period by Public Land Order No. 5822 on January 22, 1981, as described in the **Federal Register** Volume 46, page 6947. The Bureau of Land Management is requesting a new withdrawal for the area to continue the protection of the Diamond Crater Area. Notice is hereby given that a public meeting will be held at the Burns District Office Conference Room located at HC 74–12533 Hwy 20 West, Hines, Oregon 97738. The public is invited to an open house to discuss issues and concerns relative to the proposed withdrawal. The doors will be open to the public from 6:00 P.M. to 8:00 P.M., May 17, 2000. Written comments will also be considered if filed within 90 days from the date of this publication. Comments may be addressed to the District Manager, Burns District at the address above.

Dated: April 20, 2000.

Robert D. DeViney, Jr.,

Chief, Branch Realty and Records Services.

[FR Doc. 00–10431 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Great Smoky Mountains National Park, NC

SUMMARY: Notice is given that the boundary of the Great Smoky Mountains National Park has been revised to encompass additional lands. The boundary has been revised for the preservation, protection, interpretation and management of the area.

SUPPLEMENTARY INFORMATION: The boundary of the Great Smoky Mountains National Park has been revised to encompass lands as depicted on drawing 133/92002, Sheet 13 of 18, of the Great Smoky Mountains National Park as prepared by the National Park Service. The map is on file and available for inspection in the Land Resources Program Center for the Southeast Region and in the Department of the Interior, Offices of the National Park Service.

This boundary revision is authorized pursuant to Public Law 69–268 (44 Stat. 616) dated May 22, 1926, which authorized the establishment of the Great Smoky Mountains National Park, and Sections 7(c)(i) and 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (P.L. 95–42, 91 Stat. 210), and the Act of November 12, 1996 (P.L. 104–333, 110 Stat. 4194), that further authorized minor revisions in the boundaries whenever the Secretary of the Interior determines that to do so will contribute to and is necessary for the preservation, protection, interpretation or management of an area of the national park system.

ADDRESSES: The map depicting the revised boundary for the Great Smoky Mountains National park is available for inspection at the following locations:

Land Resources Program Center, Southeast Regional Office, National Park Service, 100 Alabama Street, SW., Atlanta, GA 30303

National Park Service, Land Resources Division, Department of the Interior, 1849 C Street, NW., Washington, DC 20240–0001

Dated: December 22, 1999.

Danielle Brown,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 00–10313 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirty-second meeting of the Gettysburg National Military Park Advisory Commission.

DATES: .The public meeting will be held on May 18, 2000, from 7 p.m.–9 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: April 17, 2000.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 00–10377 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on May 22, 2000, in Santa Fe, New Mexico.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet in the DeVargas room of the Hotel St. Francis, 201 Don Gasper Avenue, Santa Fe, New Mexico. Matters to be discussed will include, officer and committee reports; consideration of present and future NCPTT programs; consideration of NCPTT mission and long-range plan, assess the accomplishment of the board's first six years; and the election of officers for two-year terms.

Monday, May 22 the meeting will start at 8:30 a.m. and end at 5 p.m. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National

Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street, NW, Washington, DC 20240, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: April 20, 2000.

E. Blaine Cliver,

Chief, HABS/HAER, Designated Federal Official, National Park Service.

[FR Doc. 00–10376 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Arkansas in the Possession of the Arkansas Archeological Survey, Fayetteville, AR

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 Arkansas in the possession of the Arkansas Archeological Survey, Fayetteville, AR.

A detailed assessment of the human remains was made by Arkansas Archeological Survey professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

During 1991–1997, human remains representing 39 individuals were recovered from Parkin State Park during excavations conducted by the Arkansas Archeological Survey in cooperation with the Quapaw Tribe of Indians, Oklahoma under a Memorandum of Agreement. No known individuals were identified. The 36 associated funerary objects include an Old Town red human head effigy vessel, Mississippian ceramics and sherds, mussel shells and fragments, unidentified animal bones and fragments, charred maize cobs, fossil and bone beads, a debitage flake, chert blade and scraper, marine shell fragments, a hemitite fragment, and a projectile point.

Based on French colonial records, the Quapaw were known to be the only tribe present in the St. Francis River valley area near the mouth of the Arkansas River c. 1700 A.D. Although no definite Quapaw villages have been identified in the St. Francis River valley where the Parkin site is located, the Quapaw tribe may have used that area as an important hunting territory. Oral history evidence presented by representatives of the Quapaw Tribe of Indians, Oklahoma indicates a migration from the north to their location near the mouth of the Arkansas River.

The Quapaw Tribe of Indians, Oklahoma has maintained a strong interest in the Parkin site. The Quapaw Tribe entered into an agreement with the State of Arkansas when the site was acquired for an archeological park to help coordinate research and development at the park.

Based on the above mentioned information, officials of the Arkansas Archeological Survey have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 39 individuals of Native American ancestry. Officials of the Arkansas Archeological Survey have also determined that, pursuant to 43 CFR 10.2(d)(2), the 36 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 Arkansas Archeological Survey 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. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Paddy Murphy, Director, Historic Resources and Museum Services, Arkansas State Parks, One Capitol Mall, Little Rock, AR 72201; telephone: (501) 682–3603, before May 26, 2000. 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: April 10, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10316 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Federal Bureau of Investigation (FBI), San Francisco, 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 Native American human remains in the possession of the Federal Bureau of Investigation (FBI), San Francisco, CA.

A detailed assessment of the human remains was made by the FBI's Laboratory Division (Hair and Fiber Section) and San Francisco office professional staff in consultation with representatives of the Ute Indian Tribe of the Unitah and Ouray Reservation, Utah.

On July 19, 1996, human remains representing one individual were recovered by FBI Agents from Ripley's Entertainment, Orlando, FL. These human remains consist of a scalp with an eagle feather and have been identified as those of Chief Little Bear of the Unitah and Ouray Ute bands. No associated funerary objects are present.

In April 1995, these human remains and associated funerary object were part of The Custer collection being auctioned by Butterfield and Butterfield. The Custer collection belonged to a Mr. Acevedo from New York City, NY, and consisted mainly of antique firearms in addition to other Indian artifacts. On May 5, 1995, these human remains and associated funerary object were sold to Ripley's Entertainment, Orlando, FL.

On April 3, 1996, at the request of the United States Attorney's Office for the Northern District of California, the FBI began an investigation into the trafficking of Native American scalps by Butterfield and Butterfield Auction House, San Francisco, CA. On July 19, 1996, Ripley's Entertainment released custody of the Native American scalp to FBI agents, and these human remains and associated funerary object were sent to the FBI Laboratory, Washington, DC

for examination. Based on morphological characteristics, FBI examiners have determined that the head hairs on the scalp exhibit mongoloid characteristics, a classification which encompasses Native American hair.

Butterfield and Butterfield's auction catalog for this collection states that this scalp was taken at the Battle of Ute, c. 1879, and a contemporary letter accompanying this scalp states: ''This scalp was taken near Rawlings, Indian territory, USA, September 26, 1879. It belonged to the Chief Little-Bear, a Ute Indian, who assisted at the massacre of U.S. Troops under Captain Tomlinson, near that place. The feather plaited into the hair, (sic) indicates that he was a chief of the first rank. Presented to (?) Cooke by Capt. A.N. Cheney, 7th U.S. Cavalry.''

Historic records provided by the National Park Service with the assistance of the U.S. Army Center of Military History supports this letter of provenance. According to historic documents, the U.S. Army and Ute bands did have military engagements near Rawlings, WY in September of 1879. Nothing in historic documents, analysis, or consultation indicates these human remains are those of any other individual than Little Bear.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Based on the above mentioned information, officials of the Federal Bureau of Investigation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Federal Bureau of Investigation 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 Ute Indian Tribe of the Unitah and Ouray Reservation, Utah.

The eagle feather present with these human remains is believed to have been the personal property of Little Bear. While the eagle feather does not appear to meet the statutory definition of ''associated funerary object'', officials of the Federal Bureau of Investigation have determined that, pursuant to standard practice regarding personal property, Manual of Administrative Operations and Procedures, Sect. 2–4.4.1(5), the one object listed above is subject to return to the next of kin, in this case the Ute Indian Tribe of the Unitah and Ouray Reservation, Utah.

This notice has been sent to officials of the Ute Indian Tribe of the Unitah and Ouray Reservation, Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Special Agent Brian J. Guy, FBI, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone: (415) 553–7400, before May 26, 2000. Repatriation of the human remains to the Ute Indian Tribe of the Unitah and Ouray Reservation, Utah 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: April 10, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10317 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and Unassociated Funerary Objects in the Control of the Bureau of Indian Affairs, Department of the Interior, Washington, DC and in the Possession of the Milwaukee Public Museum, Milwaukee, WI

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, associated funerary objects, and unassociated funerary objects in the control of the Bureau of Indian Affairs, Department of the Interior, Washington, DC and in the possession of the Milwaukee Public Museum, Milwaukee, WI.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff in consultation with representatives of the Menominee Indian Tribe of Wisconsin.

In 1919, human remains representing a minimum of three individuals were recovered from the Five Islands Mound Group (47–ME–11) within the exterior boundaries of the Menominee reservation during non-legally authorize excavations conducted by Samuel A. Barrett, MPM Curator of Anthropology, Milwaukee, WI, and Alanson B. Skinner, Museum of the American Indian, Heye Foundation, New York, NY. No known individuals were identified. The 198 associated funerary objects consist of grit-tempered, cordmarked sherds and a chert point fragment.

The Five Islands Mound Group site consists of eight mounds and a village occupation. Based on cultural material, this site has been dated to the Woodland period.

The 28 cultural items consist of grit-tempered, cordmarked sherds. In 1919, these cultural items were recovered from a mound at an unnamed site in Keshena, WI during non-legally authorized excavations within the exterior boundaries of the Menominee reservation by Samuel A. Barrett, MPM Curator of Anthropology, Milwaukee, WI and Alanson B. Skinner, Museum of the American Indian, Heye Foundation, New York, NY.

In 1921, human remains representing a minimum of seven individuals were recovered from an unnamed site near Five Islands (47–ME–12) within the exterior boundaries of the Menominee reservation during non-legally authorized excavations conducted by Alanson B. Skinner, Museum of the American Indian, Heye Foundation, New York, NY. No known individuals were identified. No associated funerary objects are present.

This unnamed site near Five Islands has not been completely described in excavation records.

In 1921, human remains representing a minimum of seven individuals from the Kakwatch Mound Group (47–ME–6) within the exterior boundaries of the Menominee reservation during unauthorized excavations conducted by Samuel A. Barrett, MPM Curator of Anthropology, Milwaukee, WI, and Alanson B. Skinner, Museum of the American Indian, Heye Foundation, New York, NY. No known individuals were identified. The two associated funerary objects include a bear jaw and sherds from a grit-tempered, cordmarked ceramic pot.

The 184 cultural items include 169 grit-tempered, cordmarked sherds, a reconstructed grit-tempered, cordmarked pot, charcoal, bear jaw fragments, faunal remains, a hammerstone, a sandstone abrader, a small pitted hammer, a small celt, two stone mortars, two lithic projectile points, charred walnut fragments, and lithic debitage. These cultural items were excavated from burials from which the human remains were not collected

at the Kakwatch Mound Group (47–ME–6) within the exterior boundaries of the Menominee reservation during unauthorized excavations conducted by Samuel A. Barrett, MPM Curator of Anthropology, Milwaukee, WI, and Alanson B. Skinner, Museum of the American Indian, Heye Foundation, New York, NY.

The Kakwatch Mound Group consists of two mound groups (nine mounds total), a village occupation, and numerous refuse pits. Based on material culture, the Kakwatch Mound Group has been identified as a Woodland occupation.

In 1921, human remains representing a minimum of five individuals were recovered from the Nakuti's Berry Patch Mound Group (47–ME–5) within the exterior boundaries of the Menominee reservation during non-legally authorized excavations conducted by Alanson B. Skinner, MPM Curator of Anthropology, Milwaukee, WI. No known individuals were identified. No associated funerary objects are present.

In 1921, human remains representing one individual were recovered from the Paiawisit Mound Group (47–ME–58) within the exterior boundaries of the Menominee reservation during non-legally authorized excavations conducted by Alanson B. Skinner, MPM Curator of Anthropology, Milwaukee, WI. No known individual was identified. The 16 associated funerary objects consist of grit-tempered, cordmarked sherds.

Before 1920, human remains representing one individual were recovered from the South Branch Chapel site (47–ME–58) within the exterior boundaries of the Menominee reservation during non-legally authorized excavations conducted by Charles H. Koonz, Clerk of the Indian Agency at Keshena, WI. No known individual was identified. The ten associated funerary objects include one conch shell columnella and nine shell fragments.

All human remains from the above-listed sites have been identified as Native American. Based on analysis of mound types, site descriptions, and stylistic analysis of material culture, the sites listed above have been identified as part of the Keshena Focus, which has been linked with both the Late Woodland Period Effigy Mound Culture and the more general Woodland Period focus.

Based on the above mentioned information, officials of the Bureau of Indian Affairs and the Milwaukee Public 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 24 individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and the Milwaukee Public Museum have also determined that, pursuant to 43 CFR 10.2(d)(2), the 227 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. Officials of the Bureau of Indian Affairs and the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 212 cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Bureau of Indian Affairs and the Milwaukee Public 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, associated funerary objects, unassociated funerary objects and the Menominee Indian Tribe of Wisconsin.

This notice has been sent to officials of the Menominee Indian Tribe of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, the Ho-Chunk Nation of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation, the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation, the Oneida Tribe of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation, and the Stockbridge-Munsee Community of Mohican Indians of Wisconsin. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains, associated funerary objects, and unassociated funerary objects should contact Ann McMullen, Ph.D., Curator of North American Ethnology, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233; telephone: (414) 278–2786; fax (414) 278–6100, before May 26, 2000. Repatriation of the human remains, associated funerary objects to the Menominee Indian Tribe of Wisconsin may begin after the date if no additional claimants come forward.

Dated: April 10, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10314 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and Unassociated Funerary Objects From Yukon Island, AK in the Possession of the University of Pennsylvania Museum of Archeology and Anthropology, Philadelphia, PA

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, associated funerary objects, and unassociated funerary objects from Yukon Island, AK in the possession of the University of Pennsylvania Museum of Archeology and Anthropology, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Regional Corporation, Koniag Incorporated, the Village of Salamatoff, the Seldovia Village Tribe, the Native Village of Port Graham. The Kenaitze Indian Tribe, the Native Village of Nanwalek (aka English Bay), and the Kodiak Tribal Council were invited to consult but did not participate.

In 1931 and 1932, human remains representing four individuals were excavated from the Fox Farm site on Yukon Island, Kachemak Bay, in south-central Alaska by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. No known individuals were identified. The 24 associated funerary objects include antler and bone tools and a stone lamp.

In 1931 and 1932, human remains representing nine individuals were excavated from a midden on Yukon Island, Kachemak Bay, AK by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. No

known individuals were identified. No associated funerary objects are present.

In 1931 and 1932, human remains representing two individuals were excavated from Yukon Island, Kachemak Bay, AK by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. No known individuals were identified. No associated funerary objects are present.

The seven cultural items include beads, stone tools, and a bone needle. These cultural items were excavated from Yukon Island, Kachemak Bay, AK by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. Although these items are recorded as burial objects, they cannot be associated with any of the above human remains.

The 11 cultural items include labrets, and stone and bone tools. These cultural items were excavated from Yukon Island, Kachemak Bay, AK by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. In 1993, the human remains recovered with these cultural items were repatriated from the University of Pennsylvania Museum to the Chugach Alaska Corporation.

Based on archaeological evidence and material culture, these sites on Yukon Island have been identified as Kachemak Bay Pacific Eskimo occupations dated to 1800 B.C.–1100 A.D.

In 1931 and 1932, human remains representing eight individuals were excavated at Cottonwood Creek on the north shore of Kachemak Bay, AK by Frederica De Laguna under the auspices of the University of Pennsylvania Museum. No known individuals were identified. The five associated funerary objects include shell beads, whale bone and antler tools.

The one cultural item is a slate blade. This cultural item is associated with previously repatriated human remains from Cottonwood Creek, Yukon Island, AK from the University of Pennsylvania Museum to the Chugach Alaska Corporation in 1993.

Based on archaeological evidence and analysis of the associated and unassociated funerary objects, these individuals from Cottonwood Creek are Native American dating to the Kachemak Bay Eskimo Tradition (1800 B.C.–1100 A.D.).

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 23 individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2(d)(2), the 41 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. Officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these seven cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Lastly, officials of the University of Pennsylvania 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, associated funerary objects, unassociated funerary objects and the Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Regional Corporation, Koniag Incorporated, the Village of Salamatoff, the Seldovia Village Tribe, the Native Village of Port Graham, the Kenaitze Indian Tribe, the Native Village of Nanwalek (aka English Bay), and the Kodiak Tribal Council. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains, associated funerary objects, and unassociated funerary objects should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104–6324; telephone: (215) 898–4051, fax (215) 898–0657, before May 26, 2000. Repatriation of the human remains, associated funerary objects, and unassociated funerary objects to Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: April 10, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10315 Filed 4–25–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677 (Review)]

Coumarin From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on coumarin from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2000, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 73576, December 30, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 2, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 5, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 5, 2000. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

[2] The Commission has found the response submitted by PACE Local 2–00948 to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Issued: April 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–10425 Filed 4–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–868–871 (Preliminary)]

Steel Wire Rope From China, India, Malaysia, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China, India, and Malaysia of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission further determines, pursuant to 19 U.S.C. 1677(24)(A), that the subject imports from Thailand that are alleged to be sold at LTFV are negligible, but that there is a potential that subject imports from Thailand will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States.[2] The Commission further determines either that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of steel wire rope from Thailand [3] or that such imports are negligible.[4]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Miller and Commissioner Askey determined that there is no potential for subject imports from Thailand to imminently account for more than 3 percent of the volume of all such merchandise imported into the United States.

[3] Commissioners Hillman, Koplan, and Okun made this finding with Chairman Bragg dissenting. Chairman Bragg found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Thailand that are alleged to be sold at LTFV.

[4] Vice Chairman Miller and Commissioner Askey found that subject imports are negligible and do not reach the issue of a reasonable indication of threat of material injury by reason of subject imports from Thailand.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 1, 2000, a petition was filed with the Commission and the Department of Commerce by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee),[5] Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of steel wire rope from China, India, Malaysia, and Thailand. Accordingly, effective March 1, 2000, the Commission instituted antidumping duty investigations Nos. 731–TA–868–871 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 9, 2000 (65 FR 12575). The conference was held in Washington, DC, on March 22, 2000,

[5] The Committee is comprised of the following U.S. producers: Bergen Cable Technology, Inc.; Bridon American Corp.; Carolina Steel & Wire Corp.; Continental Cable Co.; Loos & Co., Inc.; Paulsen Wire Rope Corp.; Sava Industries, Inc.; Strandflex, A Division of MSW, Inc.; and Wire Rope Corp. of America, Inc.

and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 17, 2000. The views of the Commission are contained in USITC Publication 3294 (April 2000), entitled Steel Wire Rope from China, India, Malaysia, and Thailand: Investigations Nos. 731–TA–868–871 (Preliminary).

By order of the Commission.

Issued: April 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–10424 Filed 4–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–422]

Notice of Commission Determination Not To Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, the Public Interest, and Bonding

In the Matter of Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on March 17, 2000, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on June 17, 2000, based on a complaint by Moen Incorporated of Ohio. 64 FR 32522. Moen's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain two-handle centerset faucets and escutcheons, and components thereof (faucets). The complaint alleged that five respondents had infringed a design patent held by complainant Moen. The five respondents named in the investigation were Foremost International Trading, Inc. of East Hanover, New Jersey (Foremost), Chung Cheng Faucet Co. Ltd. of Hsien Taiwan (Chung Cheng), Hometek International Group of Illinois (Hometek), Stuhlbarg International Sales Company Inc. d.b.a. Sisco, Inc. of Rancho Dominguez, California (Sisco), and Lota International Co. Ltd. of the People's Republic of China (Lota).

On October 6, 1999, the Commission determined not to review an ID terminating the investigation as to Hometek on the basis of a consent order. On December 29, 1999, the Commission issued a notice that an ID granting complainant's motion for partial summary determination that it had satisfied the economic prong of the domestic industry requirement had become the determination of the Commission. An evidentiary hearing was held December 13–15, 1999, with complainant, respondents Foremost and Chung Cheng, and the Commission investigative attorney participating. On February 1, 2000, the Commission determined not to review an ID terminating the investigation as to respondents Sisco and Lota.

On March 17, 2000, the ALJ issued his final ID, finding a violation of section 337 by Foremost and Chung Cheng, the two remaining respondents. The ALJ also issued his recommendations on remedy and bonding. The ALJ recommended that the Commission issue a general exclusion order directing that faucets that infringe the '466 patent be excluded from entry into the United States. He also recommended a 264 percent bond during the period of Presidential review.

No party filed a petition for review of the ID.

Having examined the record in this investigation, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may issue: (1) An order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the March 17, 2000, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on May 5, 2000. Reply submissions must be filed no later than the close of business on May 12, 2000. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to

submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: April 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–10426 Filed 4–25–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Technical Assistance in Institution Mission Change

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to provide Technical Assistance to state correctional agencies in addressing the change of mission in a state prison(s).

Background

With the unprecedented growth of offender populations, the changing profile of the offenders (increasing numbers of aging, violent juveniles sentenced as adults, women, mentally ill, etc.), and the inability of many jurisdictions to keep pace with construction of appropriate facilities, many correctional systems have been required to change all or a portion of the original mission of existing institutions. This has often resulted in substantial changes in levels of staffing, shifting roles and responsibilities, facility renovation that has changed the nature of staff/inmate contact and delivery of service, reassignment of staff, and increased training needs. In some instances, dramatic mission change has occurred as, for example, prisons for men have become women's prisons, juvenile facilities have become adult, or mental health facilities have become standard prisons. In other instances, with the movement of lower custody inmates to other states or to private contract facilities, the percentage of violent or difficult inmates has increased and impacted the mission of the facility. In addition, as prison systems have expanded and some institutions have become more crowded without corresponding increases in funding and, in many instances, reduction of resources, a former mission has become obsolete without a planned or intentional change of mission.

In FY99 the National Institute of Corrections (NIC) sponsored a cooperative agreement for the study of institution mission change. The experience of eleven (11) institutions whose core mission had been changed was examined. Through observation, interviews, and other strategies designed to gain understanding of the change process, the central elements of successful organizational change in the institutional context were identified. The methodology, processes, and strategies for successful management of mission change were studied and the lessons learned, both positive and negative, were documented. The impact of organizational change on correctional staff, the resulting role confusion or disparity, and strategies for minimizing negative staff effects were specifically examined.

A report documenting the relevant data and findings was prepared and materials were developed that will assist in planning and implementing mission change. These materials include facilitation guides to assist administrators in establishment of executive parameters governing decision-making, strategic planning guides related to mission change, project management software, and materials to assist in presenting supervisor and staff workshops to enhance understanding of change, the change process, and the agency/institution plan.

In a collaborative venture with the NIC Prisons Division, the recipient of the FY2000 Cooperative Agreement will provide Technical Assistance to a minimum of 5 state correctional agencies/institutions in addressing mission change. This may include agencies/institutions who are experiencing difficulties because of mission change that occurred in the recent past, those who are planning or preparing to implement mission change, or other change scenarios that are consistent with the objectives of this project. The agencies receiving assistance may include those who participated in the FT1999 project or others expressing a need and interest.

The project awardee and NIC will develop an announcement of the award in which requests for assistance are solicited. A questionnaire will be included with the announcement that will gather basic information concerning the nature of the need in the agencies/institutions applying for the assistance. The awardee and NIC will jointly select participant agencies based on factors including, but not limited to, the nature of the need identified, representation of types of mission change, region of the country, size of the jurisdiction/institution, and other factors identified by applicants for this cooperative agreement. The Technical Assistance will be fully documented including, at minimum, a description of the problem or need, documentation of the awardee's on-site assessment, strategies employed in providing assistance, and an outcome evaluation and narrative.

A total of $152,000 is reserved for this project which will support one cooperative agreement for a 12 month period. The recipient of the award will be selected through a competitive solicitation process. Dick Franklin is the designated NIC project manager.

Project Scope

The goals of this cooperative agreement include the following:

- In selecting participant agencies/institutions, explore the background of the request for Technical Assistance to determine, at minimum, the nature of the issue/problem to be addressed, feasibility of Technical Assistance as a vehicle to address the issue/problem, probable strategies and resources required for successful intervention, and the level of impact successful intervention will have in the agency/institution.
- Determine the level of commitment of the staff who are essential to successful intervention and their ability

and willingness to be full partners in the effort to provide assistance.

• Upon selection of an agency/institution for participation, in-depth assessment of the environment and operation to achieve understanding of the issue/problem, whether the desired change is a reasonable objective, and other issues critical in assessment of the feasibility of intervention.

• Identify forces and stakeholders, including community and other external influences, that impact upon the acceptance and adjustment to change by the organization, institutional operations and programs, and staff.

• Identify probable strategies of interface and develop strategies for intervention that has the acceptance and full support of the agency and institution leadership and shows promise of successful assistance/intervention.

• Develop a summary report of the assistance provided that will provide correctional administrators with insights in addressing issues/problems of change or in planning and implementing mission change. The summary report will consist of an expanded case study of each of the participating sites.

• Develop a summary of the project consisting of lessons learned and guidelines for the management of mission change.

• Assess outcomes and the impact of the project relative to its stated intent and the needs of the field.

Specific Requirements

The successful applicant will propose a project approach that will ensure accomplishment of each of the stated goals of this project. At minimum, the following requirements will be met in pursuit of the stated goals:

• Review of the FY 1999 Management of Institution Mission Change project deliverables.

• Identification of relevant literature and other information that will illuminate the subject area and contribute to understanding of the key issues of promising approaches to change in the institution environment.

• Formation of a conceptual framework reflecting awareness of the issues in change in an institution environment and project staff possessing the requisite skills and knowledge essential to the success of the project.

• Coordination with the NIC project director at critical points in project development and as necessary to ensure clarity and accomplishment of goals and a satisfactory outcome.

Additional, specific requirements related to the training package are as follows:

Following review in draft form by the project coordinator, the summary report must be professionally edited and submitted in camera-ready hard copy and 3.5″ computer disk or zip drive disk using WordPerfect 7.0 or higher software for use with IBM compatible computers with Windows operating systems.

It will be the responsibility of the award recipient to secure written approval to use any copyrighted materials or photographs and to provide the original approval with the documents.

Authority: Public Law 93–415.

Funds Available

The award will be limited to a maximum of $152,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Application Requirements

Applicants must prepare a proposal that defines their plan for meeting the goals and requirements of this project. They are expected to define the conceptual framework most appropriate and relevant and the methodology to used in pursuing the project goals. In addition, they will identify a project staff in which all of the requisite skills are represented and who have made a commitment of time to the project. The conceptual framework of the proposal will demonstrate the applicants understanding of the management of change in the institution context and, though subject to further definition based on the nature of the requests for assistance, will demonstrate the applicants vision of the completed project.

Funding for this project has been established at $152,000. The applicant must provide a budget *and* budget narrative that clearly identifies the allocation of funds for achievement of the goals of the cooperative agreement. The rationale for the expenditures must be provided in the budget narrative unless patently obvious in the proposal.

Deadline for Receipt of Applications

Applications must be received by 4:00 p.m., EDT, on Friday, May 26, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: Request for the applicant kit, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N. W., Room 5007, Washington, D. C. 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http//www.nic.org (click on ''What's New'' and ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Dick Franklin at the above address or by calling 800–995–6423 or 202–307–1300, ext. 145, or by E-mail via rfranklin@bop.gov.

Project Completion

The award recipient will be responsible to submit all required reports and corrections or revisions of materials in a timely manner. The project period is 12 months from the date of the award and the project will not be deemed to have been completed until a final draft is accepted by the project coordinator.

Eligible Applicants

An eligible applicant is any state or general unit of local government, public or private, educational institutional, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations

Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process. It is anticipated that the award will be made within 60–90 days following the application due date.

Number of Awards: One (1).

NIC Application Number: 00P05 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372

This program is subject to the provision of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of

which is included in the application kit, along with further instructions on proposed projects serving more than one State.

Catalog of Federal Domestic Assistance Number: 16.603

Dated: April 20, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–10327 Filed 4–25–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Chief Financial Officer

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing various provisions of the Debt Collection Act of 1982, including Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 26, 2000.

ADDRESSES: Comments are to be submitted in writing to Mark Wolkow, Department of Labor, Office of the Chief Financial Officer, Room S–4502 Frances Perkins Building, 200 Constitution Ave. NW, Washington, D.C. 20210; via fax to 202–219–4975; or via email to wolkow-mark@dol.gov.

FOR FURTHER INFORMATION CONTACT: Mark Wolkow, Division of Policy and Internal Control at 202–219–8184 x127, or via email at wolkow-mark@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Act of 1982 and the Federal Claims Collection Standards, as implemented in the Department by 29 CFR Part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency reports a debt to a credit bureau or makes an administrative offset. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount or existence of a debt alleged owed the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by the agency official responsible for collection of the debt in order to reconsider his/her initial decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the agency official responsible for collection of the debt to determine whether the agency's action with regard to administrative offset or the assessment of interest, administrative costs or penalties would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. Presumably, the agency's initial determination would not change without the submission of new information.

Information concerning the debtor's assets, income, liabilities, etc., would typically not be available to the agency unless submitted by the debtor.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* EA permitting electronic submissions of responses.

III. Current Actions

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the agency official for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specified purpose will be implied from the debtor's submission of the information.

IV. *Type of Review:* Extension without change.

V. *Agency:* Office of the Chief Financial Officer.

VI. *Title:* Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest penalties and Administrative Costs.

VII. *OMB Number:* 1225–0030.

VIII. *Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; small business or organizations; farms; Federal employees.

IX. *Cite/Reference/Form/etc:* It is estimated that 10% of the individuals and organizations indebted to the Department will contest the proposed collection action and will request an administrative review and/or appeal an action based on undue financial hardship. In some cases the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, administrative review of the determination of indebtedness, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¾ hour time allotment to prepare and type a

letter. Debtors will not be asked to respond on a form.

X. *Estimated Total Burden Hours:* 12,250.

XI. *Estimated Total Burden Cost:*

Estimated annual cost to the Federal Government: $757,050.

Estimated annual cost to the respondents: $258,720.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 20, 2000.

Kenneth Bresnahan,

Chief Financial Officer.

[FR Doc. 00–10384 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

April 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz (202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contacting Darrin King (202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

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

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 78–06, Apprenticeship Plans.

OMB Number: 1210–0080.

Affected Public: Business or other for-profit; Not-for-profit institutions; Individuals or households.

Frequency: On Occasion.

Number of Respondents: 255.

Total Annual Responses: 1,275.

Estimated time per respondent: 5 Minutes.

Total burden hours: 106 Hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Section 408(a) of the ERISA gives the Secretary of Labor the right to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited Transaction Class Exemption 78–6 applies only to welfare benefit plans. Class exemption 78–6, which was granted on May 24, 1978, exempts from the prohibited transactions restrictions transactions involving: (1) The purchase of personal property by a collectively bargained multiple employer-employee welfare benefit plan maintained for the purpose of providing apprenticeship training plans from an employer who contributes to such a plan, or a wholly owned subsidiary of such an employer; and (2) the leasing of real property or personal property by an apprenticeship plan from a contributing employer or wholly owned subsidiary of such an employer. By requiring that records pertaining to the exempted transaction are maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 91–38, Collective Investment Funds.

OMB Number: 1210–0082.

Affected Public: Business or other for-profit; Not-for-profit institutions; Individuals or households.

Frequency: On Occasion.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Estimated time per respondent: 5 Minutes.

Total burden hours: 83 Hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Section 408(a) of the ERISA gives the Secretary of Labor the right to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited Transaction Class Exemption 91–38 provides and exemption from the prohibited transaction provisions of ERISA for certain transactions between collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specific percentage of the total assets in the collective investment fund. By requiring that records pertaining to the exempted transaction are maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–10381 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; MIS Reporting Requirements for Youth Opportunity Grants

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning proposed information collection regarding MIS reporting requirements for Youth Opportunity Grants. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before June 26, 2000. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: Gregg Weltz, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4463, Washington, DC 20210, 202–219–5305, extension 168.

SUPPLEMENTARY INFORMATION:

Background

Youth Opportunity Grants concentrate a large amount of resources in high-poverty neighborhoods to increase the employment, high school graduation, and college enrollment rates of youth growing up in these communities. In February, the Department of Labor announced Youth Opportunity awards to 36 urban, rural, and Native American sites. The MIS requirements for these grants will include information on enrollee characteristics, services received, outcomes, retention in jobs and school, and customer satisfaction of enrollees and employers. Youth Opportunity program operators will need to maintain individual records of enrollees, and prepare quarterly data summary reports to the Department of Labor.

Type of Review: Paperwork Reduction.

Agency: Employment and Training Administration.

Title: MIS Requirements for Youth Opportunity Grants.

Affected Public: Local Workforce Investment Boards and Youth Opportunity Service Providers such as community-based organizations, schools, and community colleges.

Total Respondents: 40 Youth Opportunity Grantees and Pilot Sites.

Frequency: Monthly.

Total Responses: 480 each year.

Average Time Per Response: 130 hours. This is based on the following assumptions: Each site will need to enter updated information for an average of 1,250 participant records over the course of a year at an average time of one hour a year, or 104 hours per months. Sites will require an average of 16 hours to prepare each quarterly report. Customer satisfaction surveys will require an average of 10 hours per site per month.

Estimated Total Burden Hours: 62,400 hours.

Estimated Total Burden Cost: $1,572,800 to operate and maintain this MIS system each year, and $800,000 in start-up costs.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 18, 2000.

Lorenzo Harrison,

Acting Administrator, Office of Youth Services.

[FR Doc. 00–10382 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Product Testing by Applicant or Third Party

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before June 26, 2000.

ADDRESSES: Written comments shall be mailed to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice) or (703) 235–156351 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines ''permissible'' equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a

fire, explosion, or other specific safety hazard related to use, have been met. Additionally, 30 CFR Part 7 provides procedures whereby products may be tested and certified by the applicant or a third party.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to ''Product Testing by Applicant or Third Party.'' MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission or responses.

A copy of the proposed information collection request may be viewed on the Internet by assessing the MSHA Home Page *(http://www.msha.gov)* under ''Statutory and Regulatory Information'' then selecting ''Paperwork Reduction Act submissions (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

MSHA is seeking to continue the requirements for approving certain products and equipment for use in underground mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Product Testing by Applicant or Third Party.

OMB Number: 1219–0100.

Recordkeeping: 30 CFR 7.4(a) requires respondents to maintain records of test results and procedures for a period of at least 3 years. Section 7.6(c) requires respondents to maintain records of the initial sale of each unit having an approval marking for at least the expected shelf life of and service life of the product.

Affected Public: Businesses or other for-profit.

Total Respondents: 391.

Frequency: On occasion.

Total Responses: 564 responses.

Average Time per Response: 2.81 hours.

Estimated Total Burden Hours: 1,585 hours.

Estimated Total Burden Cost: $114,103.

Total Annualized Costs: $0.

Total Operation/Maintenance Costs: $554,199.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: April 20, 2000.

Theresa M. O'Malley,

Program Analysis Officer, Office of Program Evaluation and Information Resources.

[FR Doc. 00–10383 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–28]

Agency Information Collection Activities; Announcement of MOM Approval

AGENCY: Occupational Safety and Health Administration, DOL.

ACTION: Notice of approval.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that the Office of Management and Budget (OMB) approved the Information Collection Request for the Vinyl Chloride Standard under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date for this action.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, N.W., Washington, ,D.C. 20210, telephone (202) 693–2444.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1999, (64 FR 52351–52352), the Agency announced its intent to request OMB to renew its current approval for the paperwork requirements contained in the Vinyl Chloride Standard (20 CFR 1910.1017, 1915.1017, and 1926.1117). Consistent with the paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the paperwork requirements contained in this standard, and assigned these requirement OMB control number 1218–0010. The approval expires February 28, 2003. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information (paperwork) unless the collection displays a valid control number.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC on April 21, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–10380 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program; Revised Notice

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of grant application deadline.

SUMMARY: This notice extends the Susan Harwood Training Grant Program application deadline from May 19, 2000, to June 2, 2000.

The notice of availability of funds and request for grant applications was originally published in the **Federal Register**, 65 FR 17316, March 31, 2000. Organizations interested in submitting a grant application should refer to the March 31 **Federal Register** notice which describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining detailed grant application instructions.

DATES: Grant application deadline is 4:30 p.m. Central Time, Friday, June 2, 2000.

ADDRESSES: Submit grant applications to the OSHA Office of Training and

Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail cindy.bencheck@osha.gov.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

Signed at Washington, D.C., this 20th day of April 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–10436 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Veterans' Workforce Investment Programs, Program Year 2000

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, DOL.

ACTION: Notice of availability of funds and solicitation for grant application for Veterans' Workforce Investment Programs, Program Year 2000 (SGA 00–04).

SUMMARY: This notice set forth the procedures for obtaining a solicitation package for the operation of employment and training programs under the Public Law 105–220, Workforce Investment Act (WIA), Section 168–Veterans' Workforce Investment Program (VWIP). The solicitation and all relevant documents, forms, certifications, and assurances is available for download at the Veterans' Employment and Training Service (VETS) Internet Home page *http://www.dol.gov/dol/vets/*. Furthermore, the solicitation is available on diskette from the Director for Veterans' Employment and Training (DVET), USDOL, assigned in your State.

DATES: An application package and instructions for completion will be made available on or before April 28, 2000. The closing date for receipt of a completed application in response to this SGA will be no later than May 26, 2000.

ADDRESSES: Application shall be mailed to: Lisa Harvey, U.S. Department of Labor, Procurement Service Center, Room N5416, 200 Constitution Ave., NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Service Center, Telephone (202) 219–6445.

SUPPLEMENTARY INFORMATION: A introduction letter will be mailed to all State Governors to be forwarded to the State entity as determined by the Governor. The State is the eligible applicant for grants to be funded under this SGA. An application for funds under this Solicitation will be accepted only if signed by the Governor of each State or his or her designee. A Governor's designee refers to the administrative head of the agency designated by the Governor to carry out the VWIP program in the State. Only one application will be accepted from each State. A transmittal letter must contain a statement that the designee is authorized to act on behalf of the Governor and administer the VWIP.

Signed at Washington, DC, this 21st day of April 2000.

Lawrence J. Kuss,

Grant Officer, U.S. Department of Labor, Procurement Services Center.

[FR Doc. 00–10435 Filed 4–25–00; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions (FACIE)

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Committee on International Exhibitions (FACIE), to the National Council on the Arts will be held on May 17, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 1 p.m. to 4 p.m., will be open to the public for policy discussion.

The remaining portion of this meeting, from 10 a.m. to 1 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: April 20, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–10365 Filed 4–25–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

May 3, 2000, 1 p.m.–1:30 p.m.: Closed Session

May 4, 2000, 11:30 a.m.–12:15 p.m.: Open Session

May 4, 2000, 1:30 p.m.–2 p.m.: Closed Session

May 4, 2000, 2 p.m.–5 p.m.: Open Session

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS:

Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 3

Closed Session (1 p.m.–1:30 p.m.)

Closed Session Minutes, March 2000 NSB Elections

Thursday, May 4

Open Session (11:30 a.m.–12:15 p.m.)

Presentation, Dr. Michael Turner, University of Chicago

Closed Session (1:30 p.m.–2 p.m.)

NSF Budget

Open Session (2 p.m.–5 p.m.)

Open Session Minutes, March 2000
Closed Session Items for August 2000
Chairman's Report
Director's Report
Executive Committee Annual Report
NSB 2001 Calendar
Committee Reports
Director's 1999 Merit Review Report
NSB Report on Communication and Outreach
NSF Budget and Planning
National S&E Infrastructure

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–10502 Filed 4–24–00; 12:50 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 24, May 1, 8, 15, 22 and 29, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, MD.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of April 24

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Renewal (public meeting)
(Contact: Dave Lange, 301–415–1730)

Wednesday, May 3

9:25 a.m. Affirmation Session (public meeting) (if needed)
9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (public meeting)
(Contact: Frank Cardile, 301–415–6185)

Week of May 8—Tentative

Monday, May 8

10 a.m. Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokai-Mura and the Implications on the NRC's Program (public meeting)
(Contact: Bill Troskoski, 301–415–8076)

Tuesday, May 9

8:55 a.m. Affirmation Session (public meeting) (if needed)
9 a.m. Meeting with Stakeholders on Efforts Regarding Release of Solid Material (public meeting)
Contact: Frank Cardile, 301–415–6185)

Week of May 15—Tentative

Tuesday, May 16

9:25 a.m. Affirmation Session (public meeting) (if needed)

Week of May 22—Tentative

Thursday, May 25

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (public meeting)
10:15 a.m. Briefing on Status of Regional Programs, Performance and Plans (public meeting)
1:30 p.m. Briefing on Improvements to 2.206 Process (public meeting)

Week of May 29—Tentative

Tuesday, May 30

9:25 a.m. Affirmation Session (public meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: April 21, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–10506 Filed 4–24–00; 12:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Special Nuclear Material of Less Than Critical Mass Licenses

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability and request for comments.

SUMMARY: The NRC is announcing the availability of, and requesting comments on, draft NUREG–1556, Volume 17, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Special Nuclear Material of Less Than Critical Mass Licenses,'' dated March 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the 17th guidance document developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and the NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in Regulatory Guide 10.3, ''Guide for the Preparation of Applications for Special Nuclear Material Licenses of Less Than Critical Mass Quantities.'' This draft report takes a more risk-informed, performance-based approach to licensing quantities of special nuclear material of less than critical mass, and reduces the information (amount and level of detail) needed to support an application to use this material. This document is strictly for public comment and is not for use in preparing or reviewing licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends July 25, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 17, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–C–24, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by

addressing electronic mail to cxb@nrc.gov. A copy of draft NUREG–1556, Volume 17, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Mrs. Carrie Brown, TWFN 9-F–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Draft NUREG–1556, Vol. 17 is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html*).

Dated at Rockville, Maryland, this 6th day of April, 2000.

For the Nuclear Regulatory Commission.

Anthony N. Tse,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–10391 Filed 4–25–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24399; File No. 812–11886]

The Kelmoore Strategy™ Variable Trust, et al.

April 19, 2000.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of any current or future investment portfolios of The Kelmoore Strategy™ Variable Trust (''Trust''), and shares of any other investment company or portfolio that is designed to fund insurance products and for which Kelmoore Investment Company, Inc. or nay of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor administrator (''Future Trusts'') (the Trust together with Future Trusts are the ''Trusts''), to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

APPLICANTS: The Kelmoore Strategy™ Variable Trust (the ''Trust'') and Kelmoore Investment Company, Inc. (''Kelmoore'').

FILING DATE: The application was filed on December 14, 1999, and amended and restated on March 22, 2000.

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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 15, 2000, and accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants: Kelmoore Investment Company, Inc., 2471 East Bayshore Road, Suite 501, Palo Alto, CA 94303, Attn: Ralph M. Kelmon, Jr., President.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is a Delaware business trust that is registered under the 1940 Act as an open-end management investment company. The Trust currently consists of a single investment portfolio, The Kelmoore Strategy™ Covered Option Fund (the ''Fund''). The Trust may offer one or more additional investment portfolios in the future (each a ''Future Fund, and together with the Fund, the Funds'').

2. Kelmoore is registered as an investment adviser under the 1940 Act, and serves as the investment adviser to the Trust and also acts as the underwriter of the shares of the Trust.

3. Once the Trust commences operations, shares representing interests in the Fund will be offered to insurance companies (each a ''Participating Insurance Company'') as an investment vehicle for separate accounts (''Separate Accounts'') supporting Variable Contracts.

4. At the time of their investment in the Trust, the Participating Insurance Companies have or will establish their own Separate Accounts and design their own Variable Contracts. Each participating Insurance Company, on behalf of its Separate Account, has or will enter into an agreement with the Trust concerning such Participating Insurance Company's participation in the Fund. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. The role of the Trust under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Funds to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested in the application.

Applicants also propose that the Trust may offer and sell shares representing interests in the Funds directly to Qualified Plans outside the separate account context.

Applicants' Legal Analysis

1. Applicants and their affiliates request an order pursuant to Section 6(c) of the 1940 Act exempting each insurance company and insurance company separate account supporting Variable Contracts which may hereafter invest in the Trusts from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be sold to and held by separate accounts funding Variable Contracts issued by both affiliated and unaffiliated insurance companies and by Qualified Plans. Applicants also request that the relief, to the extent necessary, extend to

investment advisers, principal underwriters and depositors of such separate accounts.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent those sections require ''pass through'' voting with respect to an underlying fund's shares. Rule 6e–2(b)(15) provides these exemptions only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer of any affiliate life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers it shares to a variable annuity or flexible premium variable life insurance separate account of the same company. The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of the same and any affiliated life insurance company is referred to as ''mixed funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to as ''shared funding.''

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) similarly provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer to sell their shares ''exclusively to separate accounts of the life issuer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding while not permitting shared funding.

5. In addition, neither Rule 6e–2 nor Rule 6e–3(T) contemplate that shares of the underlying portfolio funding Variable Contracts might also be sold to Qualified Plans. The use of a common management investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

6. Applicants state that changes in the federal tax law created the opportunity for the Trust to substantially increase its asset base by selling shares to Qualified Plans. Applicants further state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversified standards on the assets underlying Variable Contracts, such as those in each Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–50 which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in such portfolio must be held by the segregated asset accounts of our or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of Qualified Plans to hold shares of an investment company portfolio, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company portfolio as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(F)(3)(iii)). Applicants maintain that a result of this exception to the great diversification requirement, Qualified Plans may select the Funds as investment options without endangering the tax status of the Variable Contracts issued through Participation Insurance Companies as life insurance or annuities.

7. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations which made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of an registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 63–3((T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requiremen4ts of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognizes that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that those 1940 Act rules further recognizes that it also is unnecessary to apply Section 9(a) of the 1940 Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is not regulatory purpose in extending the Section 9(a) monitoring requirements because of extended

mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in a Trust. Applicants argue that applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Applicants further argue that the increased monitoring costs would reduce the net rates of return realized by contract owners.

10. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. It is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

12. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rule 6e–2 and 6e–3(T) under the 1940 Act).

13. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

15. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

16. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among Variable Contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants note that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not required to pass-through voting privileges.

17. Applicants state that even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

18. Where a Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase if shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

19. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

20. Applicants state that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Separate Account's investment in the Trusts. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

21. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Applicants assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions by reasonable and based on specific good-faith determinations.

22. Applicants state that a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

23. Applicants submit that there is not reason why the investment policies of a Fund would or should be materially different from what these policies would or should be if a Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Applicants represent that each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

24. Applicants state that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Fund. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional Funds serving diverse goals.

25. Applicants do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners. In considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there either were no conflict of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

26. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

27. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest.

28. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

29. Applicants considered whether it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans, and determined it is possible. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including this respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with a Trust concerning participation in the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

30. Applicants concluded that the ability of the Trusts to sell shares of each Fund directly to Qualified Plans does not create a senior security. ''Senior security'' is defined under Section 18(g) of the 1940 Act of include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with

respect to their respective shares of the Funds. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

31. Applicants also considered whether there are any conflicts between the contract owners of the Separate Accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

32. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interests in a Fund and reinvest in another funding vehicle without the same regulatory impediments faced by the Separate Accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Therefore, issues where the interests of contract owners and the interests of Qualified Plans are in conflict can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

33. Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

34. Applicants recognize that the foregoing is not an all inclusive list, but rather is representative of issues which they believe are relevant to the application. Applicants believe that the discussion contained in the application demonstrates that the sale of shares of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Funds with respect to Qualified Plans is not substantially dissimilar from the Funds' anticipated use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

35. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Fund, as a common investment media for Variable Contracts would reduce or eliminate these concerns. Applicants assert that mixed and shared funding should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants maintain that Participating Insurance Companies will benefit not only from the investment and administrative expertise of Kelmoore, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Fund, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Funds more feasible. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Funds to Qualified Plans, in addition to the Separate Accounts, will result in an increased amount of assets available for investment by such Funds. This may benefit Variable Contract owners by promoting economics of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Funds more feasible.

36. Applicants submit that, regardless of the type of shareholder in the Fund or Future Fund, Kelmoore is or would be contractually and otherwise obligated to manage the Fund or such Future Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustee of the Trust (the ''Board''). Kelmoore will work with a pool of money and will not take into account the identity of the shareholders. Thus, each Fund and any Future Fund will be managed in the same manner as any other mutual fund.

37. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants assert that mixed and shared funding will not have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative

letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contact owners, variable life insurance contract owners, and trustees of the plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Kelmoore, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment medium, including another Fund, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in each Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or Kelmoore be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participating in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts of the type described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever

rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure or Plan prospectus or other Plan document disclosure regarding potential risks of mixed and shared funding may be appropriate. Each trust will disclose in its prospectus that (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust, if applicable, may conflict, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what actions, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under this agreements governing participation in the Funds.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Plan or Plan Participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10255 Filed 4–25–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42706; File No. SR–CHX–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Inc. Relating to Operating Times of Price Improvement Programs

April 19, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on April 10, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, rule 37 of the Exchange's rules to change the starting time of each of the Exchange's automatic price improvement programs from 8:45 a.m., Central Time to the beginning of the Exchange's primary trading session, which occurs at 8:30 a.m., Central Time. The text of the proposed rule change is as follows:

Additions are *italicized;* deletions [bracketed]

ARTICLE XX

Regular Trading Sessions

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37.

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

* * * * *

(d) Super MAX Plus. Super MAX Plus shall be a voluntary automatic execution program within the MAX System. SuperMax Plus shall be available for Dual Trading System securities and Nasdaz/NM Securities. * * *

* * * * *

(3) Operating Time. SuperMax Plus will operate each day that the Exchange is open for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session; *provided, however, that preopening orders shall not be eligible for SuperMax Plus price improvement.* * * *

* * * * *

(e) SuperMAX. Except as provided below where SuperMAX is required to be enabled, SuperMAX shall be a voluntary automatic execution program within the MAX system. SuperMAX shall be avaiable for Dual Trading System securities for which SuperMAX plus has been enabled. In the event that SuperMAX Plus has been enabled for a particular Dual Trading System security and the maximum order size has been set at an amount that is less than 499 shares, SuperMAX shall be automatically enabled. * * *

* * * * *

(2) Operating Time. SuperMAX will operate each day that the Exchange is open

for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session*; provided, however, that preopening orders shall not be eligible for SuperMAX price improvement.* * * *

* * * * *

(f) Enhanced SuperMAX. Enhanced SuperMAX shall be a voluntary automatic execution program within the MAX System. Enhanced SuperMAX shall be available for (i) any Dual Trading System security in which SuperMAX Plus and SuperMAX have both been enabled, or (ii) any Dual Trading System security in which SuperMAX Plus has been enabled for 499 shares or greater. * * *

* * * * *

(3) Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from [8:45 a.m. (C.T.)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session*; provided, however, the preopening orders shall not be eligible for Enhanced SuperMAX price improvement.* * * *

* * * * *

(g) Derivative SuperMAX. Derivative SuperMAX shall be a voluntary automatic execution program within the MAX System. Derivative SuperMAX shall be available for securities that trade on the Exchange in minimum price variations of 1/64 of $1.00. A specialist may choose to enable this voluntary program within the MAX system on a security-by-security basis. If Derivative SuperMAX has been enabled for a particular security and the maximum order has been set at an amount that is less than or equal to 599 shares (or such greater amount designated by the specialist and approved by the Exchange), Derivative SuperMAX shall be automatically enabled. If the security is eligible for Derivative SuperMAX and the specialist in such security has chosen to engage Derivative SuperMAX for such security, all small agency market orders in that security will automatically be executed in accordance with the Derivative SuperMAX algorithm set forth below. For purposes of this subsection (g), the term ''small agency market order'' shall mean an agency order from 100 shares up to and including 599 shares (or such greater amount designated by the specialist and approved by the Exchange).

* * * * *

(2) Operating Time. Derivative SuperMAX will operate each day that the Exchange is open for trading from [8:45 a.m. (Central Time)] *the commencement of the Primary Trading Session* until the close of the Primary Trading Session*; provided, however, that preopening orders shall not be eligible for Derivative SuperMAX price improvement*. A specialist may enable or remove Derivative SuperMAX for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from Derivative SuperMAX with the approval of two members of the Committee on Floor Procedure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, Rule 37 of the Exchange's rules to allow the Exchange's automatic price improvement programs to begin operating when CHX trading begins.[3] The Exchange proposes that this change take effect on May 10, 2000.[4]

Under the Exchange's current rules, each of the Exchange's automatic price improvement programs, SuperMAX, SuperMAX Plus, Enhanced SuperMAX and Derivative SuperMAX, become available to specialists at 8:45 a.m., Central Time, fifteen minutes after the Exchange begins trading. The Exchange believes that the proposed rule change, which would permit automated price improvement during the first fifteen minutes of trading, will enhance CHX specialists' efficiency by automating a previously-manual process. This change will permit the CHX to better complete with other market centers at a critical juncture in the trading day by giving its specialists the opportunity to provide price improvement to a greater number of investors. Further, the Exchange represents that the 8:45 a.m., Central Time was originally chosen as the starting time for the price improvement programs to allow the Exchange to gain experience with the operation of such programs before extending their application to the first fifteen minutes of Exchange trading, which are ordinarily quite busy. Now that the Exchange has gained experience, and seen the benefits of the continuing evolution of technology, the Exchange is confident that the automatic price improvement programs can successfully operate during the opening of Exchange trading.

2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the proposed rule is consistent with section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change should increase the CHX's ability to provide customers with price improvement, and to compete with other market centers, and: (1) Does not significantly affected the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from April 10, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Committee that such action is necessary or appropriate in the public interest, for the protection of investor, or otherwise in the furtherance of the purposes of the Act.[9]

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 maybe 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 in Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should

[3] Preopening orders, however, would not be entitled to participate in these automated price improvement programs.

[4] Telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on April 17, 2000.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

refer to File No. SR–CHX–00–09 and should be submitted by May 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10368 Filed 4–25–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42698; File No. SR–NASD–00–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

April 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2000, the National Association of Securities Dealers, Inc. ''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Conduct Rules 2340, ''Customer Account Statements,'' 2710, ''Corporate Financing Rule—Underwriting Terms and Arrangements,'' and 2810, ''Direct Participation Programs.''[3] The text of the proposed rule change appears below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2340 Customer Account Statements

(a) *General*

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account (''*account statement*'') containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) *DPP/REIT Securities*

(1)(A) Voluntary Estimate Value

A general securities member may provide a per share estimated value for a direct participation program (''DPP'') or real restate investment trust (''REIT'') security on an account statement, provided the member meets the conditions of paragraphs (b)(2) and (3) below.

(B) Mandatory Estimated Value

If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer's account or included on the customer's account statement, a general securities member must include an estimated value from the annual report, an independent valuation service, or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs (b)(2) and (3) below.

(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if:

(A) after considering any relevant information about the market and the particular investment in its possession, the member has no reason to believe that the estimated value is inaccurate; and

(B) the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.

(3) If an account statement provides an estimated value for a DPP or REIT security, if must include:

(A) a brief description of the estimated value, its source, and the method by which it was developed; and

(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

(4) If an account statement does not provide an estimated value for a DPPor REIT security, it must include disclosure that:

(A) DPP or REIT securities are generally illiquid;

(B) the value of the security will be different than its purchase price; and

(C) if applicable, that accurate valuation information is not available.

(c)[(b)] *Definitions*

For purposes of this Rule*, the following terms will have the stated meanings:*

(1) [the term] ''account activity'' [shall] include*s*, but *is* not [be] limited to, purchases, sales, interest credits or debits, charges or credits, divided payments, transfer activity, securities receipt or delivers, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) [(c) For purposes of this Rule,] [the term] *a* ''general securities member'' [shall] refer*s* to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraph (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(3) ''direct participation program'' or ''direct participation program security'' refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) ''real estate investment trust'' or ''real estate investment trust security'' refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

(5) ''annual report'' means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Act.

(d) *Exemptions*

Pursuant to the Rule 9600 Series, the Association may exempt any member

[10] *See* 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed more fully below, the current proposal replaces File No. SR–NASD–97–12 (''1997 Proposal''). The 1997 Proposal was published for comment in the **Federal Register** on April 3, 1997. NASD Regulation subsequently withdrew the 1997 Proposal. *See* Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 27, 2000 (''March 27 Letter'').

from the provisions of this Rule for good cause shown.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

* * * * *

(c) Underwriting Compensation and Arrangements

* * * * *

(6) Unreasonable Terms and Arrangements

* * * * *

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

* * * * *

(xv)[4] *for a member or person associated with a member to participate in a public offering of real estate investment trust securities, as defined in Rule 2340(c)(4), unless the trustee will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.*

* * * * *

Rule 2810. Direct Participation Programs

* * * * *

(b) Requirements

* * * * *

(5) Valuation for Customer Account Statements

No member may participate in a public offering of direct participation program securities unless:

(A) the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the direct participation program securities, the method by which it was developed, and the date of the data used to develop the estimated value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

1. Background

Customer Account Statement Policy

NASD Rule 2340 requires members who conduct a general securities business to send account statements to customers on at least a quarterly basis.[5] The statements must include a description of any securities position, money balances or account activity since the prior account statement was sent.[6] A member that does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of NASD Rule 2340.

Request for Regulatory Action

By letter dated March 9, 1994, the Subcommittee or Telecommunications and Finance of the U.S. House of Representatives (''House Subcommittee''), expressed to the NASD its concern regarding the sufficiency of information provided on customer account statements regarding the current value of illiquid partnership securities.[7] The House Subcommittee recommended that investors in illiquid partnerships receive better information on the current value of their investments.

By letter dated June 14, 1994, the SEC's Division of Market Regulation (''Division'') requested information from the NASD on where it would be appropriate for self-regulatory organizations to require that members make certain disclosures regarding illiquid partnerships on customer account statements.[8] The Division suggested that, at a minimum, a member should disclose that: (1) There is no liquid market for most limited partnership interests; (2) the value of partnership, if any reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value, a short description of the methodology used to determine the value, and the date the value was last determined.

In Notice to Members 94–96 (December 1994), the NASD requested comments concerning a proposed rule establishing requirements for illiquid direct participation program[9] (''DPP'') securities listed on customer account statement. As described more fully below, the NASD received comments from 36 commenters regarding the proposal. In response to the commenters, NASD Regulation revised the proposal published for comment in Notice to Members 94–96 and filed the revised rule with the Commission in the 1977 proposal.[10]

The 1997 Proposal required general securities members to include estimated values for illiquid DPP and real estate investment trust (''REIT'') securities on customer account statements under certain circumstances.[11] Among other things, the 1997 Proposal required a general securities member that provided individual valuations for illiquid DPP or REIT securities on its retirement account statements to provide the same valuation to other customers owning such securities. The Commission published the 1997 Proposal for comment in the **Federal Register** on April 3, 1997[12] and received nine comment letters regarding the proposal.

NASD Regulation states that, as a result of further discussions with industry members, concerns arose regarding potential conflicts between the requirements of the 1997 Proposal

[4] The NASD has filed with the SEC a proposed rule change (File No. SR–NASD–00–04), that would amend paragraph (c)(6)(B). The Commission has not taken action regarding File No. SR–NASD–00–04. If the Commission approves File No. SR–NASD–00–04, proposed paragraph (c)(B)(xv) would be renumbered (xiv).

[5] ''General securities member'' is defined in the rule to mend any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3).

[6] ''Account activity.'' as defined in the rule, includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities of funds in the possession or control of the member.

[7] *See* Letter from Edward J. Markey, Chairman, and Jack Fields, Ranking Republican Member, Subcommittee on Telecommunications and Finance, U.S. House of Representatives, dated March 9, 1994. The House Subcommittee also expressed concerns to the SEC, the National Association of State Securities Administrators, and the Investment Program Association.

[8] *See* Letter from Brandon Becker, Director, Division, Commission, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994.

[9] NASD Rule 2810(a)(4) defines ''direct participation program'' as a ''program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution * * *;'' This definition covers most limited partnerships and specifically excludes real estate investment trust.

[10] *See* note 3, *supra.*

[11] REIT securities were covered by the proposal to ensure similar treatment of the two products under NASD rules.

[12] *See* 1997 Notice, *supra* note 3.

and the obligations of a member acting as a retirement account fiduciary under the Employee Retirement Income Securities Act (''ERISA'') and Internal Revenue Service (''IRS'') regulations. Therefore, NASD Regulation withdrew the 1997 Proposal [13] and has replaced it with the current proposal, which amends NASD Rules 2340, 2710, and 2810.

2. Description of the Current Proposal

A. Proposed Amendments to NASD Rule 2340

Scope: NASD Regulation proposes to apply the new requirements in NASD Rule 2340 to DPP securities and REIT securities sold in a public offering. The definitions of ''DPP'' and ''REIT'' proposed in NASD Rule 2340(c)(3) and (4) would exclude securities listed on a national securities exchange or the Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. NASD Regulation believes that the excluded securities are more likely to trade regulatory and, accordingly, that investors will have ready access to current market value information. The proposed definition of ''DPP'' in NASD Rule 2340(c)(3) also would exclude any program registered as a commodity pool because those programs generally offer investors a security that is redeemable by the issuer at the customer's option at regular intervals and at ascertainable values.

Voluntary Estimated Value: Proposed NASD Rule 2340(b)(1) states that a general securities member may provide a per share estimated value for a DPP or REIT security on an account statement, provided that the member complies with the requirements in paragraphs (b)(2) and (3) that are intended to ensure that the estimated value is reliable and that certain disclosures accompany the estimated value. Specifically, as discussed more fully below, NASD Rule 2340(b)(2) allows a member to provide estimated DPP or REIT valuations if the member has no reason to believe that the estimated value is inaccurate and the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued. NASD Rule 2340(b)(3) requires an account statement that provides an estimated DPP or REIT valuation to include (1) a brief description of the estimated value, its source, and the method by which it was developed; and (2) disclosure that DPP or REIT securities are generally illiquid and that the estimated value may not be realized when the investor seeks to liquidate the security.

Mandatory Estimated Value: Proposed NASD Rule 2340(b)(1)(B) would require a general securities member to include a per share estimated value for any DPP or REIT security on an account statement if the annual report of the DPP or REIT provides a per share estimated value for the security. Although the inclusion of the estimated value in the issuer's annual report would trigger the member's obligation, the estimated value included on the account statement could be obtained from the annual report or from an independent valuation service or another source, *e.g.,* an estimated value generated by the member. The estimated value must be included in the first customer account statement issued after the annual report is available. Proposed NASD Rule 2340(c)(5) defines the term ''annual report'' as the most recent annual report of a DPP or REIT distributed to investors pursuant to Section 13(a) of the Act.[14] A general securities member that provides a per share estimated value pursuant to NASD Rule 2340(b)(1)(B) also must comply with the requirements of NASD Rules 2340(b)(2) and (b)(3).

Reliability of Estimated Values: NASD Rule 2340(b)(2) imposes various conditions designed to ensure that any voluntary or mandatory per share estimated value provided on a customer account statement is reliable, current, and not misleading. Proposed NASD Rule 2340(b)(2) states that a member may only provide a per share estimated value on an account statement if the member, after considering all relevant information about the market and the particular investment in its possession, has no reason to believe that the estimated value is inaccurate. Thus, the proposal would prohibit a member from including a per share estimated value on the account statement if the member reasonably believed that the estimated value was inaccurate at the time it was developed or was no longer accurate as a result of changing circumstances.

In addition, proposed NASD Rule 2340(b)(2) requires that the estimated value be developed from data that is of a date no more than 18 months prior to the date that the statement is issued. NASD Regulation believes that the 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP/REIT securities based on the audited financial statements contained in the Form 10–K of the DPP or REIT. For example, an estimated value based on December 31, 1999, financial statements may be used from January 1, 2000, through June 30, 2001, thereby allowing time between April and June 2001 for a new estimated value to be developed based on the December 31, 2000, financial statements.

Disclosures Required When An Estimated Value Is Provided: Under proposed NASD Rule 2340(b)(3), a customer account statement that includes an estimated value for a DPP or REIT security must include a brief description of the estimated value, its source, and the method by which it was developed. In addition, the account statement must disclose that DPP or REIT securities are generally illiquid and that the estimated value disclosed may not be realized when the customer seeks to liquidate the security.

Disclosures Required When An Estimated Value Is Not Provided: Proposed NASD Rule 2340(b)(4) requires that an account statement that does not provide a valuation for DPP or REIT securities disclose that the securities are generally illiquid, the value of the security will be different from its purchase price, and, if applicable, the accurate valuation information is not available.

B. Proposed Amendments to NASD Rules 2710 and 2810

NASD Regulation states that the proposed rule change also will ensure that DPP sponsors and REIT trustees provide estimated per share values in their annual reports. In this regard, NASD Regulation proposes to amend NASD Rules 2710 and 2810 to prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agrees to include in each annual report a per share estimated value, a description of the method by which the estimated value was developed, and the date of the data use to develop the estimated value.

3. Implementation of Proposed Rule Change

To provide members and their service organizations with sufficient time to modify their computer systems to comply with the proposed rule change, NASD Regulation is requesting that the proposed rule change become effective six months after SEC approval. During that time, NASD Regulation will issue a Notice to Members announcing SEC

[13] *See* March 27 Letter, *supra* note 3.

[14] *See* discussion below of proposed related amendments to NASD Rules 2710 and 2810 that would prohibit members from participating in a public offering of a DPP or REIT unless the general partner, sponsor, or trustee agreed to include an estimated value for the securities in each annual report.

approval of the proposed rule change and the anticipated effective date.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change significantly improves disclosure to public customers on their account statements of information concerning the value of illiquid DPP or REIT securities, while providing safeguards for both member firms and public customers against the publication of inaccurate values for such securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Notice to Members 94–96 (December 1994)

In Notice to Members 94–96 (December 1994), the NASD published for comment a proposed rule change establishing requirements for illiquid DPP securities listed on customer account statements. The NASD received 39 comments regarding the proposal from 36 commenters. Thirty of the 36 commenters generally favored the NASD's effort to provide regulatory guidance regarding the disclosure of partnership valuations on customer account statements, although every letter contained suggested revisions. Six commenters were opposed to the adoption of the proposed rule change. The proposal published for comment in Notice to Members 94–96 required that customer account statements:

1. Segregate DPP securities from other securities on the account statement;

2. For illiquid DPP securities listed without a price, disclose that accurate pricing information was not available because the value of the security was not determinable until the liquidation of the partnership and no secondary market existed;

3. If DPP securities were listed with a price:

a. Not aggregate the value of the DPP securities with the value of any other securities on the statement or include their value in the customer account net worth calculation;

b. Disclose the methodology used for obtaining the valuation; and

c. Disclose that DPP securities are generally illiquid securities and the price listed may not be realizable if the customer seeks to liquidate the security.

Scope and Definitions: NASD Regulation agreed with the views of commenters on the rule proposed in Notice to members 94–96 that the regulatory concerns surrounding the value of DPP securities should only extend to unlisted DPPs because an investment in Nasdaq or exchange-listed securities provides investors with some measure of liquidity and recent market values. Accordingly, the current proposal adopts definitions of DPP and REIT securities that exclude securities listed on a national securities exchange or The Nasdaq Stock Market, as well as securities that are in a depository and settle regular way. NASD Regulation also determined to except from the definition of DPP securities any program registered as a commodity pool because those programs offer investors a security that is redeemable by the issuer at the customer's option at regular intervals and at ascertainable values.

Prices vs. *Estimated Values:* In response to the commenters, NASD Regulation amended the current proposal to eliminate the word ''price'' and insert the phrase ''estimated value'' throughout the proposed rule. Commenters stated that a ''price'' carried on a customer account statement gives the appearance to the investor that the security can be liquidated for an amount that is roughly equivalent to the price set forth on the customer account statement.

Requirement to Place Estimated Values on Customer Account Statements: Commenters generally agreed with the proposed mandatory requirement for disclosure of values for DPP securities. However, commenters differed as to the value to be disclosed, with the greatest amount of comment focused on valuation methodologies (whether net asset value or securitized value) and their source (*i.e.,* whether generated by the member or obtained from the general partners or third-party independent evaluators).

NASD Regulation agrees with the sentiment expressed in a majority of the comment letters and with the views of correspondence received from the House Subcommittee that investors in non-publicly traded partnerships and trusts should know how their investment is performing. However, NASD Regulation believes that there are practical problems to requiring that all members provide disclosure of the estimated values of all DPP and REIT securities held by their customers.

Therefore, the current proposal will require a general securities member to include a per share estimated value for illiquid DPP or REIT securities on customer account statements when the DPP or REIT includes a per share estimated value in the program's or trust's annual report. In addition, the current proposal will prohibit a member from participating in a public offering a DPP or REIT unless the general partner, sponsor, or trustee agrees to include a per share estimated value for the program or trust securities in the annual report.

Appropriate Source for Estimated Values: Commenters on the proposal published in Notice to Members 94–96 expressed concern that the proposal did not provide guidance on the different sources of an estimated value considered appropriate by the Association. The current proposal permits the per share estimated value that is included on a customer account statement to be from the program or trust's annual report, from an independent valuation service, or another source. The latter category is intended to permit the use of an estimated value generated by the member.

Prohibition on Using Stale Data: Many commenters on the proposal published for comment in Notice to Member 94–96 stated that an estimated value, accurate upon its first use on a customer account statement, may become stale or inaccurate due to lengthy time of subsequent events, such as the sale of a major asset of the partnership. NASD Regulation agrees that an estimated value based on stale information eventually becomes sufficiently misleading to investors to constitute a fraud. Therefore, the current proposal precludes members from disclosing an estimated value if the financial statements and other underlying data used to determine that value are of a date more than 18 months prior to the date the account statement is issued. In addition, the current proposal requires that a member have no reason to believe that the estimated value is inaccurate.

Segregation of DPP/REIT Securities: Several commenters on the proposal published for comment in Notice to Members 94–96 objected to the requirement that DPP and REIT securities be segregated from other securities into a separate location on the customer account statement. The

current proposal does not include this requirement.

Required Disclosure for Unpriced Securities: The proposal published for comment in Notice to members 94–96 would have required a customer account statement that included no price for DPP securities to indicate that accurate pricing information is not available because the value of the DPP security is not determinable until the liquidation of the partnership and no active secondary market exists. In response to comments, the current proposal requires disclosure that DPP and/or REIT securities are generally illiquid securities; that the value of the security may be different than its purchase price; and, if applicable, that accurate valuation information is not available.

The 1997 Proposal

The NASD filed the 1997 Proposal with the SEC on February 21, 1997. The Commission published the 1997 Proposal for comment in the **Federal Register** on April 3, 1997,[15] and received nine comment letters. NASD Regulation notes that, in general, the commenters supported the proposal but believed that it did not go far enough. The 1997 Proposal required that a general securities member:

1. Provide an estimated value for illiquid DPP and REIT securities on all customer account statements if the member:

a. Provided such values to its retirement account customers (except when the retirement account statement only included an aggregate valuation for all of the assets in the account); or

b. Participated in the public offering of the DPP or REIT and could obtain such a value from a periodic report filed with the SEC or from an independent source; and

2. If the member provided a valuation, obtain estimated values form a periodic filing with the SEC, an independent source, or develop its own value that is based on data that was of a date more than 18 months before the date the statement was issued;

3. Segregate illiquid DPP and REIT securities from other securities on the account statement;

4. Not aggregate the value of DPP/REIT securities with the value of other securities in the total account value unless the statement included the disclosure on the illiquidity of the securities;

5. Include a brief description in the account statement of the type of estimated value, its source, and how a customer could obtain a detailed explanation of the valuation methodology, and disclose that DPP/REIT securities are generally illiquid and that the value disclosed may not be realizable upon sale by the customer;

6. If illiquid DPP and REIT securities were listed on the account statement without a value, disclose in the account statement that DPP/REIT securities are illiquid, that the value of the security may be different than its purchase price, and that accurate pricing information was not available; and

7. Not include the original issue price of a DPP or REIT security as the estimated value on an account statement.

Objection to the Exception for Retirement Accounts: Five of the commenters urged the Association to make it mandatory for members to provide an estimated value on the account statement for the publicly sold DPP/REIT securities in their customers' accounts. In particular, several commenters objected to an exception that would have permitted members to provide an aggregate valuation for the assets in a retirement account.[16]

NASD Regulation has concluded that the mandatory disclosure of estimated values for DPP and REIT securities in retirement accounts would impose a burdensome requirement on broker-dealers that would not, according to NASD Regulation, also be applicable to non-member fiduciaries that are responsible for the majority of the accounts in which such illiquid DPP/REIT securities reside. Moreover, NASD Regulation believes that basing the mandatory disclosure of estimated values for illiquid DPP/REIT securities on the treatment of such securities in a retirement account inappropriately intrudes the rules of the NASD into the regulation of retirement accounts by the Department of Labor and the IRS.[17]

Therefore, the current proposal eliminate the requirement that members include estimated values for illiquid DPP and REIT securities in retirement accounts. Instead, the current proposal would require that a general securities member provide an estimated value for an illiquid DPP or REIT in the first account statement issued after a per share estimated value is provided in the program's or trust's annual report. According to NASD Regulation, the member's issuance of an annual retirement account statement in accordance with ERISA and IRS regulations will not be affected by this NASD account statement requirement, although members may need to advise customers of the reason for the different information provided in the two account statements.

Description of Type of Estimated Value: Commenters also suggested that the provision requiring a description of the type of estimated value be amended to only permit members to report a fair market value that incorporates a control and marketability discount, as required to be reported on IRS Forms 1099–R and 5498. A general partner's valuation is typically a net asset value and does not include a discount for illiquidity or lack of control. Therefore, NASD Regulation believes that the change requested by these commenters would limit members to an estimated value provided by an independent valuation firm because such organizations normally incorporate this type of discount in developing a valuation. NASD Regulation believes that members should be able to provide different types of per share estimated values, as long as the member makes appropriate disclosures.

Definition of DPP: In response to the request of a commenter. Regulation has revised the definition of DPP security in the current proposal to clarify that limited liability companies are covered by the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons mailing written submissions

[15] *See* 1997 Notice, *supra* note 2.

[16] The Division asked NASD Regulation to amend its proposal to require members acting in a fiduciary capacity to list on customer account statements the individual valuations for illiquid DPPs and REITs that they would be required to obtain for IRS purposes. *See* Letter from Robert L.D. Colby, Deputy Director, to Charles L. Bennett, Director, Corporate Finance, NASD Regulation, dated October 6, 1997.

[17] NASD Regulation believes that the need for greater and more frequent disclosure of individual values for retirement account assets, as urged by the commenters, is more appropriately addressed by the IRS and the Department of Labor.

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 relation to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD Regulation. All submission should refer to File No. SR–NASD–00–13 and should be submitted by May 17, 2000.

For the Commission , by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10257 Filed 4–25–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42702, File No. SR–Phlx–00–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Changing the Name of the VWAP System to ''eVWAP''

April 19, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2000, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange''), filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Exchange. On April 12, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change, as amended, pursuant to section 19(b)(3)A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 237 so that the name of an electronic trading system, and the name of the calculation component of this system, currently referred to as ''Universal Trading System,'' ''UTS,'' ''Volume Weighted Average Price Trading System,'' ''VTS,'' ''Volume Weighted Average Price'' and ''VWAP™,'' would be changed to ''eVWAP™.'' eVWAP would denote both the name of the system and the name of the calculation component, depending upon the context in which the term is used.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the name of this electronic trading system and the terminology for its pricing calculation to ''eVWAP.'' The system, which was developed by Universal Trading Technologies Corporation (''UTTC''), is operated as a facility of the Exchange under Section 3(a)(2) of the Act. The Commission approved the Exchange's operation of the system on March 24, 1999.[6]

UTTC has informed the Exchange that the proposed name and reference changes will be consistent with and facilitate the registration of a certain trademark by UTTC in ''eVWAP''. The ''e'' will promote UTTC's branding strategy regarding the system and more clearly reflect the electronic character of the system and its calculation component. The proposed rule change does not change the substance or operation of the system or the calculations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may

[18] 27 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 12, 2000 letter from Nandita Yagnik, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). The Exchange also requested that the Commission waive the 5-day notice of its intent to file the proposal by treating the original proposed rule change as the prefiling notice required under Rule 19b–4(f)(6); and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (SR–Phlx–96–14).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

designate. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission finds that the proposed rule change does not affect the substantive operation of the Volume Weighted Average Price Trading System. In addition, the Commission finds that the Exchange provided the required prefiling written notice of its intent to file this proposed rule change when it filed the original proposed rule change.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–19 and should be submitted by May 17, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10369 Filed 4–25–00; 8:45 am]

BILLING CODE 8010–01–M

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42701; File No. SR–Phlx–00–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending PHLX Rule 237 To Extend the Pilot Program for VTS Until November 1, 2000

April 19, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2000, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange''), filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Exchange. On April 12, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change, as amended, pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comment son the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for the Volume Weighted Average Price (''VWAP'') Trading System (''VTS'' or ''System'')[6] under November 1, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 12, 2000 letter from Nandita Yagnik, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). The Exchange also requested that the Commission waive the 5-day notice of its intent to file the proposal by treating the original proposed rule change as the prefiling notice required under Rule 19b–4(f)(6); and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19B–4(F)(6).

[6] The Exchange has filed a proposed rule change to change the name of VTS to ''eVWAP.'' *See* SR–Phlx–00–19.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

VTS is a pre-opening order matching session for the electronic execution of large-sized stock orders at the volume weighted average price (''VWAP''). The Exchange received Commission approval to operate VTS as a one year pilot on March 24, 1999.[7] The VTS became operational on August 27, 1999. As a condition to the pilot program, the Commission requested that the Exchange prepare a comprehensive report pertaining to the operation and effectiveness of the VTS.[8]

The Exchange now proposes to extend the current pilot program until November 1, 2000 in order to have a complete year of trading information through the VTS. This will allow the Exchange to issue the required report based on a full year of trading which should provide a more comprehensive assessment of the VTS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and

[7] *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999)(SR–Phlx–96–14).

[8] The Commission requested that the Exchange provide a report that: (i) Addresses the overall reliability of the System and identifies any System outages or other technical problems; (ii) provides a summary of the Exchange's surveillance efforts; (iii) discusses the strategies employed by the users and committers and evaluates whether the system is useful to market participants; (iv) provides feedback from Exchange members and non-members regarding their experience with the system; and (v) measures the system's impact and effect on the primary market of eligible securities. The Exchange proposes to submit its report by September 1, 2000.

[9] 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. By extending the period of time that VTS is operational, the Exchange can evaluate the VTS for its impact on investors as well as the market as a whole as it prepares the Commission's requested report.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furthernance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program. By extending the pilot program, the Commission will enable the Exchange to continue to offer the System without interruption, and will allow the Exchange to collect and analyze the information necessary to produce the report requested by the Commission. In addition, the Commission finds that the Exchange provided the required prefiling written notice of its intent to file this proposed rule change when it filed the original proposed rule change.[12]

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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–26 and should be submitted by May 17, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 00–10370 Filed 4–25–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request, ICR abstracted below has been forwarded to the Office of Management and Budget, OMB for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 3, 2000 (66 FR 5386) and there were no responses to the initial Notice.

DATES: Comments must be submitted on or before May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Charlotte Hackley; M–61, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–4267 or email to charlotte.hackley@ost.dot.gov.

SUPPLEMENTARY INFORMATION:

Office of the Secretary, OST

Title: Extension of information collection authority under Transportation Acquisition Regulation TAR.

OMB Control Number: 2105–0517.

Affected Public: Individuals or households and business or other for-profit organizations.

Abstract: The requested extension of the approved control number covers the TAR which includes forms DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.45, DOT F 4220.46, and Form DD 882.

Annual Estimated Burden: 33,115.*

*The annual estimated burden is increased to 33,115 as a result of Section 101(g)(1) of the Motor Carrier Safety Improvement Act of 1999, which requires the Secretary of Transportation to insert (TAR) 48 CFR 1252.209–70 in all Department of Transportation requests for proposal and contracts for research.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on the 20th day of April, 2000.

Michael Robinson,

Clearance Officer, United States Department of Transportation.

[FR Doc. 00–10398 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Tazewell, Woodford, Livingston, Marshall, McLean, Putnam, Bureau, and La Salle Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for constructing a proposed four-lane Heart of Illinois Highway in north central Illinois. Three feasible corridors identified by Illinois DOT as part of an earlier study will be the focus of the EIS. The proposed highway would improve the highway connection between the Peoria area and northeastern Illinois.

FOR FURTHER INFORMATION CONTACT:

Ronald C. Marshall, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, IL 62703; Phone: (217) 492–4600

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, District 4, 401 Main Street, Peoria, IL 61602–1111; Phone: (309) 671–3333

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to develop a four-lane divided highway, known as the Heart of Illinois Highway, between Peoria and the interstate freeway system either north or east of Peoria. Three feasible corridors previously identified by Illinois DOT will be examined as part of the Draft EIS. One corridor is located west of the Illinois River and is oriented in a north-south direction. The other two corridors are located east of the Illinois River and are oriented east-west. Each corridor is approximately 40 to 50 miles long. The proposed project will bypass communities within the three feasible corridors.

The proposed action will enhance travel efficiency and safety within the study area, improve transportation continuity and rural access, and support economic development in the region.

This proposed project will select a preferred corridor for detailed engineering and environmental analysis and will select a recommended alignment within the preferred corridor. A preferred corridor will be recommended and presented at a Public Hearing. Alternate alignments will be studied within the preferred corridor once it has been identified. Alternates studied will address engineering and environmental concerns in order to determine an alignment location which meets the transportation needs of the region and minimizes the impacts to the environment. Alignment studies will determine one preferred alignment location and address type of facility, preliminary interchange geometrics, engineering and environmental impacts identified. Preliminary measures to minimize harm, probable construction cost estimates and estimated right of way requirements will be developed. A second hearing will be held to present the final preferred alignment.

Several alignment alternatives, including the no-action alternative, will be evaluated for the proposed project. Interchanges will be provided at all major high-volume roadways. Primary resources that would be affected are agricultural land, property tax income, wetlands, and woodlands.

A scoping process will be undertaken as part of this project. The process will include meetings, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. A study group comprised of local officials, environmental, and other community interests has been established to provide input during development and refinement of alternatives. A scoping packet may be obtained from one of the contact people listed above.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, public involvement activities will be conducted as part of the study. Drop-in centers, newsletters, and interest group meetings will be scheduled. The project's Draft EIS will be available for public and agency review prior to the public hearing. The time and location of the public hearing will be announced in local newspapers. Comments or questions concerning this proposed action and the Draft EIS should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: April 20, 2000.

Jon-Paul Kohler,

Environmental Engineer, Springfield, Illinois.

[FR Doc. 00–10429 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–99–6285 (formerly OMCS–99–6285)]

Parts and Accessories Necessary for Safe Operation; General Motors Corporation's Exemption Application; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of application for exemption.

SUMMARY: The FMCSA is granting the application of the General Motors Corporation (GM) for an exemption from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption enables motor carriers to operate commercial motor vehicles (CMVs) manufactured by GM, and equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemption achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations. The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemption is effective on May 26, 2000. The exemption expires on May 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to the previous notice concerning this subject by using the universal resource locator

(URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (*i.e.*, State) Offices have been transferred to FMCSA Service Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of the TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be up to two years in duration, and may be renewed.

Section 4007 of the TEA–21 requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of the TEA–21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures to be followed to request waivers and apply for exemptions from the FMCSRs, and the procedures that will be used to process them.

GM's Application for an Exemption

GM applied for an exemption from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively. GM's application for an exemption was included in its response to the notice of intent to grant similar exemptions to the Ford Motor Company on behalf of motor carriers operating certain vehicles manufactured by Ford (64 FR 43417; August 10, 1999). A copy of GM's application is included in the docket referenced at the beginning of this notice. GM indicated that it ''fully supports the FHWA's preliminary determination to grant an exemption from the requirements of [§§] 393.67(c)(7)(ii), 393.67(f)(2) and 393.67(f)(3)(ii) to [the] Ford Motor Company'' and requested the exemption on behalf of motor carriers operating certain vehicles manufactured by GM.

GM produces G-vans (Chevrolet Express and GMC Savanna) and full-size C/K trucks (Chevrolet Silverado and GMC Sierra) which may be equipped for numerous uses, including use as a CMV as defined in 49 CFR 390.5. GM argues that exemptions are needed for the same reasons described in the Ford Motor Company's applications. The OMCS granted the Ford Motor Company's applications for exemptions on December 20, 1999 (64 FR 71184).

Notice of Application and Proposal To Grant Exemption; Request for Comments

On December 20, 1999 (64 FR 71186), the Office of Motor Carrier Safety published a notice announcing its proposal to grant GM's application for an exemption from certain fuel tank design and certification requirements in the FMCSRs. The notice discussed GM's application, the basis for proposing to grant the exemption, and requested public comment from all interested parties.

Discussion of Comments

The FMCSA received comments from El Dorado National and GM. Both commenters agreed with the preliminary decision to grant an exemption for motor carriers operating certain vehicles manufactured by GM.

El Dorado National believes the rate at which a fuel tank may be filled has no bearing on the safe operation of the vehicle, or safety during the refueling process. El Dorado National stated that ''[t]he tanks in question will accept fuel at a rate that the typical commercial unleaded fuel pumps deliver. * * *''

On the subject of labeling of fuel tanks, El Dorado National indicated that ''[s]ince these vehicle tanks are tested, certified, and mass produced it does not seem relevant to label each tank.'' El Dorado National believes the absence of a certification label would not compromise safety.

FMCSA Decision

The FMCSA has considered the comments received in response to the December 20, 1999, notice of application and has decided to grant the exemption.

Fill-Pipe Capacity Requirement

The FMCSA has reviewed its fill pipe design requirements and has concluded that the fill-pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the Environmental Protection Agency's (EPA) regulations [1] concerning gasoline fuel pumps. While the FMCSA requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum

[1] The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

rate gasoline fuel pumps are designed to dispense fuel.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (*e.g.,* at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the FMCSA does not believe this would present a safety problem. The FMCSA agrees with GM's argument in its application that the use of automatic shut-off valves on fuel dispensing pumps make it unlikely that a significant amount of fuel will be spilled if a vehicle is refueled using a pump that exceeds the vehicle's capacity for receiving fuel. The agency believes the combination of the EPA regulation concerning dispensing pumps, and the use of automatic shut-off nozzles on these pumps ensures a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii).

The FMCSA believes any operational problems experienced by motor carriers using certain fuel pumps to refill GM vehicles have already been resolved. The vehicles in questions have been in use for a number of years and are still being produced. Therefore, motor carriers using these vehicles have experience refueling them. The FMCSA is not aware of any safety problems associated with the fill-pipe capacity for the fuel tanks on GM G and C/K vehicles.

The FMCSA also reviewed available information on the origin of the fill-pipe rule. The 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice ''Side Mounted Gasoline Tanks'' as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, ''Fuel Systems,'' an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 ''Fuel Systems—Truck and Truck Tractors.'' The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The FMCSA does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, ''[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue.''

The FMCSA believes the current requirement may need to be reconsidered in light of the EPA requirements. While the agency reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. Therefore, the agency is exempting interstate motor carriers operating certain GM vehicles from § 393.67(c)(7)(ii).

Fuel Tank Marking and Certification

With regard to an exemption from the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the FMCSA does not believe there would be a readily apparent adverse impact on safety associated with the absence of the required markings. Although the FMCSA considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the agency's requirements and those that are not, the agency does not believe the operators of the GM vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

As a vehicle manufacturer, GM is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. However, GM may not have had the same level of awareness about all of the fuel tank requirements of the FMCSA , the agency responsible for regulating motor carriers.

GM has indicated that its tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because GM cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow approximately 10 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The FMCSA is providing an exemption to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating certain GM vehicles. The exemption is effective upon publication pursuant to 5 U.S.C. 553(d)(1) and is valid until May 26, 2002, unless revoked earlier by the FMCSA. GM, or any of the affected motor carriers, may apply to the FMCSA for a renewal. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemption can be identified by their vehicle identification numbers (VINs). The VINs contain ''J'' or ''K'' in the fourth position and a ''1'' in the seventh position.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: April 14, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00–10400 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–99–6354 (formerly OMCS–99–6354)]

Controlled Substances and Alcohol Use and Testing; PacifiCorp Electric Operations' Exemption Application; Random Testing of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial of application for exemption.

SUMMARY: The FMCSA is denying the application of PacifiCorp Electric Operations (PacifiCorp) for an exemption from the FMCSA's controlled substances and alcohol random testing requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). PacifiCorp requested an exemption because the company believes it has a low percentage of positive random test

results since testing was initiated. PacifiCorp's positive rate for random controlled substances tests is 1 percent and its positive rate for random alcohol tests is 0.8 percent. The FMCSA is denying the exemption because PacifiCorp did not explain how it would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the random controlled substances and alcohol testing requirements. The company requested regulatory relief but did not offer alternatives that would have comparable deterrent effects.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to the previous notice concerning this subject by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Service Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary.

Section 4007 of the TEA–21 requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process them.

PacifiCorp's Application for an Exemption

PacifiCorp applied for an exemption from 49 CFR 382.305, which provides requirements concerning random controlled substances and alcohol testing of commercial motor vehicle drivers. A copy of the application is in the docket identified at the beginning of this notice. PacifiCorp indicated that it is an electric utility with 133 service centers and other facilities in six States. Approximately 1,600 drivers would be affected if the exemption were granted.

Notice of Application and Proposal to Deny Exemption; Request for Comments

On December 20, 1999 (64 FR 71181), the Office of Motor Carrier Safety published a notice announcing its proposal to deny PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements in the FMCSRs. The notice discussed PacifiCorp's application, the basis for proposing to deny the exemption, and requested public comment from all interested parties.

Discussion of Docket Comments

The FMCSA received one comment to the notice proposing to deny PacifiCorp's application for an exemption—from the Georgia Public Service Commission (Georgia PSC). The Georgia PSC indicated that it agreed with the proposal to deny the exemption application. The Georgia PSC stated:

> The Commission takes the position that to remove the important deterrent of random controlled substances and alcohol testing is a detriment to safety, and such removal would set a dangerous precedent if granted. This is especially true in light of the fact that the applicant does not propose any specific alternative that would produce an equivalent level of safety.

FMCSA Decision

The FMCSA has carefully reviewed PacifiCorp's application for an exemption from the controlled substances and alcohol random testing requirements of 49 CFR 382.305, and the comment from the Georgia PSC and decided to deny the application. As indicated in the proposal to deny the application, a motor carrier's low positive testing rate is not, in and of itself, sufficient reason for the carrier to be granted an exemption from the random testing regulations. Random testing identifies drivers who use controlled substances or misuse alcohol, but are able to use the predictability of other testing methods (e.g., pre-employment, and reasonable suspicion) to avoid testing positive. More importantly, random testing serves as a deterrent against beginning or continuing prohibited controlled substances use and misuse of alcohol.

Although PacifiCorp indicated that its positive testing rates for controlled

substances and alcohol are 1 percent and 0.8 percent, respectively, these rates are indications that its workplace is not presently drug-free and that random testing still serves a very necessary purpose. Based on the information submitted by PacifiCorp, the company appears to employ an annual average of 1,600 drivers, which means the company is required to conduct at least 800 random controlled substances tests, and 160 random alcohol tests during each calendar year. A positive testing rate of 1 percent for controlled substances means that out of the 800 random tests conducted, eight individuals were found to have violated the prohibition on the use of controlled substances. A positive testing rate of 0.8 percent for alcohol means that out of the 160 random tests conducted, two individuals were found, at a minimum, to have violated the prohibition against reporting for duty or remaining on-duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater (49 CFR 382.201). These two individuals may also have violated the prohibitions against using alcohol while performing safety-sensitive functions (49 CFR 382.205), and using alcohol within four hours of performing safety-sensitive functions (49 CFR 382.207).

It is clear that some of PacifiCorp's drivers were not deterred from using controlled substances, and misusing alcohol. It is therefore unreasonable to conclude that exempting the company from random controlled substances and alcohol testing would provide a more effective deterrent for the company's workforce. Even if the effect of ending random testing were nil, which is unlikely, the projection into the future of PacifiCorp's current positive test rates means that at least 80 of its drivers would operate CMVs on the public highways in the next decade with controlled substances, and another 20 with substantial amounts of alcohol, in their bodies. This is not reassuring.

Furthermore, PacifiCorp did not indicate whether drivers who tested positive were terminated, or returned to duty. If they returned to duty, what was their subsequent record of compliance? The agency believes this information is relevant.

Discontinuing random controlled substances and alcohol testing would send a message that as long as CMV drivers are not involved in serious accidents and do nothing that would prompt an employer to conduct a reasonable suspicion test, there is no real obstacle to recreational use of controlled substances or the abuse of alcohol.

Although the current post-accident and reasonable suspicion testing requirements would have remained in effect if PacifiCorp's request were granted, the FMCSA does not consider them effective deterrents without the complementary random testing requirement. In the case of post-accident testing, the damage has already been done before a test is conducted. For reasonable suspicion testing, indicators that the driver may have a problem have already become apparent to a trained observer. Random testing however, provides a means to detect driver problems in the absence of an accident or reasonable-suspicion indicators. An effective controlled substances and alcohol program must have all three of these elements to deter the prohibited conduct, and, if deterrence fails, to detect such conduct by drivers. Even with all three of these elements, some drivers engage in prohibited conduct, as evidenced by PacifiCorp's own data. It is extremely unlikely that discontinuing the random testing portion of the program would have allowed PacifiCorp to achieve the same level of safety currently achieved through a program that includes all the required elements.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: April 14, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00–10399 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq., this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on February 7, 2000 [65 FR 5928]. No comments were received.

DATES: Comments must be submitted on or before May 26, 2000.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, telephone number 202–366–4161. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: ''Seamen's Claims; Administrative Action and Litigation''.

OMB Control Number: 2133–0522.

Type of Request: Approval of an existing information collection.

Affected Public: Officers or members of a crew who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration, or successor. Also included are surviving dependents, beneficiaries, and or/legal representatives of officers or crew members.

Form(s): None.

Abstract: The collection consists of information obtained from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor. The information will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed, it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

Annual Estimated Burden Hours: 3,125 hours.

Dated: April 21, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–10395 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7272]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Lady in Red.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 26, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7272. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: LADY IN RED Owner: Robert & Carol Blodgett.

(2) Size, capacity and tonnage of vessel: According to the Applicant ''43′ LOA, 23.6′ Beam, 3.5′ Draft.″ Tonnage:″ 25.23 Gross Tons (46 U.S.C. 14502)''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Custom, 3–5 day sailing & scuba diving adventures. Gulf and Atlantic coast waters of Florida.''

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1992, place of construction: St. Francis Marine—Durbin, South Africa.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: ''The impact on existing operators offering the same type of services will be negligible. The service area will be located in the Gulf and Atlantic, coastal waters of Florida. The customized offering will center on the sailing and diving experience aboard a luxury, sailing catamaran. The package will also include ecological discovery and education in the NOAA controlled waters of the Florida Keys, and be limited to a maximum of 8 passengers. The business operation will be located at Marathon, Florida. But, will offer points of departure out of any of the major ports in the state of Florida. The points of departure will be based on customer preference. Currently, Blackbeard Cruses has a similar offering, but it is restricted to the Bahamas and does not offer the Florida Keys as an alternative. They are also limited to monohull sailboats sailing out of Miami, FL.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''There will be a positive impact on U.S. shipyards due to the, added, annual income from the maintenance on our fleet.''

By Order of the Maritime Administrator.

Dated: April 21, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–10396 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7273]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MIMI.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 26, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7273. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: S/V MIMI. Owner: George G. Story, Alan M. Story & Spiro N. Cocotas; Three Mates, Inc.

(2) Size, capacity and tonnage of vessel: According to the Applicant: ''LOD: 58.5′—BOD: 19.5′—Draft: 7.7′—Mainmast: 63.5′. Gross: 36 Tons—Net: 31 Tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: ''Charter; revolving around, but not limited to, education and research work. MIMI presently works widely along the East Coast, into the Gulf of Mexico and rarely beyond twenty miles offshore.''

(4) Date and place of construction and (if applicable) rebuilding: Date of construction: 1931, place of construction: Camaret, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: ''The Sailing Vessel MIMI, for the past seventeen years, has worked solely in education. After the filmed production of the educational curriculums ''The Voyage of the MIMI'' in 1982 then ''The Second Voyage of the MIMI'' two years later, a demand for the curriculum platform, the S/V MIMI, to tour the east coast became wide spread. In the course of the school year the vessel now sails four thousand nautical miles along the Eastern United States and shares the nautical life of it's crew, along with other points of related nautical interests, such as navigation, mechanical advantage, knot tying and seamanship, with as many as forty-five thousand elementary and middle school students. The MIMI curriculum, which was originally sponsored through a collaboration between the United States Department of Education, Bank Street college of Education and the Public Broadcasting System, is today seen by, and worked with, well over one million students, through over twenty-one thousand schools systems nation wide, annually. Sailing MIMI to all of the areas the curriculum services is impossible. Making MIMI available to teachers during the vacationing periods of the year, will further update and carry the curriculum to the classroom through the teacher's experiences aboard the vessel. The S/V MIMI, operating within its not-for-profit status, will be utilized as an uninspected vessel, carrying only six fared passengers, two crewmembers and one cook, in a near coastal situation. By the nature of MIMI's reputation and fame, no other vessel can deliver this experience; since there is no other recognizable MIMI, there is no impact on other existing businesses of this kind, simply because there are none to impact upon. Also, ever since MIMI's homeport has been Gloucester, Massachusetts, all maintenance and repairs, as well as a major rebuilding during the summer of 1995, have been made with U.S. materials and U.S. labor, in U.S. shipyards, the vessel itself is operated by U.S. personnel and all completely paid for with U.S. money earned here in the United States.''

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: ''For all of the aforementioned reasons, it appears as though the impact on United States coastwise trade and United States shipyards is a positive impact, not a negative one, and will always continue to be.''

By Order of the Maritime Administrator.

Dated: April 21, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–10397 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 [64 FR 57924–57925].

DATES: Comments must be submitted on or before May 26, 2000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Michael Huntley at the National Highway Traffic Safety Administration, Office of Crash Avoidance Standards (NPS–12), 202–366–0029, 400 Seventh Street, SW, Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 571.213, Child Restraint Systems.

OMB Number: 2127–0511.

Type of Request: Extension of a currently approved collection.

Abstract: Each manufacturer of child restraint systems must label each system with safety information and instructions on using the restraint. Without proper use, the effectiveness of these systems are greatly diminished. The manufacturer is also required to provide a printed instructions brochure with-

step-by-step information on how the restraint is to be used activated and used. A permanently attached label gives quick-look information on whether the restraint meets the safety requirements, recommended installation and use and warnings against misuse. Manufacturers are also required to provide owner registration cards and label to their child restraints with a message informing users of the importance of registering the restraint.

Affected Public: The manufacturer's producing child restraint systems.

Estimated Total Annual Burden: 90,000.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 19, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–10439 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 10, 1999 [64 FR 61378–61379].

DATES: Comments must be submitted on or before May 26, 2000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John F. Oates at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–2730, 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR part 1335 State Highway Safety Data and Traffic Records.

OMB Number: 2127—NEW.

Type of Request: New information collection.

Abstract: The Transportation Equity Act for the 21st Century, signed into law on June 1998. Established a New Section 411, entitled State Highway Safety Data Improvements. Under this provision, states may qualify for incentive grant funds by adapting and implementing effective highway safety data and traffic records improvement programs which meet specified statutory criteria. The program identifies three basic records system components, all of which must be present if the state is to retrieve multiple-year grants: (1) A committee to coordinate the development and use of highway safety data and traffic records; (2) a systematic assessment of the state's highway safety data and traffic records; and, (3) a strategic plan for the continued improvement of highway safety data and traffic records.

Affected Public: Those state, local, and tribal government officials applying for incentive grant funds.

Estimated Total Annual Burden: 114.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 19, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–10440 Filed 4–25–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33846]

Peter A. Gilbertson, et al., and SouthShore Corporation—Control Exemption—Illinois Indiana Development Company, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25, for Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, and SouthShore Corporation (collectively petitioners) to acquire control of Illinois Indiana Development Company, LLC (IIDC).[1]

DATES: This exemption will be effective May 26, 2000. Petitions to stay must be filed by May 11, 2000, and petitions to reopen must be filed by May 22, 2000.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 33846 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioners' representative: Rose-Michele Weinryb, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, 1925 K Street, NW., Suite 405, Washington, DC 20006. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD Services 1–800–877–8339.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 19, 2000.

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

Vernon A. Williams,

Secretary.

[FR Doc. 00–10423 Filed 4–25–00; 8:45 am]

BILLING CODE 4915–00–P

[1] This proceeding is related to two concurrently filed notices of exemption in *Illinois Indiana Development Company, LLC—Acquisition and Operation Exemption—Norfolk Southern Railway Company,* STB Finance Docket No. 33845 (STB served and published at 65 FR 10149 on Feb. 25, 2000); and *Chicago SouthShore & South Bend Railroad—Operation Exemption—Illinois Indiana Development Company, LLC,* STB Finance Docket No. 33819 (STB served and published at 65 FR 10148 on Feb. 25, 2000).

Federal Register

Wednesday,
April 26, 2000

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3130 and 3160
National Petroleum Reserve, Alaska—Utilization; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3160

[WO–310–1310–00 24 1A]

RIN 1004–AD13

National Petroleum Reserve, Alaska—Unitization

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new subpart to the Bureau of Land Management's oil and gas regulations implementing new statutory authority allowing operators to form units in the National Petroleum Reserve, Alaska (NPRA). Units allow for the sharing of costs and spreading of revenues among several leases, and allow for production from unit leases to occur without regard to lease or property boundaries. The rule would also allow for waiver, suspension, or reduction of rental or royalty for NPRA leases; allow for suspension of operations and production for NPRA leases; amend existing regulatory language to set the primary lease term for an NPRA lease at 10 years. Current regulations allow 10 years, or a shorter term if it is in the notice of sale; and add a new subpart to the NPRA regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands.

This proposal would also make it clear that existing suspension regulations would not apply to the NPRA.

DATES: You must submit your comments to BLM at the appropriate address below on or before June 26, 2000. BLM will not necessarily consider any comments received after the above date in making its decisions on the final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Internet e-mail: WOComment@blm.gov. (Include ''Attn: AD13'')

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela at (202) 452–0340, or Ian Senio at (202) 452–5049, or write to Director (630), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. Persons who use a telecommunications device for the deaf may contact these persons through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. The Rule as Proposed
IV. Section-by-Section Analysis
V. Procedural Matters

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

You may mail comments to Director (630), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

You may deliver comments to Room 401, 1620 L Street, NW, Washington, D.C. 20036.

You may also comment via the Internet to WOComment@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD13'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 452–5030.

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 1620 L Street, NW, Room 401, Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Why is BLM Proposing This Rule?

Part 3130 of 43 Code of Federal Regulations (CFR) contains the regulations that apply to oil and gas leasing in the National Petroleum Reserve, Alaska (NPRA) authorized under the Naval Petroleum Reserves Production Act of 1976, as amended (the ''Act''), (42 U.S.C. 6501 *et seq.*). Part 3130 does not contain regulations on unitization, suspensions, or waivers of royalty or rental, suspensions of operations and production or subsurface storage of oil and gas. This proposed rule would implement amendments to the Act (see Pub. L. 105–83) authorizing operational activities, including unitization of leases, suspensions or waivers of royalty or rental, the suspension of operation and production for leases in NPRA and subsurface storage agreements.

Is this Rule Related to the Environmental Impact Statement or the Record of Decision to Lease Oil and Gas in the NPRA?

No. BLM completed and made publicly available an Environmental Impact Statement/Integrated Activity Plan (EIS/IAP) regarding oil and gas leasing in the NPRA on August 7, 1998. The Secretary issued a Record of Decision (ROD) for that action on October 7, 1998. This proposal does not address the EIS/IAP or the ROD or any action involved with the actual leasing process, but would cover operational activities carried out under leases issued as a result of that process.

III. The Rule as Proposed

How Would This Rule Change BLM's Oil and Gas Regulations?

The proposed rule applies to operations under Federal oil and gas leases in NPRA and would add a new

subpart allowing the formation of oil and gas units in the NPRA. The rule would also—

(A) Allow for waiver, suspension or reduction of rental or royalty for NPRA leases;

(B) Allow for suspension of operations and production for NPRA leases;

(C) Amend existing regulatory language to set the primary lease term for an NPRA lease at 10 years. Current regulations allow 10 years or a shorter term if it is in the notice of sale;

(D) Add a new subpart to the NPRA regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands in return for fees; and

(E) Make it clear that existing suspension regulations that preceded the enactment of P.L. 105–83, would no longer apply to the NPRA.

What is Unitization?

Unitization is a means for a group of oil and gas lessees in a given area to share in the risks and costs associated with oil and gas exploration and development and also to share in the possible benefits. Unitization of leases reduces the need for surface disturbing activities by enhancing the likelihood that fewer wells would need to be authorized in order to produce the oil or gas reservoir. The proposed regulations implement statutory changes and are intended to recognize the unique climatic conditions of NPRA, the needs and practices of the oil and gas industry in light of those conditions, and the need to protect natural resources in NPRA.

The Secretary is obligated to protect surface resources within NPRA (*see* 42 U.S.C. 6508). The protection of surface resources includes the protection of subsistence needs of rural residents. This proposal does not directly address subsistence because unitization will not change the obligation to comply with subsistence related stipulations in leases. Please comment on whether these proposed regulations will meet the needs of the public and the industry while protecting the NPRA environment and whether these regulations should specifically address subsistence.

Why is BLM Proposing a Rule on Unitization of Oil and Gas Leases in NPRA?

While there is already a detailed set of regulations governing oil and gas leasing in NPRA in Part 3130 of 43 CFR, there are no regulations allowing for unitization. The proposed rule implements paragraph (8) of section 6508 of the Act that authorizes unitization of NPRA leases.

Is This Proposal Similar to That Proposed in BLM's Earlier Oil and Gas Rulemaking on Unitization?

This proposal closely follows the proposed unit regulations in BLM's proposed comprehensive oil and gas rule published on December 3, 1998, at 63 FR 66840. Those unit regulations would apply on Federal lands in the lower 48 States and Alaska, but not in NPRA. This proposal differs from that proposal where the statute requires differences or where, because of environmental, climatic, or geologic concerns, we determined that rules in NPRA should differ from those applying to other Federal lands. This proposal is also different in that it applies only to exploratory units and would not apply to enhanced or secondary recovery units.

What Are the Major Differences Between This Proposal and the Unit Regulations That Currently Apply to Federal Lands Outside of NPRA?

Increased Flexibility

Like the unit regulations proposed earlier (63 FR 66911), these regulations would increase the flexibility of the unitization process by allowing operators and BLM to negotiate exploration and development terms before entering into a unit agreement. The focus of this process would be to protect the public interest rather than to rely on the model unit agreement contained in existing regulations at 43 CFR subpart 3186, which is currently applicable to Federal lands outside of NPRA.

Up-Front Negotiation and Limited Number of Unit Terms

The primary change to the unitization process that you may be familiar with would be an emphasis on up-front negotiation among the various interest owners and BLM. Operators would be able to use any agreement format in their unit agreement as long as it addressed the following four basic issues: (1) Unit area; (2) Initial and continuing development obligations; (3) Productivity criteria and participating areas; and (4) BLM's ability to set or modify the quantity, rate, and location of development and production.

BLM would accept only a limited number of additional unit agreement terms beyond the mandatory terms. If the unit agreement does not specifically address modifications, they would not be permitted unless all of the parties to the agreement agree. The unit agreement would include all producing intervals unless the unit agreement specifies those producing interval(s) to which it applies.

What Would be the Basis for the Negotiations?

The unit operator and BLM would base the negotiation of unit agreement terms on many factors. These factors may include the history of the area, economics, the number and depth of wells previously drilled in the area, the size of the area, and the cost of the proposed operations and the unique environmental and climatic and geologic conditions in the NPRA.

How Would the Unit Agreement Process Work?

Under the proposed regulations, generally, if you own or lease tracts you could apply to BLM for review of your proposed unit agreement. You and BLM would negotiate the terms of the unit agreement. BLM would review the agreement and determine whether we should approve it. After BLM approves the unit agreement, tracts joining the unit would be committed tracts. BLM would designate a participating area if it found that a well meets the negotiated productivity criteria laid out in the unit agreement. To meet the productivity criteria, a well must have future production potential sufficient to pay for the costs of drilling, completing and operating a unit well. Each participating area would have at least one well meeting the productivity criteria. Participating areas are used to allocate production to committed tracts within the unit. A tract shares in production if there is anywhere within the tract a participating area containing a well that meets the productivity criteria.

When a unit well in a participating area stops producing, the participating area terminates unless there is another unit well that is producing in that participating area. Normally, when the last unit well in the last participating area stops producing and there are no approved drilling or reworking operations on committed tracts, the unit terminates. After unit termination, all committed leases that were part of the unit would return to their individual lease status in effect at the time of termination and would not receive any further benefits of unitization. For example, if a committed Federal lease's primary term expires before unit termination, the Federal lease would terminate when the unit terminates, unless the lease qualifies for extension under current regulations at 43 CFR 3135.1–5. There is no automatic extension of the lease term provided for

Federal leases which have been previously committed to terminated units. Federal leases that have not completed their primary term would continue under their terms.

What Are Participating Areas and How Does This Proposal Treat Them?

Participating areas are used to allocate production from wells in a unit to the tracts committed to the unit and unleased Federal land. A participating area includes the land around a well that meets certain criteria negotiated for and laid out in the agreement. In general, these criteria must show that the production from the well can pay for its operation. You and BLM would negotiate the productivity criteria and the participating area and revision size, and would include these terms in the unit agreement. To establish a participating area, you must prove to BLM that the production from the area you propose to include in the participating area can cover the costs of operating the area.

This proposal would change the current procedure involving the creation and size of initial participating areas and additions to existing participating areas. This rule would provide that the amount of land to be included in any participating area or revision be specified in the unit agreement. Under current procedures that apply to Federal lands outside of NPRA you are not required to specify the amount of land and BLM determines participating area size after a detailed review of production data. Under existing procedure, participating areas include only specific producing intervals. Under this proposal we presume that a participating area includes all producing intervals unless the agreement specifies that it doesn't. An addition to an existing participating area would occur when a new well that meets the productivity criteria defined in the unit agreement is drilled outside of that participating area.

Does This Proposal Require a Plan of Operations?

The obligation in the model unit agreement to drill an exploratory well and subsequent wells under a plan of operations would be replaced with initial and continuing development obligations. Under this proposal, you and BLM would negotiate the initial and continuing development obligations and would include those terms in the unit agreement. These terms would define the number and frequency of wells you plan to drill or operations that would establish new unitized production. You would be required to submit a plan of operations to BLM after you completed initial development obligations that would detail how you plan to develop the area. Under this proposal, the unit would automatically contract (decrease in size) to the existing participating area(s) when you do not meet a continuing development obligation.

Existing regulations that apply to Federal lands outside of NPRA allow five years for drilling and development of the unitized area before automatic elimination would occur for lands not in a participating area. This proposal would not contain the 5-year initial drilling and development period of current regulations applying to Federal lands outside of NPRA. BLM believes this new requirement would increase the potential for oil and gas development by encouraging operators to follow a continuous development program on a schedule appropriate for the area, or risk contraction of the unit area to the participating area(s).

What Are Paying Well Determinations and How Does This Proposal Treat Them?

Under current regulations that apply to Federal lands outside of NPRA, paying well determinations are the basis to authorize the creation of a participating area. Under this proposal, paying well determinations would be replaced with well productivity criteria laid out in the unit agreement. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing, and operating.

Under This Proposal, Is There a Set Time in Which I Must Develop the Entire Unit?

Under existing procedures that apply to Federal lands outside of NPRA, operators are limited to a set time to develop the entire unit. Under the proposed regulations, the unit would not contract as long as development continued at the rate set out in the agreement. Once you meet your initial development obligations (set out in the agreement), all tracts committed to a unit would continue to receive the benefits of unitization as long as the unit is producing oil and gas.

Why is BLM Proposing Rules on Waiver, Suspension, or Reduction of Rental or Royalty?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve waiver, suspension, or reduction of rental or royalty for NPRA leases (see paragraph (10) of section 6508 of the Act). In accordance with the Act, BLM would approve these only if they encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators would get the benefit only if they proved to BLM that they could not successfully operate the lease without the benefit. These standards are high because we should take these actions only as a last resort, to save a lease which ''cannot be successfully operated under the terms provided therein.'' (42 U.S.C. 6508).

Why is BLM Proposing a Rule on Suspensions of Operations and Production?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve suspensions of operations and production for an NPRA lease. The rule would implement paragraph (10) of section 6508 of the Act that gives BLM the authority to suspend operations and production on NPRA leases. Because of the extreme sensitivity of Alaska's north slope environment, any surface disturbing activity requires a long construction lead-time and careful planning. The lapse of time between the discovery of oil and gas and the connection of that discovery well with transportation facilities is much greater in northern Alaska and is much more expensive than in the lower 48 States.

A lease should not be lost, or the opportunity to develop a new field foregone, simply because a multi-year planning and construction process may be required. It is important that the environment receive maximum protection while providing the lessee, the United States, and the State of Alaska the opportunity to develop new mineral resources. These regulations would allow BLM to grant suspensions of operations and production of unitized leases to protect the surface resources, to promote the greatest ultimate recovery of resources to allow for the careful planning and construction of a transportation system to a new area of discovery, or to mitigate reasonably foreseeable and significant adverse effects on the surface resources.

How Does a Suspension of Operations and Production Affect a Lease?

During the period of the suspension, operations and production would stop. Operators would not be required to pay any rental or royalty during the period of suspension, but neither would they have beneficial use of the lease. Suspensions of operations and production would also extend the term of a suspended lease, and add the period of the suspension to the lease term.

Why is BLM Proposing a Rule on NPRA Lease Extensions?

Recent amendments to the Act made by Public Law 105–83 authorize BLM to approve lease extensions. Paragraph (8) of section 6508 of the Act provides that extensions can only occur by production or by reworking or drilling as approved by the Secretary. However, BLM is charged with administering this statute and has the duty to interpret and implement these provisions. If a very narrow construction is given to the words production, drilling or reworking, the result would be the expenditure of time and money without the opportunity to start operations that would otherwise extend the lease term. Accordingly, the proposed regulations would address the concepts of ''constructive drilling'' and ''constructive reworking operations,'' and recognize demonstrations of diligence in operations as a basis for extension.

What are Subsurface Storage Agreements?

Subsurface storage agreements are agreements between an operator and BLM to store oil or gas on Federal lands in existing geologic structures in return for a fee. Tanks are not installed: The gas is reinjected, and is stored in, a geologic structure that exists naturally. There is very little environmental impact involved in storing oil or gas in this manner. Most times oil or gas is reinjected by existing surface and subsurface operating equipment from prior operations. Existing regulations that apply to Federal lands outside of NPRA allow subsurface storage agreements (see 43 CFR 3105.5). There is a similar need for subsurface storage agreements within the NPRA.

Why is BLM Proposing a Rule on Subsurface Storage Agreements?

Subsurface storage agreements are important for NPRA because they would allow operators to store oil or gas with minimal environmental impact while waiting for distribution. Climatic conditions in NPRA are often severe, making gas storage necessary until it can be distributed.

Are There any Other Changes to Existing Regulations That This Proposal Would Make?

Yes. This rulemaking would make two more minor changes to the NPRA regulations.

1. Fixing the Lease Term at 10 Years

In recent amendments to the Act made by Public Law 105–83, Congress mandated that the initial NPRA lease term be 10 years. These regulations would implement that provision. Under current regulations, the lease term could be less. Longer lease terms in the NPRA are preferable since there are harsh geologic and climatic conditions in the NPRA that make it difficult to operate in that region. Longer lease terms would allow operators additional time to deal with the geologic and climatic conditions in NPRA.

2. Administrative Provision

Existing provisions on suspensions that apply to leases in the lower 48 States would no longer apply to NPRA leases. This proposal would amend existing language in subpart 3160 that cross-references § 3104–3 and make it clear that that provision does not apply to NPRA leases. This amendment is strictly administrative. As discussed above, this proposal would implement statutory authority by adding suspension provisions that apply only to NPRA leases.

IV. Section-by-Section Analysis

Subpart 3130—Oil and Gas Leasing, National Petroleum Reserve, Alaska: General

Section 3130.4–2 would set NPRA lease terms at 10 years. Existing regulations allow lease terms to be less than 10 years if it is in the notice of lease sale. This change was mandated by Congress.

Subpart 3133—Rentals and Royalties

Section 3133.3 would provide for waiver, suspension, or reduction of rental, royalty, or minimum royalty for NPRA leases if it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Applicants would be required to prove to BLM that they couldn't operate under their current lease terms without a waiver, suspension, or reduction of rental, royalty, or minimum royalty.

Section 3133.4 would require you to submit to BLM an application and describe in it the relief you are requesting. BLM would also require you to submit the items listed in this section in your application so that BLM can determine if you meet the standards of the regulations.

Subpart 3135—Transfers, Extensions, Consolidations and Suspensions

The suspension of operations and production in this subpart should be distinguished from the suspensions of rental, royalty, or minimum royalty in subpart 3133. Those suspensions relate to payments only and do not relate to suspensions of operations and production contained in this subpart.

Section 3135.2 would describe the circumstances under which BLM would approve a request for a suspension of operations and production on an NPRA lease. BLM would approve suspensions of operations and production if you are prevented from operating your lease for reasons beyond your control, and your request:

(A) Is in the interest of conservation of natural resources. This could include conservation of oil and gas as well as other NPRA resources;

(B) Encourages the greatest ultimate recovery of oil and gas, including the planning and construction of a transportation system to a new area of discovery; or

(C) Mitigates reasonably foreseeable and significantly adverse effects on surface resources.

The suspension stops the running of the lease term and during the period of the suspension you:

(A) Are not required to pay rental or royalty; and

(B) Do not have beneficial use of and may not operate on your lease.

Examples of reasons that BLM might grant a suspension could be related to protection of natural habitat and wildlife, and protection of subsistence needs of rural residents. Please comment on whether the regulation should include specific reasons to support a grant of suspension, and whether additional or different reasons should be the basis supporting a grant of suspension.

Section 3135.3 would provide the suspension application requirements. BLM would require the listed items to determine whether you qualify for a lease suspension.

Sections 3135.4 and 3135.5 would describe the effective date of the suspension and when you should stop paying rental or royalty.

Sections 3135.6 and 3135.7 would state when your suspension terminates and how the termination of the suspension would affect your lease. BLM will terminate suspensions when you begin any operations on your lease, or when BLM determines that the

reason for granting the suspension no longer exists. You must notify BLM at least 24 hours before starting operations on a suspended lease. Once the lease suspension terminates, your rental or minimum royalty obligation resumes. Your lease will be extended by adding the period of the suspension to the term of your lease.

Subpart 3137—Unitization Agreements, National Petroleum Reserve, Alaska

Section 3137.5 would contain a definitions section that includes the terms you need to know to understand this subpart.

This section introduces two terms, *constructive drilling* and *constructive reworking* operations, that would be unique to the NPRA. These terms are important for the extension provisions of §§ 3137.111 through 3137.113 and would allow you to get an extension of a lease in a unit if you prove there are ongoing constructive drilling or reworking operations in the unit. Since oil and gas operations are difficult and expensive in the NPRA, we believe, as we noted in the overview discussion above, that it is reasonable for constructive drilling or reworking operations to extend your lease.

We would use of the term *operating rights* instead of the use of the more universal term ''working interest'' here to be consistent with BLM's proposed Onshore Oil and Gas Leasing and Operations regulations (63 FR 66879) and current regulations that apply to Federal lands outside of NPRA. (see §§ 3100.0–5 and 3160.0–7). Please specifically comment on this definition and how it compares to standard industry usage of this term.

General

Section 3137.10 would explain the benefits to entering into a unitization agreement in the NPRA. One of the major benefits of unitization is that operations or production from one part of the unit meets the development obligations for all leases committed to the unit. You receive the benefits of operations or production, even if the operations are not on, or the production does not occur from, your lease. We give identical benefits to all the tracts in the unit for extensions and wells that meet the productivity requirements laid out in the agreement. As long as one well in the unit has met the productivity criteria, all leases in the unit are extended.

Another benefit of unitization is that operations may occur in the unit without regard to restrictions such as spacing requirements and lease offsets. For example, if there were a 200-foot limit to drilling next to a lease boundary, it would not apply among unitized tracts and you would be able to drill within the 200-foot limit. Finally, since unit operator(s) would be responsible for operations for all unitized tracts, lessees benefit by being able to consolidate operations and reporting requirements.

Application

Sections 3137.20 would describe the format of the unit agreement BLM will accept. BLM would accept any format as long as it protects the public interest, including oil and gas resources and environmental concerns, and includes the mandatory terms required by these regulations.

Section 3137.21 would introduce the basic terms of a unit agreement. It would also cross reference other sections of the regulation whose subject is referenced here. This section would contain a provision that would allow BLM to request additional supporting documentation after reviewing your initial application.

Section 3137.22 would lay out the size and shape requirements for the unit area. Units must be made up of tracts that are contiguous so that unit operations and production could be conducted in an efficient and logical manner. BLM considers this to be the minimum qualification for a tract to be included in a unit area. The unit area must also include at least one NPRA lease since these regulations would not apply if an NPRA lease were not in the unit.

This section would also make it clear that BLM may limit the size and shape of the unit, considering the type, amount and rate of development and production and the location of the oil and gas. BLM would approve reasonable sizes and shapes as long as they comply with the other provisions of this section.

Section 3137.23 would describe what you must submit to BLM in your application. This would include a statement that there are sufficient tracts in the agreement to reasonably operate and develop the unit area. This means that BLM expects unit operators to be able to operate the unit area efficiently without the need for participation in unit operations or production by non-committed parties.

Your application would include a discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPRA. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section would also require you to explain how unit operations may reduce impacts compared to individual lease operations. In other words, your unit application must explain how:

(A) Operations under the unit will comply with the environmental, subsistence, archaeological, and historical preservation requirements under laws or regulations; and

(B) The unit operations' impacts on surface resources would be less than those impacts of lease operations were they to be performed individually.

Section 3137.24 would list the reasons BLM would reject a unit agreement application.

BLM would reject a unit application that:

(A) Does not contain the mandatory terms these regulations require, and any additional terms BLM may require you to include;

(B) Proposes a unit operator who has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order. BLM has determined that only responsible, qualified operators should be allowed to operate a unit in the NPRA. Operators with satisfactory records of compliance are more likely to comply with the terms and conditions of leases and these regulations than those who have unsatisfactory records of compliance. BLM would also reject any unit application that proposes an operator who is not qualified, under any statute or regulation, to operate within NPRA;

(C) Does not conserve natural resources. BLM interprets paragraph (10) of 42 U.S.C. 6508 as establishing this standard. BLM has interpreted ''in the interest of conservation'' from the statute to mean that the unit agreement must conserve natural resources, including oil and gas and other resources in the area of development;

(D) We determined was not in the public interest. BLM would not approve unit applications that do not protect the resources in an oil and gas pool, field, or similar area;

(E) Does not comply with any special conditions in effect for any part of the NPRA that would be affected by the unit or any lease subject to the unit. BLM often imposes special conditions, such as stipulations and conditions of approval, to protect surface and subsurface resources; or

(F) Does not comply with the requirements of this subpart.

Sections 3137.25 and 3137.26 would explain how parties to the unit would know if BLM approves or disapproves the unit agreement and when the unit agreement will become effective. BLM would provide notice to unit operators. The unit operator would be required to

notify in writing all parties to the unit agreement within 30 calendar days of receiving BLM notice. One important reason for this is to notify lessees of when the unit operator began acting on their behalf. A unit agreement is effective the date BLM approves it.

Sections 3137.27 and 3137.28 would explain the effect of other agreements on the unit agreement and whether a unit agreement includes all oil and gas committed to the unit.

This section would make it clear that private agreements between operators, among lessees, or between the operator(s) and lessees do not affect or modify the terms of the BLM approved unit agreement. Likewise, agreements entered into with any other parties, including lease agreements, do not modify unit terms or conditions. However, the unit agreement does not modify Federal lease stipulations.

The regulations would require a unit agreement to include all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary.

Development

Section 3137.40 and 3137.41 would explain that you must define initial and continuing development obligations in a unit agreement. You and BLM would negotiate the details of these terms before you submit a final application.

Initial development obligations must be such that when you complete them, you will be able to estimate the size and shape of the reservoir within the unit area and understand the geologic conditions existing within the reservoir and unit area. You must complete initial development obligations before beginning continuing development obligations.

Continuing development obligations should promote development within unit areas. BLM has determined that, as a matter of policy, in exchange for the benefits of unitization, operators must commit to development exceeding that of non-unit development in the area surrounding the unit.

Optional Terms

Section 3137.50 would describe the optional terms BLM may allow you to include in your unit agreement if they promote additional development or enhanced production potential. These include optional terms that:

(A) Limit the unit to certain formations;

(B) Allow multiple unit operators; or (C) Allow modifications to the agreement by less than 100% of the parties to the unit.

BLM would also allow other optional terms not listed above if you prove to BLM that they promote the greatest economic recovery of oil and gas.

Section 3137.51 would establish the requirements for multiple unit operators. The unit agreement must explain the conditions under which additional unit operators would be acceptable. For example, a justification for multiple unit operators may be the need for different sets of operations to produce oil and gas with different and distinct characteristics from the same unit. Multiple unit operators may be necessary to have distinct, but not redundant, surface production facilities to handle that production. The unit agreement must also establish the responsibilities of the different operators so that lessees and BLM are informed of who is responsible for what, including bond coverage.

You must also define in the unit agreement the consequences if one or more of the unit operators defaults, such as which operator(s) would be responsible for particular operations in case another operator defaults. Finally, the unit agreement must define which unit operator is responsible for unit obligations not specifically assigned in the unit agreement such as the division of responsibilities for different types of operations that might occur within the same unit.

Section 3137.52 would set out the requirements to allow you to modify the unit agreement. You would be able to modify the unit agreement if:

(A) All current parties (original parties or their successors) agree to the modification; or

(B) You meet the modification provision in the unit agreement. In order to permit you to modify the unit agreement in this manner, the unit agreement must identify which parties, and what percentage of those parties, must consent to each type of modification named in the unit agreement.

Before BLM approves a modification, you must certify that all necessary parties, as spelled out in the unit agreement, have agreed to the modification. Modifications would be effective retroactive to the date you filed a complete modification application.

Unit Agreement Operating Requirements

Section 3137.60 would describe the unit operator's obligations. Operators must:

(A) Comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders; and

(B) Provide evidence of acceptable bonding. The proposal provides that the amount of acceptable bonding would be no less than the sum of the individual Federal bonding requirements for each of the Federal leases committed to the unit.

Evidence of acceptable bonding could include:

(A) A list of the bonds, their identification numbers, and their amounts; and

(B) Certification that the bond amounts are sufficient to cover the proposed unit operations.

Operators who do not comply with this section are not eligible to operate an NPRA unit.

This section would require bonds to be payable to the Secretary of the Interior. This is standard practice for bonding on public lands.

Section 3137.61 would make clear how you can change the unit operator. If you are the new unit operator of an existing unit, you must file statements with BLM that you accept unit obligations and that the required percentage of interest owners according to the unit terms consented to a change of the unit operator. New operators must also file evidence of acceptable bonding. The effective date of the change in the unit operator would be the date BLM approves it.

Section 3137.62 would describe your liabilities as a former unit operator. Former unit operators would be liable for any duties and obligations that accrued before BLM approved a new unit operator.

Section 3137.63 would describe your liabilities as the new unit operator. Liability would be joint and several with the former unit operator. This means that each person who holds an undivided interest in the lease is responsible for the full amount of liability if the other holders of the lease can't satisfy the liability. The new unit operator would have joint and several liability with the record title and operating rights owners for:

(A) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations and BLM notices and orders;

(B) Plugging unplugged wells that were drilled and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operators; and

(C) Liabilities that accrue during the time you are the unit operator. Under the proposed regulation, the new unit operator's liability for obligations under

the lease, such as royalties and other payments, would be limited by Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1712(a).

Section 102(a) of FOGRMA provides that, while a lessee may designate some other person, such as a unit operator, to make payments due to the Government on the lessee's behalf, the designated payer does not thereby become liable to the Government for those payment obligations. A designated payer, such as a unit operator, only has liability to the Government if he is also the owner of the operating rights in a lease or is the record title owner. The statute provides that the operating rights owners are primarily liable to the Government for payment obligations and that owners of record title are secondarily liable if they do not own the operating rights.

Accordingly, the proposed regulation would recognize that a new unit operator's potential liability for the payments due the Government would not be automatic, but would be dependent upon whether he is an operating rights owner or an owner of record title, in accordance with the limitations contained in Section 102(a) of FOGRMA.

Section 3137.64 would set out the requirements for preventing drainage or compensating the Federal Government for it. To prevent uncompensated drainage of oil and gas from unit land by wells on land not subject to the agreement, you must take such measures as BLM determines are necessary. This would include:

(A) Drilling protective wells that are economically feasible. A protective well is considered economically feasible if it is projected to have production in quantities sufficient to pay for the cost of drilling, completing and producing operations;

(B) Paying the Federal Government compensatory royalty for oil or gas lost through drainage from a unit. BLM would determine the amount of compensatory royalty that would cover oil and gas lost through drainage;

(C) Forming other agreements or modifying existing agreements to allow the tracts in the unit to share in production. BLM would agree to this provision only if we determine that the Federal Government is being fairly compensated for drainage; or

(D) Any additional measures that BLM considers necessary to prevent uncompensated drainage.

Development Requirements

Sections 3137.70 would explain:

(A) The requirements to meet initial development obligations; and

(B) What you must submit to BLM after you meet initial development obligations. To meet initial development obligations by the time you agreed to in your unit agreement, you must have:

(1) Drilled the required test well(s) to the primary target. This term would have been negotiated with BLM before you submitted to BLM your complete unit application;

(2) Drilled at least one well that meets the productivity criteria (see the discussion of § 3137.82 for a discussion of productivity criteria); or

(3) Established to BLM's satisfaction that further drilling to meet the productivity criteria is unwarranted or impracticable. BLM would require you to submit information showing that the primary target defined in the unit has been adequately drilled and tested as proof that further drilling is unwarranted or impracticable. This information could include well logs and production test data. If you meet this standard, and BLM agrees that further drilling should not occur, the unit may terminate. Alternatively, if you have a modification provision in your unit agreement, you could submit, for BLM approval, a request to modify the initial development obligations and/or productivity criteria in your unit agreement.

You would be required to submit to BLM certification that you met initial development obligations within 60 calendar days after having done so.

Section 3137.71 would explain the requirements to meet continuing development obligations and would list what kinds of operations BLM would consider to be continuing development. (See the discussion of §§ 3137.40 and 3137.41.) Work you conducted before meeting initial development requirements would not be continuing development. You would be required to submit to BLM, no later than 90 days after meeting initial development obligations, a plan that describes how you will meet continuing development obligations. No later than 90 days after BLM's approval of your plan, you would be required to certify to BLM in writing that you started operations to fulfill continuing development obligations.

Section 3137.72 would explain that you may conduct additional development within or outside a participating area to fulfill continuing development obligations.

Section 3137.73 would explain that a unit contracts if you do not meet a deadline for performing a continuing development obligation. This section would also explain contraction and when it is effective. Contraction means that all areas outside any participating area will be eliminated from the unit and only established participating areas (producing or non-producing, depending on unit terms) remain in the unit. After contraction, any producing wells no longer in the unit would produce oil or gas under the terms of the lease or other agreement (*e.g.,* communitization agreement) under which they are operating. If you do not meet a continuing development obligation before a participating area is established, the unit terminates.

Participating Areas

Sections 3137.80 and 3137.81 would define participating areas and describe their function. Whether an area surrounding a well becomes a participating area depends on whether the well within the unit area meets the productivity criteria set out in the unit agreement. The function of a participating area is to allocate production to each committed tract that is within or partially within the participating area according to that tract's surface acreage within the participating area. Section 3137.80 would require you to delineate a participating area at the time it meets the productivity criteria defined in § 3137.82.

Section 3137.82 would define productivity criteria as the characteristics of a well that warrant including an area (defined in the unit agreement) surrounding the well in a participating area. The criteria would be required to be defined in the unit agreement for each producible interval. Well characteristics include things like the:

(A) Depth of the well;

(B) Geology surrounding the well that might affect drainage from the oil and gas reservoir; and

(C) Area you estimate the well to be draining.

You must be able to determine whether you meet the criteria when the well is drilled and you have completed testing. This means that as soon as you complete testing, it must be evident whether or not the well meets the productivity criteria.

To meet the productivity criteria, you must be able to demonstrate to BLM that the well has sufficient future production potential to pay for the costs of drilling, completing, and operating the well as a *unit well.* This is different from a paying lease well, since those wells need only cover the operating costs on a *lease basis.* A unit benefits from the efficiencies and economics of operating several leases jointly, whereas a non-unit lease must stand on its own.

Section 3137.83 would explain that the first well you drill after unitization that meets the productivity criteria would establish the initial participating area. If that initial participating area contains wells that meet the productivity criteria that existed before BLM approved the unit agreement, the wells will either:

(A) Be added to the participating area if the well is in the same producible interval; or

(B) Establish a separate participating area if the well is in a different producible interval. This would occur unless the unit agreement defines the productivity criteria to include separate producible intervals in a single participating area.

Section 3137.84 would describe what you must submit to BLM to establish an initial or new participating area or add to an existing participating area. You must submit to BLM:

(A) A statement that the well meets the productivity criteria as defined in the unit agreement. BLM may request you to submit information verifying your statement. This could include well logs and production test data.

(B) A map showing the new or revised participating area and acreage. This map should be detailed enough for BLM to determine the participating area boundary and the exact acreage.

(C) An allocation schedule for each participating area that establishes production allocation for each tract and for each record title and operating rights owners in the participating area. This information is necessary to determine proper allocation of production and for royalty purposes.

Section 3137.85 would set the effective date of an initial, new, or revised participating area as the first day of the month in which you complete a well that meets the productivity criteria.

However, this date can't be earlier than the effective date of the unit, even if the well was drilled and met the productivity criteria before BLM approved the unit.

Section 3137.86 would lay out what happens to a participating area when you drill new wells that meet the productivity criteria. The participating area will remain the same, a new participating area will be established, or an existing participating area will be expanded, depending on whether the well is:

(A) Inside or outside the participating area boundaries; and

(B) In the same or different producible interval as an existing well.

Section 3137.87 would describe your responsibilities if there are unleased Federal tracts in a participating area. You must include any unleased Federal tracts in a participating area even though BLM will not share in unit costs. BLM cannot be a party to the unit agreement. However, you must allocate production to the unleased Federal tracts for royalty purposes as if they were committed to the agreement. The Federal Government would receive royalties based on the production allocated to that land in the participating area.

If there are unleased Federal tracts that are leased after the effective date of the unit, you must admit them as of the effective date of the lease. Any time there is a new Federal lease admitted to the unit, you must submit to BLM:

(A) Revised maps;

(B) A new list of committed leases; and

(C) New allocation schedules reflecting introduction of the new lease to the unit.

Section 3137.88 would explain that wells on committed tracts outside any existing participating area that do not meet the productivity criteria would be considered to be non-unit wells, and operations on those wells are non-unit operations. Not later than 60 calendar days after a unit well does not meet the productivity criteria, you must notify BLM and treat the well as a non-unit well. This means that you must conduct operations under the terms of the lease or any other federally approved cooperative agreements such as communitization agreements and drainage compensation agreements but not under the unit terms.

Section 3137.89 would explain how production is allocated from wells that do not meet the productivity criteria. If a well that does not meet the productivity criteria was drilled before the unit was formed, or outside the participating area but still within the unit, production from that well must be allocated on a lease or other agreement basis. If a well was drilled after BLM approved the unit and was completed within an existing participating area, the production from that well becomes part of the participating area production. This is true whether or not the well meets the productivity criteria.

Section 3137.90 would explain that wells on committed tracts outside an existing participating area that do not meet the productivity criteria may be operated by someone other than the unit operator. However, as the unit operator, you must continue to operate wells you drilled after unit formation that do not meet the productivity criteria. You must do this until BLM approves a new operator for those wells.

Section 3137.91 would explain that a well BLM previously determined was a non-unit well (it did not meet the productivity criteria) that now meets the productivity criteria may establish or revise a participating area. You must notify BLM within 60 days of when this occurs and demonstrate to us that the well meets the productivity criteria before you revise an existing participating area or establish a new one. Operators would be required to submit engineering and geologic and geophysical exploration information to prove to BLM that a well meets the productivity criteria.

Section 3137.92 would explain that after contraction under § 3137.73 of this subpart, a participating area terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, unless you show that within 60 days after BLM's notification—

(A) Your operations to restore or establish new production are in progress; and

(B) You are diligently pursuing oil and gas production.

Production Allocation

Section 3137.100 would explain how to allocate production when a participating area includes unleased Federal lands as if the unleased Federal lands were leased and committed to the agreement. This protects the Federal interest and ensures that the public is fairly compensated for Federal oil and gas produced.

The obligation to pay the United States for production from unleased Federal lands accrues from the later of the date:

(A) The committed leases in the participating area that includes unleased Federal lands receive a production allocation; or

(B) Federal lands become unleased, whichever is later.

Federal lands that were committed to the unit may become unleased for a variety of reasons; such as BLM determining that the lessee of record is ineligible to hold a lease.

The royalty rate for production from unleased Federal lands in the unit would be the greater of 121/2% or the highest royalty rate of any lease in the unit. This provision would be consistent with how royalty rates are determined for unleased Federal lands in Federal units outside of the NPRA.

Obligations and Extensions

Section 3137.110 would make it clear that nothing in a unit agreement modifies Federal lease stipulations

including lease-specific environmental stipulations.

Section 3137.111 would explain that BLM will extend the primary term of a unit if there is:

(A) Actual production from a well in the unit that meets the productivity criteria; or

(B) Actual or constructive drilling or reworking operations.

These actions should demonstrate to BLM that you expended sufficient effort to explore for oil and gas that should be rewarded with an extension of the unit.

Section 3137.112 would contain a chart that explains that as long as the unit exists:

(A) Production from any unit well that meets the productivity criteria from any tract committed to the unit will extend all leases in the unit as long as that production is occurring;

(B) BLM would approve an extension of up to three years for all leases committed to the unit if you perform actual or constructive drilling or reworking operations on any tract in the unit; and

(C) After an extension for actual or constructive drilling or reworking operations, all leases in the unit would be eligible for an extension of up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in performing the approved drilling or reworking operations during the initial extension. If, after the second extension, you still have not drilled a well within the unit that meets the productivity criteria and within the unit there is no producing well that meets the productivity criteria, the unit terminates.

Section 3137.113 would explain that BLM will extend all committed leases if, for reasons beyond your control, you were prevented from starting actual or constructive reworking or drilling operations. You would be eligible for two extensions for a total of six years. You must resume actual or constructive drilling or reworking operations as soon as the reasons that prevented you from starting operations no longer exist. If you do not resume operations, BLM will cancel the extension and the unit would terminate.

Change in Ownership

Section 3137.120 would make it clear that grantees, transferees, and successors in interest of a unitized lease are subject to the terms and conditions of the unit agreement. This is standard practice for BLM-approved units and in the oil and gas industry in general.

Unit Termination

Section 3137.130 would describe the circumstances under which BLM will approve voluntary termination. BLM will approve voluntary termination of the unit any time before the unit operator discovers production that meets the productivity criteria, or the unit operator certifies that at least 75% of the operating rights (working interest) owners on a surface acreage basis agree to the termination. BLM chose 75% of operating rights (working interest) owners as the standard to discourage voluntary unit termination against the will of most of the lessees, and to protect interest owners in the unit.

Section 3137.131 would explain that if the unit terminated before the unit operator met the initial development obligations, BLM's approval of the agreement is revoked. The consequences of this are that lessees forfeit any benefits they may have received as a result of unitization, such as lease extensions and suspensions. Any lease that BLM extended as a result of being committed to the unit would expire unless it qualified for an extension under § 3135.1–5 of this part. Any lease suspension BLM granted as a result of a lease being committed to the unit would be canceled.

Section 3137.132 would explain that a unit automatically terminates if you did not meet a continuing development obligation before any participating area is established. You would have negotiated continuing development obligations with BLM that would be specified in the unit agreement, and as such, BLM will strictly enforce the obligations. The effective date of the termination is the day after you did not meet a continuing development obligation.

Section 3137.133 would explain that a unit terminates when the last participating area of a unit terminates. If there are no participating areas in the unit, it means that there is no production from any well that meets the productivity criteria in the unit area. Consequently, the reason for the unit no longer exists.

Section 3137.134 would explain that when the unit terminates, all committed leases are subject to their original provisions. Any lease that has completed its primary term on or before the unit expires, unless it qualifies for an extension under current § 3135.1–5.

Section 3137.135 would explain that the unit operator must submit to BLM a plan and schedule for mitigating the impact of unit operations within 3 months after unit termination. Operators would be required to describe in detail planned plugging and abandonment and surface restoration operations.

Appeals

Section 3137.150 would explain that any person who is adversely affected by a BLM decision under this subpart may appeal that decision. This section would also cross-reference State Director Review (SDR) regulations that BLM is developing. Details of how the SDR process would work will be in an upcoming proposed rule. Under this proposal, you would be able to request an SDR of decisions BLM issues under these regulations. This section would not become final until the SDR regulations are final.

In the event that these regulations become final before the SDR regulations are final, SDRs would be available for decisions issued under these regulations following the process in existing regulations at § 3165.3(b).

Possible Alternative

Please specifically comment on whether or not the existing regulations in subparts 3180–3183 and the model unit agreement form in subpart 3186 could apply to units in the NPRA in lieu of the unit agreement process we are proposing. We also invite comments on how the model agreement form should be modified to apply to NPRA units.

Due to statutory requirements and policy considerations, such as the difficulties of conducting operations in the NPRA, we believe that if BLM were to decide to use the existing unit agreement regulations, instead of the regulations in this proposal, several sections of the proposal would need to be incorporated into the regulatory process. In addition to the existing regulations on units and the model unit agreement for unproven areas (43 CFR 3186.1), the following sections of the proposal would apply to NPRA units:

- The definitions of constructive drilling and constructive reworking operations in proposed § 3137.5.
- Paragraphs (b) through (e) of proposed § 3137.24, dealing with the reasons BLM would reject a unit application.
- Proposed § 3137.60, which lays out the unit operator's obligations.
- Proposed § 3137.63, describing liabilities of a new unit operator after a change in unit operators.
- Proposed § 3137.112, which addresses lease extensions for actual or constructive drilling operations. The concept in the proposal of ''productivity criteria'' would be replaced with ''paying well'' determinations contained in the existing unit agreement regulations.

• Proposed § 3137.113, which also addresses lease extensions.

• Proposed § 3137.150, which has to do with appeals of decisions under the subpart.

Several provisions of the model form in § 3186.1 would also be modified for NPRA units as follows:

• Replacing the ''Mineral Leasing Act of February 25, 1920, as amended,'' with ''Naval Petroleum Reserves Production Act of 1976, as amended,'' wherever it appears.

• Section 9 of the model form would be modified by removing ''6 months'' from the first sentence of the section and replacing it with a blank. BLM would determine a reasonable time frame in which particular operations would be required to occur. BLM realizes that, due to the more severe climate in NPRA, operations there are more difficult and more time consuming than in the lower 48 and therefore operators may require more than 6 months to establish drilling operations. For the same reasons the same modification would apply to optional section 9a.

• Paragraph 18(g) would be eliminated since that paragraph pertains to and directly quotes from the Mineral Leasing Act, which does not apply to NPRA.

• Sections 7, 8, 9 and 10 of the ''General Guidelines'' would be eliminated. Section 7 would be eliminated since there are no NFS lands in NPRA. Section 8 applies to the Jackson Hole Area of Wyoming only. There are no reclamation lands in NPRA to which section 9 could apply. Finally, there are no existing or planned power sites in the NPRA , so section 10 would be eliminated.

Subpart 3138—Subsurface Storage Agreements

This proposal would add a new subpart to BLM's NPRA leasing regulations dealing with subsurface storage agreements.

Section 3138.10 would make it clear that BLM will allow you to store oil or gas in existing geologic structures on either leased or unleased Federal lands, if you prove to BLM that the storage is necessary to avoid waste or to promote conservation of natural resources, including oil and gas. Under this subpart you would be able to store gas produced from Federal or non-Federal lands.

Section 3138.11 would require you to submit to BLM an application to receive a subsurface storage agreement. In the application you must:

(A) Provide the reason for forming a subsurface storage agreement. This is in addition to the proof required by § 3138.10. For example, your justification could be that you require subsurface storage while awaiting the building of a distribution system or that you require storage for economic reasons, or to avoid waste;

(B) Describe the area you plan to include in the agreement. This should include a legal land description of all Federal or non-Federal leases within the area of the storage agreement;

(C) Describe the formation you plan to use for storage. This should include the standard geologic name or designation, if any, of the reservoir, and the depths at which the formation exists;

(D) Pay proposed storage or rental fees based on the value of the storage, injection, and withdrawal volumes and rental or other income you might generate for letting or subletting the storage area. BLM could approve or disapprove your proposed fee structure or make a counter-proposal;

(E) Pay any royalty payment for oil and gas that you may produce from the formation;

(F) Describe how often and under what circumstances you propose that you and BLM renegotiate fees and payments. For example, this could be based on anticipated changes in the rate of reservoir fill-up or withdrawal from the reservoir;

(G) Propose an effective date and term of the agreement. This should be tied to your justification for the agreement (see A above);

(H) Certify that all owners of mineral rights and lease interests have consented to the gas storage agreement in writing. This is to protect mineral owners' and lessees' mineral rights. BLM will reject subsurface storage agreement applications that do not comply with this provision;

(I) Provide an ownership schedule showing lease or land status. This should include the status of leased and unleased and Federal and non-Federal properties;

(J) Provide a schedule of the participation factor for all parties to the agreement. The schedule should list the parties to the agreement and the percent or volume of oil or gas stored for each of them; and

(K) Demonstrate the capability of the reservoir to store oil or gas. This demonstration could include geologic maps showing the storage formation, reservoir data demonstrating the volume of area available for storage, and similar data.

This section would also explain that the terms of the storage agreement are negotiated between you and BLM. The agreement will include terms on bonding and reservoir management. BLM may request additional data we find necessary to approve your application.

Section 3138.12 would describe what you must pay for storage. The fee could be based on any combination of storage fees, rentals, or royalties to which you and BLM agree. When determining a fair storage fee, typically, BLM would also take into consideration what operators in the same area are paying for similar gas storage arrangements whether on Federal or non-Federal land.

Part 3160—Onshore Oil and Gas Operations

This proposal would amend the existing purpose section of BLM's operating regulations. Subpart 3160 applies to NPRA lease operations and to unit operations. This section would revise subpart 3160 to make it clear that the referenced suspension regulations apply to operations on other Federal lands but not to NPRA.

V. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government since the costs of operating and leasing in the NPRA would not be substantially affected (see the economic analysis).

b. This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the oil and gas program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this proposed rule.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The proposal does not deal with entitlements, grants, loan programs, or rights and obligations of their recipients; BLM's oil and gas program does not typically have an impact on these issues and neither would this proposal. BLM does charge user fees for certain activities on Federal lands. However, this proposal would not implement any new user fees. Any fees, such as filing fees for leases, already exist under other regulations.

d. This rule will not raise novel legal or policy issues. NPRA leasing

regulations already exist. However, those regulations do not address unitization, suspension of rental and royalty, suspension of operations and production or subsurface storage agreements. This rule would make operating practices in the NPRA more consistent with those on Federal lands outside of NPRA in that unitization would be made available in NPRA.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601–612) (RFA), to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

This rule will not have a significant economic effect on a substantial number of small entities as defined under RFA. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this section, a ''small entity'' is considered to be an individual, limited partnership, or small company with fewer than 500 employees. Many of the operators BLM deals within the oil and gas program would be considered to be small entities.

Leasing decisions could potentially impact small operators. However, this rule is independent of leasing decisions. The rule is neutral as to whether or not leasing will occur in NPRA. Due to the significant costs associated with oil and gas operations in the NPRA, we do not anticipate many small operators will lease oil and gas in the NPRA. Having an NPRA lease, as that is defined in the proposal, is a condition precedent to unit formation in NPRA. If small operators did lease in NPRA, the economic impacts associated with this proposal are positive, but minimal, for operators in general (see the economic analysis) and would also be so for small operators. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million or more (see the economic analysis).

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposal would not effect costs or prices for consumers since the actions associated with the proposal would have minimal economic impact on the industry (see the economic analysis).

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises, but could positively effect them by making it more attractive to lease oil and gas in the NPRA.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The proposal would not change the relationship between BLM's oil and gas program and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act (see the economic analysis). These proposed regulations do not impose an unfunded mandate on State, local or Tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local or Tribal governments or the private sector.

Takings Implications

In accordance with Executive Order 12630, the proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The proposed rule would not take anyone's property. The proposed rule would not take away or restrict an operator's right to develop an NPRA oil and gas lease under the lease terms. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Federalism Implications

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does 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. The rule does not preempt State law. The proposed rule would make operations in the NPRA more consistent with practices on other Federal lands.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM drafted this rule in plain-language to provide clear standards and to ensure that the rule is clearly written. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule drafting process for the same reasons.

Paperwork Reduction Act

These regulations would contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), BLM has submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. BLM will not require

collection of this information until OMB has given its approval.

The recordkeeping and information collection items required under various provisions of this proposal in subparts 3133, 3135, 3137, and 3138 pertain to data that would be submitted by the operator or operating rights owner. The information would provide data so that BLM may approve a proposed unit agreement or storage agreements or enable BLM to monitor compliance with granted approvals. For unit agreements, BLM would use the information to grant approval to begin or modify unit operations or to allow unit agreements to continue.

The information required under the 3130 subparts would cover a range of activities, and a specific operator would not be required to obtain or provide each item. Many of the requirements are one-time filings BLM would use to approve operations under a unit agreement or to apply for reduction of royalty, suspension or operations or production, or a subsurface storage agreement. BLM would use other routine data submissions to monitor drilling and production and ensure compliance with the unit agreement, lease terms, regulations, orders, notices to lessees, lease stipulations, and conditions of approval. All recordkeeping burdens are associated with the items requested in this regulation.

The information burden in subparts 3133, 3135, 3137, and 3138 totals an estimated 410¼ hours. BLM professional staff derived these estimates by relying on personal experiences in working with the oil and gas industry and by consulting with field office staff. This collection comprises non-form items, and BLM expects the public reporting burden to be as follows:

Section 3133.4. An application for waiver, suspension, or reduction of rental, royalty, or minimum royalty on a lease would include:

(1) A description of the requested relief.

(2) The lease serial number.

(3) Number, locations, and status of each well drilled.

(4) A statement that shows the amount of oil or gas subject to royalty for each month covering a period of at least 6 months immediately before the filing date of the application.

(5) The number of wells counted as producing each month and the average production per well per day.

(6) A detailed statement of expenses and costs of operating the entire lease.

(7) All facts that demonstrate why the wells cannot be successfully operated under the terms of the lease.

(8) The amount of any outstanding overriding royalty and payments out of production or similar interests.

(9) Other information BLM may require.

The information and data provide the basis and evidence to BLM that the lease cannot be operated under its terms without the rental or royalty relief and that the applicant meets the standards of the regulations, the benefit would be granted if it would encourage the greatest ultimate recovery of oil and gas, or the waiver, suspension, etc., is in the interest of conservation of natural resources.

We estimate it would take approximately 16 hours to comply with the information requirement for application for waiver, suspension, or reduction of rental or royalty. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, much of which is already maintained by the operator. We estimate that there will be one application for royalty suspension for a total information collection burden of 16 hours.

Section 3135.3. An application for suspension of lease operations and production would include a description of the circumstances that are beyond the operator's reasonable control that prevent operation of, or production on, the entire lease.

The information is required to determine whether the applicant qualifies for a lease suspension, the suspension is in the interest of conservation of oil and gas or other natural resources, the lease cannot be operated for reasons beyond the control of the operator, and the lessee is complying with the other requirements of the regulations.

We estimate it would take approximately four hours to comply with the information requirement for application for suspension. We estimate that there will be one application for suspension within a given year, for a total information collection burden of four hours.

Section 3135.6. After BLM terminates a suspension of operations or production, the operator would be required to notify BLM before resuming operations or production.

Notification ensures proper monitoring by BLM of operations activities. The information is required so that BLM may approve the proposed operations. It would also enable BLM to monitor operations for compliance with the regulations and lease terms.

We estimate it would take approximately ¼ of an hour to comply with the notification requirement, and we estimate one response for a total information burden of ¼ of an hour.

Section 3137.23. An application for NPRA unitization would include:

(1) The proposed agreement.

The agreement would provide the information requested in § 3137.21 as follows:

(A) A description of the unit area and the geologic and engineering factors on which the area is based.

The information is required for BLM to determine if the proposed unitization of leases is technically feasible and to adequately assess you proposed initial and continuing development obligations. The information would also be necessary for BLM to ensure that operations are conducted in a manner that promotes the conservation of natural resources.

(B) Initial and continuing development obligations.

This information would allow BLM to verify that the operator has planned a program of exploration or development that meets or exceeds the rate of well operations in the vicinity of the unit without unitization and represents an investment proportionate to the size of the area in the unit agreement.

(C) Proposed participating area size and locations.

This requirement would be necessary for BLM to determine whether the lands within the unit area have been reasonably proven to contain unitized substances that can be produced in paying quantities.

(D) Acknowledgment of BLM's authority to set or modify the quantity, rate, and location of development and production.

(E) Any optional terms authorized by section 3137.50.

(2) A map showing the unit area and committed leases and other tracts;

The map would show all tracts that are to be included in the unit.

(3) A list of committed leases and other tracts with legal descriptions, record titles, working interests, and acreage.

This would list owners of record title and all working interest owners that have agreed to abide by the terms and conditions of the unit agreement.

(4) Written certification that: (a) All owners of leased or unleased minerals rights and record title and operating rights lease interests were invited to join the unit; (b) there is sufficient commitment to the unit agreement for reasonable control of the unit area; (c) all of the interests are committed to the unit; and (d) there is agreement to unit obligations under 3170.60.

The certification would provide BLM information to determine whether there is sufficient commitment of leases or tracts in the unit area for reasonable control of the unit area and that the committed parties agree to abide by the terms and conditions of the unit agreement.

(5) Evidence of acceptable bonding. BLM requires this information to determine that operations under the unit agreement are covered by a bond in an amount sufficient to protect public lands and resources.

(6) A discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPRA. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section would also require you to explain how unit operations may reduce impacts compared to individual lease operations. BLM requires this information to determine if:

(A) Unit operations will comply with the environmental, subsistence, archaeological, and historical preservation requirements under laws or regulations; and

(B) The unit operations' impacts on surface resources would be less than those impacts of lease operations were they to be performed individually. BLM considers this to be an important factor in determining whether or not to approve the unit agreement.

We estimate it would take approximately 80 hours to comply with the information requirement for application for unit designation. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, but not the time normally required to obtain, analyze, and interpret the information normally expended as part of an exploration program without unitization. We estimate that there will be no more than three unit applications made within a given year, for a total information collection burden of 240 hours.

Section 3137.25 would require the operator to notify in writing all parties to the unit agreement that BLM approved the unit.

We estimate that it would take approximately one hour to comply with the notification requirement. The estimate includes the time to draft the notifications to the different parties to the unit. We expect three respondents for a total information collection burden of three hours.

Section 3137.52. An application for modification of a unit agreement would include certification that:

(1) All parties to the agreement consent to the modification; or

(2) The operator meets the modification provision in the agreement, which identifies which parties and what percentage of those parties consent to each type of modification.

BLM requires this certification by the operator to ensure that the terms of the unit agreement previously approved are met.

We estimate that application for modification of a unit agreement will take approximately four hours, and that there will be one application for a total burden of four hours.

Section 3137.60. The operator would be required to provide BLM evidence of acceptable bonding.

BLM would require evidence of such bonding because bonding is required under the regulations and the terms of the lease.

We estimate the information would take approximately ½ of an hour to provide for each new occurrence, and estimate three respondents, for a total information burden of 1½ hours.

Section 3137.61. To change unit operators, and when there is a change of unit operator, the new unit operator must provide, for BLM's approval:

(1) A statement that it accepts unit obligations;

(2) A statement of the percentage of interest owners required by the unit agreement consenting to a change of unit operator; and

(3) Evidence of acceptable bonding.

Statements of unit obligation acceptance and percentage of interest owners consenting to the change are required so that unit requirements and the terms of the previously-approved unit agreement are continued to be met, and that the unit may remain in effect.

Evidence of acceptable bonding is necessary because bonding is required under the regulations and the terms of the lease and so that BLM can determine that operations under the unit agreement are continued to be covered by a bond sufficient to protect public lands and resources.

We estimate it will take approximately ¾ hour to provide the statements and the evidence of acceptable bonding. We estimate two responses, for a total information burden of 1½ hours.

Section 3137.70. The operator would be required to submit certification that it met the initial unit obligation.

Certification is required to document that the initial unit obligation, as required in the unit agreement, was timely met so that the unit may remain in effect.

We estimate it will take approximately two hours to comply with the certification information. The estimate includes time for gathering and compiling data showing that unit requirements such as drilling and production are met, and for providing certification. We estimate three responses, for a total information burden of six hours.

Section 3137.71. The operator would be required to provide a plan describing how it will meet continuing development obligations. The plan would include a description of the activities needed for full development of the oil and gas field and any further actual or constructive drilling operations that will be conducted.

BLM requires the information to determine if the plan would actually comply with the unit terms on continuing development.

The operator would also be required to submit certification, and supporting documentation if requested, that it met continuing development obligations.

This certification documents that continuing development obligations, as required in the unit agreement, were met on time to ensure compliance with unit terms.

We estimate it will take approximately two hours to comply with the certification requirement. The estimate includes time for gathering and compiling drilling, testing, completion, and recompletion data and providing certification. We estimate three responses, for a total information burden of six hours.

Section 3137.84. The respondent would be required to submit a statement that the well meets the productivity criteria and economic, geologic, and engineering data; a map; and a production allocation schedule to establish or revise a participating area (PA).

The information is necessary for BLM to determine whether the unit meets the requirements to form a PA and to determine that the unit is productive.

We estimate it will take approximately 12 hours to comply with the information required for an operator's request to establish or revise a PA. The estimate includes time for compiling and preparing the various data requirements. We estimate two responses, for a total information burden of 24 hours.

Section 3137.87. If there are unleased Federal tracts in a participating area, the operator would be required to include the unleased Federal tracts in the unit. If the tract is later leased you must provide revised maps, a list of committed leases, and production allocation schedules to BLM.

The information enables BLM to monitor the terms of the participating area and to ensure that royalty revenue is properly allocated and reported.

The information would require approximately three hours to prepare and provide. We estimate one respondent, for a total information burden of three hours.

Section 3137.88. The respondent would be required to provide notification to BLM that a well does not meet the productivity criteria.

This information is necessary for BLM to determine whether to approve the well for non-unit operations and to ensure proper allocation of production.

We estimate it will take approximately a ½ of an hour to comply with the notification requirement, and one response, for a total information burden of ½ of an hour.

Section 3137.91. The respondent would be required to notify BLM when a non-unit well meets productivity criteria, which is then used to revise or establish a PA.

BLM would use the required information to determine whether a non-unit well meets the productivity criteria and therefore will revise or establish a PA.

We estimate it would take approximately ½ of an hour to comply with the notification requirement, and estimate one response, for a total information burden of ½ of an hour.

Section 3137.92. The respondent would be required to provide information that it restored or established production and well completion information so that a participating area would not terminate after BLM notification of insufficient production.

BLM requires this information to determine whether to keep a PA in effect.

We estimate it will take approximately one hour to comply with the production information requirement. The estimate includes time to compile production data. We estimate one response, for a total information burden of one hour.

Section 3137.112. The operator would be required to provide information that shows actual well production meets the productivity criteria or that there is actual or constructive drilling or reworking operations in order to request an extension of the primary term of all leases committed to a unit agreement.

BLM would require verification that the operator met the requirements for obtaining a lease extension.

We estimate there will be one respondent and the information, which is already maintained by the operator, will take approximately three hours to organize and compile. The total burden would be three hours.

Section 3137.113. The operator would be required to demonstrate to BLM that it cannot start actual or constructive drilling or reworking activities because of reasons beyond the operator's control.

BLM requires the information to determine the validity of the operator's inability to conduct drilling or reworking activities, as required under the terms of the lease.

We estimate one respondent and that two hours would be needed to fulfill the information requirement for a total information burden of two hours.

Section 3137.130. If a unit operator requests approval for voluntary termination of the unit, and production is insufficient to establish a participating area, the operator would be required to certify that at least 75 percent of the interest owners in the agreement agree to the voluntary termination.

BLM requires the certification to approve termination of the unit based on production data and consent of the interest owners under the terms of the agreement.

This information would take approximately one hour to compile. We estimate one respondent, for a total information burden of one hour.

Section 3137.135. The respondent would be required to submit a plan for mitigating the impacts from unit operations after termination of the unit.

The information is necessary for BLM approval of mitigation plans for timely, proper, and efficient management of the surface impacts resulting from unit operations.

We estimate it would take approximately four hours to comply with the information requirement for application for unit designation. The estimate includes time for formulating and preparing the specified information. We estimate three responses, for a total information burden of 12 hours. The estimate includes the time for reviewing the instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 3138.11. An application for a subsurface storage agreement would include:

(1) The reason for forming the agreement;

(2) Descriptions of both the area that is to be included and the formation;

(3) The proposed storage fees or rentals;

(4) Royalty for oil or gas present in the formation before injection and produced when stored oil or gas is withdrawn;

(5) A description of fees and payments renegotiations;

(6) The proposed effective date and term of the agreement;

(7) Certification that all owners of leased or unleased minerals rights and lease interests have committed or consented to the commitment of their interest in writing;

(8) An ownership schedule showing lease or land status;

(9) A schedule showing the participation factor for all parties to the agreement;

(10) Geologic maps and other data that demonstrate storage capability of the reservoir.

The information is necessary so that BLM can determine whether the proposed agreement is technically feasible and is necessary to avoid waste and that operations will be conducted in a manner that promotes conservation of natural resources.

We estimate it would take approximately 80 hours to comply with the information requirement for application for storage agreement. The estimate includes time for compiling and preparing the various specified information and obtaining commitments and providing certification. We estimate that there will be one storage agreement application, for a total information collection burden of 80 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Interior Desk Officer (1004–NEW) New Executive Office Building, Washington, D.C. 20503.

BLM considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of BLM, including whether the information will have practical use;

Evaluating the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing 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; such as permitting electronic submittal of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

BLM has prepared an environmental assessment and has found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required.

Environmental effects that could occur would be the result of leasing, not the result of these proposed regulations. To the extent that there are any environmental effects incident to the proposed regulations, they would likely be beneficial. Unitization combines the development plans of several lessees into a single consolidated plan of development under one operator instead of separate operators and separate plans of development for each lease. The advantage of having one operator and one plan of development under one unit agreement is that the effect on the environment could be minimized in contrast to having several plans of development for each lease covering an oil and/or gas field with a relatively greater environmental effect.

For subsurface storage agreements, the oil or gas is reinjected, and would be stored in a geologic structure. There are no tanks installed and the oil or gas usually is reinjected using existing surface and subsurface operating equipment from prior operations. There is very little environmental impact involved in storing oil or gas in this manner. The operator must demonstrate that storage is necessary to avoid waste or to promote the conservation of natural resources which otherwise may be vented or lost. Therefore, the proposed regulations could encourage better, more efficient development with a smaller environmental ''footprint'' and effects.

These regulations would not add to the effects of other actions, but could facilitate less of an environmental footprint due to consolidating and unifying the development of a given oil or gas field under one operator. The authorization of subsurface storage agreement would promote the conservation of oil or gas which otherwise may be vented or lost. This would conserve natural resources.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated whether formal government-to-government consultation with Indian Tribes is required with respect to the proposed rules. In this case, we have concluded that, within the context of this rulemaking, formal consultation other than opportunities provided to the public for notice and comment is not required.

Executive Order 13084 (''E.O. 13084''), ''Consultation and Coordination with Indian Tribal Governments'' (May 14, 1998), (63 FR 27655) supplements the President's memorandum of April 29, 1994. E.O. 13084 provides that Federal agencies must consult with Indian Tribal Governments before formal promulgation of regulations that ''significantly or uniquely affect'' Tribal communities. E.O. 13084 defines ''Indian Tribes'' for purposes of government-to-government consultation as those ''that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.'' E.O. 13084 at Section 1(b). In accordance with this mandate, the Bureau of Indian Affairs recently published a list of recognized Tribes, including a large number of Native Alaskan entities including Villages, Communities, and Tribes. *See* 63 FR 71941 (December 30, 1998). If there is a duty of government-to-government consultation, it would be owed to those listed Tribal governments.

The proposed regulations are designed to permit consolidated operation of oil and gas leases on Federal lands and thereby promote conservation. We are not aware that any of the recognized Tribal governments have significant oil and gas interests within NPRA or within the vicinity of NPRA. To the extent that any of those Tribes acquire oil and gas interests and choose to join a unit which includes Federal NPRA leases, they would be eligible to participate in those unit agreements in the same manner as any other participants. Accordingly, the proposed regulations would not ''significantly or uniquely affect'' those Tribes and there is no government-to-government consultation obligation in this case.

Additionally, we are aware that a number of Alaska Native corporations organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) (ANCSA) may have oil and gas interests. These corporations could potentially become participants in units which include Federal NPRA leases. If so, they would be eligible to participate in those unit agreements in the same manner as any other participants. However, no special consultation with such corporations is required. The Bureau of Indian Affairs has recently declined to include such corporations on the list of recognized Tribes eligible for government-to-government consultation. The Bureau of Indian Affairs indicated that ANCSA corporations ''are formally state-chartered corporations rather than tribes in the conventional legal or political sense'' and that Alaskan Native Villages were Indian Tribes. *See* ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs,'' 60 FR 9250 (February 16, 1995).

Finally, while the proposal of these regulations imposes no special government-to-government consultation obligation upon the Department, there will be ample opportunity for the Tribal governments, along with the public generally, to comment in accordance with the notice and comment requirements of the Administrative Procedure Act.

Economic Analysis

Unitization

The proposal implements the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), which was amended by Public Law 105–83, and allowed for the creation of units in the Naval Petroleum Reserves, Alaska (NPRA). Unitization could increase the potential value of NPRA leases, which could result in higher bonus bids at lease sales. Operators could also obtain some benefit due to some reduction in operating and reporting costs. These reduced costs are a benefit derived from unitization since production may occur from fewer areas and reporting requirements could be consolidated. However, the essential costs of

operating and leasing in NPRA would not be substantially affected. As previously noted, there are other non-economic benefits to unitization (see discussion of § 3137.10).

Once leasing occurs in NPRA, the proposed unitization rules may increase the probability of finding and producing oil and gas there through more efficient and economic exploration and production, but the net effect should be small enough that there would not be a measurable net effect on oil and gas prices. Any impacts on the economy, productivity, competition, or jobs would be positive. Development could only occur if it did not endanger the environment, public health, or safety.

To the extent that the proposed rules may increase the bonus bids for leases and the probability of production, the potential increase in revenue and economic activity could have a positive effect on State, local, and tribal governments and communities.

Subsurface Storage

The proposal would also allow for subsurface storage agreements in the NPRA. This would have little economic effect. Most often, companies use existing infrastructures to re-inject oil or gas into existing geologic structures. Companies would derive an economic benefit since they could store oil or gas while waiting for distribution of it or while waiting for more favorable economic conditions. The Federal government would derive a benefit in the form of storage fees. The benefits derived by the companies operating in NPRA or the Federal government would not be significant. In 1998 BLM had in effect 32 oil and gas storage agreements in the lower 48 states which provided $982,346 in revenues. That averages out to about $30,698 in revenue payments to the United States per agreement. We anticipate far fewer agreements in NPRA than in the lower 48 with about the same average income stream being generated per agreement. These could impact State, local, and tribal governments and communities positively, but only minimally. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Waiver, Suspension, or Reduction of Rental or Royalty

The proposal would also allow for the waiver, suspension, or reduction of rental or royalty on NPRA leases. This provision would have minimal economic impact. BLM would not allow for any to take place unless it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators would only get the benefit if they proved to BLM that they could not successfully operate the lease without the benefit. These standards are high because BLM believes we should take these actions only as a last resort, to save a lease which ''cannot be successfully operated under the terms provided therein.'' (42 U.S.C. 6508).

Operators would benefit since they would be able to continue to operate their leases. BLM would benefit as well since producible leases would not be shut down and the Federal government would continue to receive revenue, albeit at a reduced rate. State, local, and Tribal governments and communities would be positively affected since leases that would under other circumstances be shut down, would continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Suspensions of Operations and Production

This proposal would allow for suspension of operations and production for NPRA leases. Suspensions of operations and production give operators relief from lease obligations when they are prevented from complying with the obligations for reasons that are beyond their control. During the period of the suspension, lessees are not required to pay rental or royalty on their lease, but they do not have beneficial use of their lease during the period. The lease term would be extended by the time period of the suspension.

One example where lease suspensions would be appropriate would be where an operator has found oil and gas in producible quantities, but there is no transportation system available to get the oil and gas to market. BLM would suspend operations and production on the lease until operations on the lease resume or when BLM determines the reason for the suspension no longer exists.

Any economic impacts associated with this provision would, in the long run, be positive. The alternative to suspension would be shutting down lease operations. This alternative is not beneficial to the government or operators. Short-term loss in rentals and royalties is preferable to shutting down a lease completely. State and local governments and native communities could be positively impacted since leases that would under other circumstances be shut down, would, in the long run, continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Lease Extensions

This proposal would allow for the extension of unit leases if, from anywhere in the unit there is—

(A) Actual production from a well in the unit that meets the productivity criteria set out in the unit agreement;

(B) Actual or constructive drilling operations; or

(C) Actual or constructive reworking operations.

This proposal would have little economic impact on the industry as a whole, but could make unitizing leases in the NPRA more attractive to individual operators. Operators would get the benefit of diligently developing their leases by way of lease extensions. This is a benefit to industry, since leases in units which otherwise would be canceled would be extended if there was constructive drilling or reworking within the unit.

Any economic impacts associated with this provision would, in the long run, be positive. The alternative to extending leases in the unit would be canceling a lease and shutting down operations. This alternative is not beneficial to the government or operators. State, local, and Tribal governments and communities would be positively affected since leases that would under other circumstances be shut down would continue to operate, increasing the chances of discovering oil and gas. If producible oil and gas is discovered, the unit could provide jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Fixing Lease Term at 10 Years

Congress mandated that the initial NPRA lease term be 10 years. The provision setting the lease term at 10 years would have little, if any, economic impact. It could benefit operators since the term would be fixed at 10 years consistent with the statute, whereas under current regulations, the term could be less. Longer lease terms in the NPRA are preferable since there are harsh geology and climate in the NPRA make it difficult to operate in that region. Longer lease terms would allow operators additional time to deal with the geologic and climatic conditions in NPRA.

Administrative Provision

The provision that clarifies which suspension regulations apply to NPRA

is strictly administrative and would have no economic impact.

Authors

The principal authors of this rule are Erick Kaarlela (Washington Office), Sherri Thompson (Colorado State Office), Rick Wymer (Tulsa Field Office), Duane Spencer (Colorado State Office), and Chris Gibson (Alaska State Office), assisted by Ian Senio of BLM's Regulatory Affairs Group (Washington Office) and Harvey Blank (Office of the Solicitor, Department of the Interior).

List of Subjects

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians'lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands'mineral resources, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and under the authorities cited below, amend Title 43, Subtitle B, Chapter II, Subchapter C, Part 3130 as follows:

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

1. Revise the authority citation for part 3130 to read as follows:

Authority: 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

2. Revise § 3130.4–2 to read as follows:

§ 3130.4–2 Lease term.

The primary term of an NPRA lease is 10 years.

3. Add § 3133.3 and § 3133.4 to subpart 3133 to read as follows:

§ 3133.3 Under what circumstances will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty on my NPRA lease?

BLM will waive, suspend, or reduce the rental, royalty, or minimum royalty of your lease if BLM finds that—

(a) It encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation; and

(b) You can't successfully operate the lease under its terms. This means that your cost to operate the lease exceeds income from the lease.

§ 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPRA lease?

(a) Submit to BLM your application and in it describe the relief you are requesting and include—

(1) The lease serial number;

(2) The number, location and status of each well drilled;

(3) A statement that shows the aggregate amount of oil or gas subject to royalty for each month covering a period of at least six months immediately before the date you filed the application;

(4) The number of wells counted as producing each month and the average production per well per day;

(5) A detailed statement of expenses and costs of operating the entire lease;

(6) All facts that demonstrate that you can't successfully operate the wells under the terms of the lease;

(7) The amount of any overriding royalty and payments out of production or similar interests applicable to your lease; and

(8) Any other information BLM requires.

(b) Your application must be signed by—

(1) All lessees of record; or

(2) By the operator on behalf of the lessees of record.

4. Revise the subpart 3135 heading to read as follows:

Subpart 3135—Transfers, extensions, consolidations, and suspensions

5. Add §§ 3135.2 through 3135.7 as follows:

§ 3135.2 Under what circumstances will BLM approve my request for a suspension of operations and production for my lease?

(a) BLM will approve your request for a suspension of operations and production for your lease(s) if BLM determines that—

(1) It is in the interest of conservation of natural resources;

(2) It encourages the greatest ultimate recovery of oil and gas, including the planning and construction of a transportation system to a new area of discovery; or

(3) It mitigates reasonably foreseeable and significantly adverse effects on surface resources.

(b) BLM will suspend lease obligations if it determines that, despite the exercise of due care and diligence, you can't comply with those obligations for reasons beyond your control.

(c) If BLM approves your request for a suspension of operations and production, the suspension—

(1) Stops the running of your lease term and prevents it from expiring for as long as the suspension is in effect;

(2) Relieves you of your obligation to pay rent, royalty, or minimum royalty during the suspension; and

(3) Prohibits you from operating on, producing from, or having any other beneficial use of your lease during the suspension.

§ 3135.3 How do I apply for a suspension of operations and production?

(a) You must submit to BLM an application stating the circumstances that are beyond your reasonable control that prevent you from operating or producing your lease(s).

(b) Your suspension application must be signed by—

(1) All record title owners of the lease; or

(2) By the operator on behalf of the record title owners of the leases committed to an approved agreement.

(c) You must submit your application to BLM before your lease expires.

(d) Your application must be for your entire lease.

§ 3135.4 When is a suspension of operations and production effective?

A suspension of operations and production is effective—

(a) The first day of the month in which you file the application for suspension; or

(b) Any other date BLM specifies in the approval document.

§ 3135.5 When should I stop paying rental or royalty after my suspension of operations and production is approved?

You should stop paying rental or royalty on the first day of the month following BLM's approval of the suspension.

§ 3135.6 When will my suspension terminate?

(a) Your suspension terminates—

(1) On the first day of the month in which you begin to operate or produce on your lease; or

(2) The date BLM specifies in a written notice to you.

(b) You must notify BLM at least 24 hours before you begin operations or production under paragraph (a)(1) of this section.

§ 3135.7 How will termination of the suspension affect my lease?

(a) BLM extends your lease term by adding the period of the suspension to the term of the lease.

(b) Your rental and/or minimum royalty obligation resumes on the date the suspension terminates.

6. Add a new subpart 3137 to part 3130 to read as follows:

Subpart 3137—Unitization Agreements—National Petroleum Reserve, Alaska

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Appeals

3137.150 Who may appeal a decision BLM issues under this subpart?

Subpart 3137—Unitization Agreements—National Petroleum Reserve, Alaska

§ 3137.5 What terms do I need to know to understand this subpart?

As used in this subpart—

Actual drilling means operations you conduct that are similar to those that a person seriously looking for oil or gas could be expected to conduct in that particular area, given the existing knowledge of geologic and other pertinent facts about the area to be drilled. The term includes the testing, completing, or equipping of the drill hole (casing, tubing, packers, pumps, etc.) so that it is capable of producing oil or gas. Actual drilling operations do not include preparatory or preliminary work such as grading roads and well sites, or moving equipment onto the lease.

Actual production means oil or gas flowing from the wellbore into treatment or sales facilities.

Actual reworking operations means reasonably continuous well-bore operations such as fracturing, acidizing, and tubing repair.

Committed tract means—

(1) A Federal lease where all owners of record title and all operating rights owners have agreed to the terms and conditions of a unit agreement and agreed to accept responsibility for unit operations; or

(2) A State lease or private parcel of land where all owners and all operating rights owners have agreed to the terms and conditions of a unit agreement and agreed to accept responsibility for unit operations.

Constructive drilling means those activities that are necessary to prepare for actual drilling that occurs after BLM approves an application to drill, but before you actually drill the well. These include, but are not limited to, activities such as road and well pad construction, and drilling rig and equipment set-up.

Constructive reworking operations means activities that are necessary to prepare for well-bore operations. These may include rig and equipment set-up and pit construction.

Continuing development obligations means a program of development or operations you conduct that, after you complete initial obligations defined in a unit agreement—

(1) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(2) Represents an investment proportionate to the size of the area covered by the unit agreement.

NPRA lease means any oil and gas lease within the boundaries of the National Petroleum Reserve, Alaska

(NPRA), issued by the United States under the Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501–6508), that authorizes exploration for and removal of oil and gas.

Operating rights (working interest) means any interest you hold that allows you to explore for, develop, or produce oil and gas.

Participating area means those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

Primary target means the principal geologic formation that you intend to develop and produce.

Producible interval means the section of any pool, deposit, zone, or portion thereof capable of producing oil and gas.

Record title means legal ownership of an oil and gas lease recorded in BLM's records.

Tract means land that may be included in an NPRA oil and gas unit agreement and that may or may not be in a Federal lease.

Unit agreement means a BLM-approved agreement to cooperate in exploring, developing, operating and sharing in production of all or part of an oil or gas pool, field or like area, including at least one NPRA lease, without regard to lease boundaries and ownership.

Unit area means all tracts committed to a BLM-approved unit. Tracts not committed to the unit, even though they may be within the external unit boundary, are not part of the unit area.

Unit operations are all activities associated with exploration, development drilling, and production operations conducted by the unit operator(s) on committed tracts.

General

§ 3137.10 What benefits do I receive for entering into a unit agreement?

(a) Each individual tract committed to the agreement meets its full performance obligation if one or more tracts in the unit meets the development or production requirements;

(b) Production from a well that meets the productivity criteria (see § 3137.82 of this subpart) under the unit agreement extends all NPRA leases committed to the agreement as provided in § 3137.112 of this subpart;

(c) You may drill within the unit without regard to certain lease restrictions, such as lease boundaries within the unit and spacing offsets; and

(d) You may consolidate operations and permitting and reporting requirements.

Application

§ 3137.20 Is there a standard unit agreement form?

There is no standard unit agreement form. BLM will accept any unit agreement format if it protects the public interest and includes the mandatory terms required in § 3137.21 of this subpart.

§ 3137.21 What must I include in an NPRA unit agreement?

(a) Your NPRA unit agreement must include—

(1) A description of the unit area and any geologic and engineering factors upon which the area may be based;

(2) Initial and continuing development obligations (see §§ 3137.40 and 3137.41 of this subpart);

(3) The proposed participating area size and locations (see § 3137.80(b) of this subpart);

(4) A provision that acknowledges BLM's authority to set or modify the quantity, rate, and location of development and production; and

(5) Any optional terms authorized by § 3137.50 of this subpart.

(b) You must include in the unit agreement any additional terms and conditions that result from consultation with BLM. After your initial application, BLM may request additional supporting documentation.

§ 3137.22 What are the size and shape requirements for a unit area?

(a) The unit area must—

(1) Be composed of tracts, each of which must be contiguous to at least one other tract in the unit, that are located so that you can perform operations and production in an efficient and logical manner; and

(2) Include at least one NPRA lease.

(b) BLM may limit the size and shape of the unit considering the type, amount and rate of the proposed development and production and the location of the oil and gas.

§ 3137.23 What must I include in my NPRA unitization application?

Submit your unitization application to BLM and include in it—

(a) The proposed agreement;

(b) A map showing the unit area;

(c) A list of committed tracts including, for each tract, the—

(1) Legal land description and acreage;

(2) Names of persons holding record title interest;

(3) Names of persons holding operating rights; and

(4) Name of the unit operator.

(d) You must certify—

(1) That you invited all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) within the external boundary of the unit area described in the application to join the unit;

(2) That there are sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area;

(3) The commitment status of all tracts within the area proposed for unitization; and

(4) That you accept unit obligations under § 3137.60 of this subpart.

(e) Evidence of acceptable bonding;

(f) A discussion of reasonably foreseeable and significantly adverse effects on the surface resources of NPRA and how unit operations may reduce impacts compared to individual lease operations; and

(g) Other documentation BLM may request. BLM may require additional copies of maps, plats, and other similar exhibits.

§ 3137.24 Why would BLM reject a unit agreement application?

BLM will reject a unit agreement application—

(a) That does not address all mandatory terms, including those required under § 3137.21(b) of this subpart;

(b) If the unit operator—

(1) Has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order; or

(2) Is not qualified to operate within NPRA under applicable laws and regulations;

(c) That does not conserve natural resources;

(d) That is not in the public interest;

(e) That does not comply with any special conditions in effect for any part of the NPRA that would be affected by the unit or any lease subject to the unit; or

(f) That does not otherwise comply with the requirements of this subpart.

§ 3137.25 How will the parties to the unit know if BLM approves the unit agreement?

BLM will notify the unit operator in writing when it approves or disapproves the proposed unit agreement. The unit operator must notify in writing all parties to the agreement within 30 calendar days after receiving BLM's notice of approval or disapproval.

§ 3137.26 When is a unit agreement effective?

The agreement is effective on the date BLM approves it.

§ 3137.27 What effect do other agreements have on the unit agreement?

No other agreement—

(a) Modifies the terms or conditions of the unit agreement; or

(b) Relieves the unit operator of any right or obligation under the unit agreement.

§ 3137.28 What oil and gas resources of committed tracts does the unit agreement include?

A unit agreement includes all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary.

Development

§ 3137.40 What initial development obligations must I define in a unit agreement?

You must define—

(a) The number of wells required to assess the reservoir adequately;

(b) A primary target for each well;

(c) A schedule for starting and completing drilling operations for each well; and

(d) The time between starting operations on a well to the start of operations on the next well.

§ 3137.41 What continuing development obligations must I define in a unit agreement?

A unit agreement must obligate the operator to a program of exploration and development that, after completion of the initial obligations—

(a) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(b) Represents an investment proportionate to the size of the area covered by the unit agreement.

Optional Terms

§ 3137.50 What optional terms may I include in a unit agreement?

BLM may approve the following optional terms if they promote additional development or enhanced production potential—

(a) Limiting the agreement to certain formations and their intervals (see § 3137.28 of this subpart);

(b) Multiple unit operators (see § 3137.51 of this subpart);

(c) Modifying the agreement terms by less than 100 percent of the parties to the agreement (see § 3137.52 of this subpart); or

(d) Other terms that BLM determines will promote the greatest economic recovery of oil and gas consistent with applicable law.

§ 3137.51 Under what conditions does BLM permit multiple unit operators?

BLM permits multiple unit operators only if the unit agreement defines—

(a) The conditions under which additional unit operators are acceptable;

(b) The responsibilities of the different operators, including obtaining BLM approvals, reporting, paying Federal royalties and conducting operations;

(c) Which unit operators are obligated to ensure bond coverage for each NPRA lease in the unit;

(d) The consequences if one or more unit operators defaults. For example, if an operator defaults, the agreement would list which unit operators would conduct that operator's operations and ensure bonding of those operations; and

(e) Which unit operator is responsible for unit obligations not specifically assigned in the unit agreement.

§ 3137.52 When may I modify the agreement?

(a) You may modify a unit agreement if—

(1) All current parties to the agreement agree to the modification; or

(2) You meet the requirements of the modification provision in the unit agreement. The modification provision must identify which parties, and what percentage of those parties, must consent to each type of modification.

(b) You must submit to BLM an application for modification.

(c) The operator must certify that the necessary parties have agreed to the modification.

(d) A modification is not effective unless BLM approves it. After BLM approves the modification, it is effective retroactively to the date you filed a complete application for modification. However, BLM may approve a different effective date if you request it and provide acceptable justification.

(e) BLM will reject any modifications that do not comply with BLM regulations or applicable law.

Unit Agreement Operating Requirements

§ 3137.60 As the unit operator, what are my obligations?

(a) You must comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders.

(b) You must provide BLM evidence of acceptable bonding. *Acceptable bonding* means a bond in an amount which is no less than the sum of the individual Federal bonding requirements for each of the NPRA leases committed to the unit. This requirement may also be met if the unit operator is added as a principal to lease bonds to reach the required amount.

(c) The bond must be payable to the Secretary of the Interior.

§ 3137.61 How do I change unit operators?

(a) To change unit operators, the new unit operator must submit to BLM—

(1) Statements that—

(i) It accepts unit obligations; and

(ii) The percentage of required interest owners consented to a change of unit operator; and

(2) Evidence of acceptable bonding (see § 3137.60(b) of this subpart).

(b) The effective date of the change in unit operator is the date BLM approves the new unit operator.

§ 3137.62 What are my liabilities as a former unit operator?

You are responsible for all duties and obligations of the unit agreement that accrued while you were unit operator up to the date BLM approves a new unit operator.

§ 3137.63 What are my liabilities after BLM approves me as the new unit operator?

(a) After BLM approves the change in unit operator, you, as the new unit operator, assume full liability, jointly and severally with the record title and operating rights owners, except as otherwise provided in paragraph (c) and to the extent permitted by law, for—

(1) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders;

(2) Plugging unplugged wells and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operator (this liability is joint and several with the former unit operator); and

(3) Those liabilities accruing during the time you are unit operator.

(b) Your liability includes, but is not limited to—

(1) Rental and royalty payments;

(2) Protecting the lease from loss due to drainage as provided in § 3137.64 of this subpart;

(3) Well plugging and abandonment;

(4) Surface reclamation;

(5) All environmental remediation or restoration required by law, regulations, lease terms, or conditions of approval; and

(6) Other requirements related to operations on the lease.

(c) Your liability for royalty and other payments on the lease is limited by section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1712(a)).

§ 3137.64 As a unit operator, what must I do to prevent or compensate for drainage?

You must prevent uncompensated drainage of oil and gas from unit land

by wells on land not subject to the agreement. This includes, but is not limited to—

(a) Drilling a protective well if it is economically feasible;

(b) Paying compensatory royalty;

(c) Forming other agreements, or modifying existing agreements, that allow the tracts committed to the agreement to share in production; or

(d) Any additional measures BLM considers necessary to prevent uncompensated drainage.

Development Requirements

§ 3137.70 What must I do to meet initial development obligations?

(a) To meet initial development obligations by the time specified in your unit agreement you must—

(1) Drill the required test well(s) to the primary target;

(2) Drill at least one well that meets the productivity criteria (see § 3137.82 of this subpart); or

(3) Establish, to BLM's satisfaction, that further drilling to meet the productivity criteria is unwarranted or impracticable.

(b) You must certify to BLM that you met initial development obligations no later than 60 calendar days after meeting the obligations. BLM may require you to supply documentation that supports your certification.

§ 3137.71 What must I do to meet continuing development obligations?

(a) Once you meet initial development obligations, you must perform additional development. Work you did before meeting initial development obligations is not continuing development. Continuing development includes the following operations—

(1) Drilling, testing, or completing additional wells to the primary target or other unit formations;

(2) Drilling or completing additional wells that establish production of oil and gas;

(3) Recompleting wells or other operations that establish new unit production; or

(4) Drilling existing wells to a deeper target.

(b) No later than 90 calendar days after meeting initial development obligations, submit to BLM a plan that describes how you will meet continuing development obligations.

(1) If you have drilled a well that meets the productivity criteria, your plan must describe the activities to fully develop the oil and gas field.

(2) If you fulfilled your initial development obligations, but did not establish a well that meets the productivity criteria, your plan must describe any further actual or constructive drilling operations you will conduct.

(c) No later than 90 calendar days after BLM's approval of your plan submitted under paragraph (b) of this section, you must certify to BLM that you started operations to fulfill your continuing development obligations. BLM may require you to—

(1) Supply documentation to support your certification; and

(2) Submit periodic reports that demonstrate continuing development.

§ 3137.72 May I perform additional development outside established participating areas to fulfill continuing development obligations?

You may perform additional development either within or outside a participating area, depending on the terms of the unit agreement.

§ 3137.73 What happens if I do not meet a continuing development obligation?

(a) After you establish a participating area, if you do not meet a continuing development obligation and BLM has not granted you an extension of time to meet the obligation, the unit contracts. This means that—

(1) All areas within the unit that do not have participating areas established will be eliminated from the unit. Any eliminated areas are subject to their original lease terms; and

(2) Only established participating areas, whether they are actually producing or not, remain in the unit.

(b) Units contract effective the first day of the month after the date on which the unit agreement required the continuing development obligations to begin.

(c) If you do not meet a continuing development obligation before you establish a participating area, the unit terminates (see § 3137.132 of this subpart).

Participating Areas

§ 3137.80 What are participating areas and how do they relate to the unit agreement?

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

(b) You must include the proposed participating area size in the unit agreement for planning purposes and to mitigate reasonably foreseeable and significantly adverse effects on NPRA surface resources. The unit agreement must define the proposed participating areas. Your proposed participating area may be limited to separate producible intervals or areas.

(c) At the time you meet the productivity criteria discussed in § 3137.82 of this subpart, you must delineate those participating areas.

§ 3137.81 What is the function of a participating area?

The function of a participating area is to allocate production to each committed tract within a participating area. Allocation to each committed tract within the participating area is in the same proportion as that tract's surface acreage in the participating area to the total acreage in the participating area.

§ 3137.82 What are productivity criteria?

(a) Productivity criteria are characteristics of a unit well that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producible interval. You must be able to determine whether you meet the criteria when the well is drilled and you complete well testing.

(b) To meet the productivity criteria the well must indicate future production potential sufficient to pay for the costs of drilling, completing, and operating the well on a unit basis.

§ 3137.83 What establishes a participating area?

The first well you drill after the unit agreement is formed that meets the productivity criteria establishes an initial participating area. When you establish an initial participating area, lands that contain previously existing wells in the unit that meet the productivity criteria (see § 3137.82 of this subpart), will—

(a) Be added to that initial participating area as a revision, if it is in the same producible interval; or

(b) Become a separate participating area, if it is in a different producible interval (see also § 3137.88 of this subpart for wells that do not meet the productivity criteria).

§ 3137.84 What must I submit to BLM to establish a new participating area, or add to an existing participating area?

To establish a new participating area or add to an existing participating area, you must submit to BLM a—

(a) Statement that the well meets the productivity criteria (see § 3137.82 of this subpart). BLM may require you to submit information supporting your statement;

(b) Map showing the new or revised participating area and acreage; and

(c) Schedule that establishes the production allocation for each NPRA lease or tract, and each record title and operating rights owner in the

participating area. You must submit a separate allocation schedule for each participating area.

§ 3137.85 What is the effective date of a participating area?

The effective date of either an initial or revised participating area is the first day of the month in which you complete a well that meets the productivity criteria, but no earlier than the effective date of the unit.

§ 3137.86 What happens to the participating area when I drill new wells that meet the productivity criteria?

If a new well that meets the productivity criteria is—

(a) Inside a participating area boundary and completed in the same producible interval, the participating area will remain the same;

(b) Outside a participating area boundary and completed in the same producible interval as the well in an existing participating area, the participating area expands to include the new area; or

(c) In a different producible interval, inside or outside the participating area, a new participating area may be established for the well.

§ 3137.87 What must I do if there are unleased Federal tracts in a participating area?

If there are unleased Federal tracts in a participating area, you must—

(a) Include the unleased Federal tracts in the participating area, even though BLM will not share in unit costs;

(b) Allocate production for royalty purposes as if the unleased Federal tracts were leased and committed to the agreement under § 3137.100 of this subpart;

(c) Admit Federal tracts leased after the effective date of the unit agreement into the agreement on the date the lease is effective; and

(d) Submit to BLM revised maps, a list of committed leases, and allocation schedules that reflect the commitment of the newly leased Federal tracts to the unit.

§ 3137.88 What happens when a well outside a participating area does not meet the productivity criteria?

If a well outside any of the established participating area(s) does not meet the productivity criteria, all operations on that well are non-unit operations and we do not revise the participating area. No later than 60 calendar days after the well did not meet the productivity criteria, you must notify BLM that unit operations are no longer occurring. You must conduct non-unit operations under the terms of the underlying lease or other federally approved cooperative oil and gas agreements.

§ 3137.89 How does production allocation occur from wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the production is allocated on a lease or other federally approved cooperative oil and gas agreement basis. You must pay and report the royalties from any such well either as specified in the underlying lease or other federally approved cooperative oil and gas agreements.

(b) If you drilled a well after the unit was formed and the well is completed within an existing participating area, the production becomes a part of that participating area production. This paragraph applies whether or not the well meets the productivity criteria.

(c) If a well that does not meet the productivity criteria is outside a participating area, the production is allocated the same as under paragraph (a) of this section.

§ 3137.90 Who must operate wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the operator of the well at the time the unit was formed may continue as operator.

(b) As unit operator, you must continue to operate wells drilled after unit formation that do not meet the productivity criteria, until BLM approves a change in the designation of operator for those wells.

§ 3137.91 When may a well BLM previously determined to be a non-unit well establish or revise a participating area?

If you, as the unit operator, complete sufficient work so that a well BLM previously determined to be a non-unit well now meets the productivity criteria, you must demonstrate this to BLM within 60 calendar days of when this occurs. You must then revise an existing participating area or establish a new participating area (see § 3137.84 of this subpart).

§ 3137.92 When does a participating area terminate?

After contraction under § 3137.73 of this subpart, a participating area terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, unless you show that within 60 days after BLM's notification—

(a) Your operations to restore or establish new production are in progress; and

(b) You are diligently pursuing oil or gas production.

Production Allocation

§ 3137.100 How must I allocate production to the United States when a participating area includes unleased Federal lands?

(a) When a participating area includes unleased Federal lands, you must allocate production as if the unleased Federal lands were leased and committed to the agreement (see §§ 3137.80 and 3137.81 of this subpart). The obligation to pay royalty for production attributable to unleased Federal lands accrues from the later of the date the—

(1) Committed leases in the participating area that includes unleased Federal lands receive a production allocation; or

(2) Previously leased tracts within the participating area become unleased.

(b) The royalty rate applicable to production allocated to unleased Federal lands is the greater of 121/2% or the highest royalty rate for any lease committed to the unit.

Obligations and Extensions

§ 3137.110 Do the terms and conditions of a unit agreement modify Federal lease stipulations?

A unit agreement does not modify Federal lease stipulations.

§ 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement?

If the unit operator requests it, BLM will extend the primary term of an NPRA lease committed to a unit agreement if, from anywhere in the unit area, there is—

(a) Actual production from a well that meets the productivity criteria;

(b) Actual or constructive drilling operations; or

(c) Actual or constructive reworking operations.

§ 3137.112 Under what circumstances will BLM extend my NPRA lease?

BLM will extend all NPRA leases committed to the unit, for as long as the unit exists, for the following types of operations from any NPRA lease committed to the unit—

Type of operations	Length of extension	Additional extension
(a) Actual production	As long as there is production from a well in the unit that meets the productivity criteria.	Does not apply.
(b) Actual or constructive drilling operations	Up to 3 years	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.
(c) Actual or constructive reworking operations	Up to 3ears	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.

§ 3137.113 What happens if I am prevented from performing actual or constructive drilling or reworking operations?

(a) If you demonstrate to BLM that reasons beyond your control prevent you, despite reasonable diligence, from starting actual or constructive drilling, reworking, or completing operations, BLM will extend all committed leases as if you were performing constructive or actual drilling or reworking operations. You are limited to two extensions under this section.

(b) You must resume actual or constructive drilling or reworking operations when conditions permit. If you do not resume operations—

(1) BLM will cancel the extension; and

(2) The unit terminates (see § 3137.131 of this subpart).

Change in Ownership

§ 3137.120 As a transferee of an interest in a unitized NPRA lease, am I subject to the terms and conditions of the unit agreement?

As a transferee of an interest in an NPRA lease that is included in a unit agreement, you are subject to the terms and conditions of the unit agreement.

Unit Termination

§ 3137.130 Under what circumstances will BLM approve a voluntary termination of the unit?

BLM will approve the voluntary termination of the unit at any time—

(a) Before the unit operator discovers production sufficient to establish a participating area; and

(b) The unit operator submits to BLM certification that at least 75 percent of the operating rights owners in the agreement, on a surface acreage basis, agree to the termination.

§ 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?

If the unit terminated before the unit operator met the initial development obligations, BLM's approval of the agreement is revoked. You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPRA lease as a result of having been committed to the unit. Any lease that BLM extended as a result of being committed to the unit would expire unless it qualified for an extension under § 3135.1–5 of this part.

§ 3137.132 What if I do not meet a continuing development obligation before I establish any participating area in the unit?

If you do not meet a continuing development obligation before any participating area is established, the unit terminates automatically. Termination is effective the day after you did not meet a continuing development obligation.

§ 3137.133 After participating areas are established, when does the unit terminate?

After participating areas are established, the unit terminates when the last participating area of the unit terminates (see § 3137.92 of this subpart).

§ 3137.134 What happens to committed leases if the unit terminates?

(a) If the unit terminates, all committed NPRA leases return to individual lease status and are subject to their original provisions.

(b) An NPRA lease that has completed its primary term on or before the date the unit terminates expires unless it qualifies for extension under § 3135.1–5 of this part.

§ 3137.135 What are the unit operator's obligations after unit termination?

Within 3 months after unit termination, the unit operator must submit to BLM for approval a plan and schedule for mitigating the impacts resulting from unit operations. The plan must describe in detail planned plugging and abandonment and surface restoration operations. The unit operator must then comply with the BLM-approved plan and schedule.

Appeals

§ 3137.150 Who may appeal a decision BLM issues under this subpart?

(a) Any person adversely affected by a BLM decision under this subpart may appeal the decision under parts 4 and 1840 of this title.

(b) You may file for a State Director Review (SDR) of decision BLM issues under this subpart. Sections [to be specified in the final rule] of this title contain regulations on SDR.

7. Add a new subpart 3138 to part 3130 to read as follows:

Subpart 3138—Subsurface Storage Agreements

Sec.

3138.10 When will BLM allow subsurface storage agreements covering federally-owned lands?
3138.11 How do I apply for a subsurface storage agreement?
3138.12 What must I pay for storage?

§ 3138.10 When will BLM allow subsurface storage agreements covering federally-owned lands?

BLM will allow you to use either leased or unleased federally-owned lands for the subsurface storage of oil and gas, whether or not the oil or gas you intend to store is produced from federally-owned lands, if you demonstrate that storage is necessary to—

(a) Avoid waste; or

(b) Promote conservation of natural resources.

§ 3138.11 How do I apply for a subsurface storage agreement?

(a) You must submit an application to BLM for a subsurface storage agreement that includes—

(1) The reason for forming a subsurface storage agreement;

(2) A description of the area you plan to include in the subsurface storage agreement;

(3) A description of the formation you plan to use for storage;

(4) The proposed storage fees or rentals. The fees or rentals must be

based on the value of the subsurface storage, injection, and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances you and BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests have consented to the gas storage agreement in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement; and

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage.

(b) BLM will negotiate the terms of a subsurface storage agreement with you, including bonding, and reservoir management.

(c) BLM may request documentation in addition to that which you provide under paragraph (a) above of this section.

§ 3138.12 What must I pay for storage?

You must pay any combination of storage fees, rentals, or royalties to which you and BLM agree. The royalty you pay on production of native oil and gas from leased lands will be the royalty required by the underlying lease(s). You must not produce native oil and gas from unleased lands in the storage agreement area.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

8. Revise the authority citation for part 3160 to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

9. Revise 3160.0–1 to read as follows:

§ 3160.0–1 Purpose.

The regulations in this part govern operations associated with the exploration, development and production of oil and gas deposits from—

(a) Leases issued or approved by the United States;

(b) Restricted Indian land leases; and

(c) Those leases under the jurisdiction of the Secretary of the Interior by law or administrative arrangement including the National Petroleum Reserve-Alaska (NPR–A). However, § 3103.4–4 of this chapter does not apply to the NPR–A.

Dated: April 11, 2000.

Kathy Karpan,

Acting Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 00–10150 Filed 4–25–00; 8:45 am]

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Part III

General Services Administration

41 CFR Parts 101–41 and 102–118
Transportation Payment and Audit; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–41 and 102–118

[FPMR Amendment G–115]

RIN 3090–AH15

Transportation Payment and Audit

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on transportation payment and audit into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* This final rule is effective April 20, 2000.

Applicability Date: In order to protect the interests of the Government, the Administrator of General Services grants a waiver to the prepayment audit provisions for all agencies who do not have a verified audit system by April 20, 2000. This exemption for agencies will extend until October 1, 2000 or the issuance of an approved agency transportation prepayment audit plan, whichever occurs first, to allow agencies a reasonable time to incorporate these regulations into transportation prepayment audit plans and to allow agencies to coordinate the GSA's regulations with the proper fiscal systems.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Program Analyst, Transportation Management Policy Division, Office of Governmentwide Policy, General Services Administration, at 202–208–7638, or E-mail at ed.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In response to President Clinton's mandate to Federal agencies to make communication with the public more understandable, GSA is revising and clarifying the transportation management policies by:

(1) Writing them in plain language and making substantive changes; and

(2) Allowing the use of commercial bills of lading and electronic commerce.

This rewrite incorporates Public Law 105–264, section 3, which amended 31 U.S.C. 3322, 31 U.S.C. 3528, and 31 U.S.C. 3726. The major change required is the mandatory use of prepayment audits for transportation billings.

The Federal Management Regulation (FMR) is in the question and answer format. Question and answer format is an effective way to engage the reader and to break the information into manageable pieces. The FMR asks questions in the first person, as the user would. It then answers the questions in the second and third person. The FMR addresses the agency in the singular.

B. Substantive Changes

This final rule clarifies existing transportation payment and audit requirements and makes substantive changes in this final rule.

We implement the mandatory use of prepayment audits, as required by Public Law 105–264, section 3, which amended 31 U.S.C. 3322, 31 U.S.C. 3528, and 31 U.S.C. 3726. Under a prepayment audit, the agency will keep more of its transportation dollars, by verifying transportation billings to eliminate potential overpayments.

We encourage agencies to expand the use of charge cards, commercial bills of lading, and electronic payment methods in place of the Government forms (Government Bill Of Lading and Government Transportation Request) used currently. The use of electronic bills of lading and existing commercial forms are the preferred methods to decrease the need for paperwork, retention of duplicate copies, and to lessen stockpiles of archived paper files and storage space.

The appeals process for a claim must begin within an agency and the first level of appeal must be handled at an appropriate level within the agency. In exchange for keeping funds through the use of prepayment audits, agencies will have responsibilities related to the setup and function of their prepayment audit programs.

FMR part 118 affects any department or establishment of the Federal Government defined by 5 U.S.C. 305, whose payment for transportation services are subject to the transportation audit provisions of section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726).

A proposed rule was published on February 22, 2000, at 65 FR 8818. Comments were received from nine agencies and no members of the public. All comments were considered in the formulation of the final rule and, as a result, a number of changes were made to the proposed rule.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to internal agency management and will not have a significant effect on the public.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 101–41 and 102–118

Accounting, Claims, Government property management, Surplus Government property, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, 41 CFR chapters 101 and 102 are amended as follows:

CHAPTER 101—[AMENDED]

1. Part 101–41 is revised to read as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

Authority: 31 U.S.C. 3726; and 40 U.S.C. 486(c).

§ 101–41.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For transportation payment and audit policy, see FMR part 102–118 (41 CFR part 102–118).

CHAPTER 102—[AMENDED]

2. Part 102–118 is added to subchapter D to read as follows:

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

Subpart A—General

Introduction

Sec.
102–118.5 What is the purpose of this part?
102–118.10 What is a transportation audit?
102–118.15 What is a transportation payment?
102–118.20 Who is subject to this part?
102–118.25 Does GSA still require my agency to submit its overall transportation policies for approval?
102–118.30 Are Government corporations bound by this part?

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102–118.35 What definitions apply to this part?

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102–118.105 Where can I find the rules governing the use of a Government Bill of Lading?
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102–118.115 Must my agency use a GBL?
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102–118.130 Must my agency use a GBL for express, courier, or small package shipments?
102–118.135 Where are the mandatory terms and conditions governing the use of bills of lading?
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102–118.150 What are the major mandatory terms and conditions governing the use of passenger transportation documents?
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102–118.170 Will GSA continue to maintain a centralized numbering system for Government transportation documents?

Subpart C—Use of Government Billing Documents

Terms and Conditions Governing Acceptance and Use of a Government Bill of Lading (GBL) or Government Transportation Request (GTR) (Until Form Retirement)

102–118.175 Must my agency prepare for the GBL retirement?
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102–118.190 When buying passenger transportation, must my agency reference the applicable contract?
102–118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?
102–118.200 Can a TSP demand advance payment for the transportation charges submitted on a bill of lading (including GBL)?
102–118.205 May my agency pay an agent functioning as a warehouseman for the TSP providing service under the bill of lading?
102–118.210 May my agency use bills of lading other than the GBL for a transportation shipment?
102–118.215 May my agency pay a TSP any extra fees to pay for the preparation and use of the GBL or GTR?
102–118.220 If a transportation debt is owed to my agency by a TSP because of loss or damage to property, does my agency report it to GSA?
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102–118.245 How does my agency get an assigned set of GBL or GTR numbers?
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102–118.300 How does my agency fund its prepayment audit program?
102–118.305 Must my agency notify the TSP of any adjustment to the TSP's bill?
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Maintaining an Approved Program

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102–118.340 How does my agency contact the GSA Audit Division?
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102–118.350 Does establishing a prepayment audit system or program change the responsibilities of the certifying officers?
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102–118.505 Must my agency send a voluntary refund to the Treasurer of the United States?
102–118.510 Can my agency revise or alter a GSA Form 7931, Certificate of Settlement?
102–118.515 Does my agency have any recourse not to pay a Certificate of Settlement?
102–118.520 Who is responsible for determining the standards for collection, compromise, termination, or suspension of collection action on any outstanding debts to my agency?
102–118.525 What are my agency's responsibilities for verifying the correct amount of transportation charges?
102–118.530 Will GSA instruct my agency's disbursing offices to offset unpaid TSP billings?
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Transportation Service Provider (TSP) Filing Requirements

102–118.545 What information must a TSP claim include?
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102–118.585 May a TSP appeal a prepayment audit decision of the GSBCA?
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Transportation Service Provider (TSP) and Agency Appeal Procedures for Postpayment Audits

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102–118.660 May a TSP appeal a postpayment audit decision of the GSBCA?
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Transportation Service Provider (TSP) Non-Payment of a Claim

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Authority: 31 U.S.C. 3726; and 40 U.S.C. 481, *et seq.*

Subpart A—General

Introduction

§ 102–118.5 What is the purpose of this part?

The purpose of this part is to interpret statutes and other policies that assure

that payment and payment mechanisms for agency transportation services are uniform and appropriate. This part communicates the policies clearly to agencies and transportation service providers (TSPs). (See § 102–118.35 for the definition of TSP.)

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related bills. The audit must examine the validity, propriety, and conformity of the charges with tariffs, quotations, agreements, or tenders, as appropriate. Each agency must ensure that its internal transportation audit procedures prevent duplicate payments and only allow payment for authorized services, and that the TSP's bill is complete with required documentation.

§ 102–118.15 What is a transportation payment?

A transportation payment is a payment made by an agency to a TSP for the movement of goods or people and/or transportation related services.

§ 102–118.20 Who is subject to this part?

All agencies and TSPs defined in § 102–118.35 are subject to this part. Your agency is required to incorporate this part into its internal regulations.

§ 102–118.25 Does GSA still require my agency to submit its overall transportation policies for approval?

GSA no longer requires your agency to submit its overall transportation policies for approval. However, as noted in § 102–118.325, agencies must submit their prepayment audit plans for approval. In addition, GSA may from time to time request to examine your agency's transportation policies to verify the correct performance of the prepayment audit of your agency's transportation bills.

§ 102–118.30 Are Government corporations bound by this part?

No, Government corporations are not bound by this part. However, they may choose to use it if they wish.

Definitions

§ 102–118.35 What definitions apply to this part?

The following definitions apply to this part:

Agency means Executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Atomic Energy Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

Note to the definition of Agency: All agencies' payments for transportation services are subject to the transportation audit provisions of section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726).

Agency claim means any demand by an agency upon a TSP for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods, and documentary evidence of title. It is also a contract of carriage when movement is under 49 U.S.C. 10721 and 49 U.S.C. 13712.

Document reference number means the unique number on a bill of lading, Government Bill of Lading, Government Transportation Request, or transportation ticket, used to track the movement of shipments and individuals.

EDI signature means a discrete authentication code which serves in place of a paper signature and binds parties to the terms and conditions of a contract in electronic communication.

Electronic commerce means electronic techniques for performing business transactions (ordering, billing, and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Electronic data interchange means electronic techniques for carrying out transportation transactions using electronic transmissions of the information between computers instead of paper documents. These electronic transmissions must use established and published formats and codes as authorized by the applicable Federal Information Processing Standards.

Electronic funds transfer means any transfer of funds, other than transactions initiated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearinghouse transfers, Fed Wire transfers, and transfers made at automatic teller machines and point of sale terminals.

Government Bill of Lading (GBL) means Optional Forms 1103 and 1203, the transportation documents issued by GSA and used as a receipt of goods, evidence of title, and generally a contract of carriage.

Government contractor-issued charge card means both an individually billed travel card, which the individual is required to pay, and a centrally billed account for paying travel expenses, which the agency is required to pay.

Government Transportation Request (GTR) means Optional Form 1169, the Government document used to buy transportation services. The document normally obligates the Government to pay for the transportation services provided.

Offset means agency use of money owed by the agency to a transportation service provider (TSP) to cover a previous debt incurred to the agency by the TSP.

Ordinary debt means an amount that a TSP owes an agency other than for the repayment of an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not provided (including unused transportation tickets), duplicate payments, and amounts for which a TSP is liable because of loss and/or damage to property it transported.

Overcharge means those charges for transportation and travel services that exceed those applicable under the contract for carriage. This also includes charges more than those applicable under rates, fares and charges established pursuant to section 13712 and 10721 of the Revised Interstate Commerce Act, as amended (49 U.S.C. 13712 and 10721), or other equivalent contract, arrangement or exemption from regulation.

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders. This process may also include subsequent adjustments and collections actions taken against a TSP by the Government.

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders.

Privately Owned Personal Property Government Bill of Lading, Optional Form 1203, means the agency transportation document used as a receipt of goods, evidence of title, and generally a contract of carriage. It is only available for the transportation of household goods. Use of this form is mandatory for Department of Defense, but optional for other agencies.

Rate authority means the document that establishes the legal charges for a

transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, and other equivalent documents.

Released value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. In return, when negotiating for rates and the released value is proposed to be less than the actual value of the cargo, the TSP should offer a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown on any applicable tariff, tender, contract, transportation document or other documents covering the shipment.

Reparation means the payment involving a TSP to or from an agency of an improper transportation billing as determined by a postpayment audit. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from payments to settle a claim for loss and damage to items shipped under those rates.

Standard carrier alpha code (SCAC) means an unique four-letter code assigned to each TSP by the National Motor Freight Traffic Association, Inc.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when they determine that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP on the invoice, the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction.

Statement of difference rebuttal means a document used by the agency to respond to a TSP's claim about an improper reduction made against the TSP's original bill by the paying agency.

Supplemental bill means a bill for services that the TSP submits to the agency for additional payment after reimbursement for the original bill. The need to submit a supplemental bill may occur due to an incorrect first bill or due to charges which were not included on the original bill.

Taxpayer identification number (TIN) means the number required by the Internal Revenue Service to be used by the TSP in reporting income tax or other returns. For a TSP, the TIN is an employer identification number.

Transportation document (TD) means any executed agreement for transportation service, such as a bill of lading (including a Government Bill of Lading), a Government Transportation Request, or transportation ticket.

Transportation service means service involved in the physical movement (from one location to another) of products, people, household goods, and any other objects by a TSP for an agency as well as activities directly relating to or supporting that movement. Examples of this are storage, crating, or connecting appliances.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers, and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

Transportation service provider claim means any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which they now believe they are owed; and any subsequent bills from the TSP resulting from a transaction that was pre- or postpayment audited by the GSA Audit Division.

Virtual GBL (VGBL) means the use of a unique GBL number on a commercial document, which binds the TSP to the terms and conditions of a GBL.

Note to § 102–118.35: 49 U.S.C. 13102, *et seq.*, defines additional transportation terms not listed in this section.

Subpart B—Ordering and Paying for Transportation and Transportation Services

§ 102–118.40 How does my agency order transportation and transportation services?

Your agency orders:

(a) Transportation of freight and household goods and related transportation services (e.g., packing, storage) with a charge card, bill of lading, purchase order (or electronic equivalent), or for domestic shipments until September 30, 2001, a Government Bill of Lading (GBL). GBLs will continue to be available after that date, if needed, for international shipments (including domestic overseas shipments).

(b) Transportation of people through the purchase of transportation tickets with a Government issued charge card (or centrally billed travel account citation), Government issued individual travel charge card, personal charge card, cash (in accordance with Department of the Treasury regulations), or in limited prescribed situations, a Government Transportation Request (GTR). See the ''U.S. Government Passenger Transportation—Handbook,'' obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.45 How does a transportation service provider (TSP) bill my agency for transportation and transportation services?

The manner in which your agency orders transportation and transportation services determines the manner in which a TSP bills for service. This is shown in the following table:

TRANSPORTATION SERVICE PROVIDER BILLING

(a) Ordering method	(b) Billing method
(1)(i) Government issued agency charge card, ... (ii) Centrally billed travel account citation.	(1) Bill from charge card company (may be electronic).
(2)(i) Purchase order, ... (ii) Bill of lading, (iii) Government Bill of Lading, (iv) Government Transportation Request.	(2) Bill from TSP (may be electronic).
(3)(i) Contractor issued individual travel charge card	(3) Voucher from employee (may be electronic).

TRANSPORTATION SERVICE PROVIDER BILLING—Continued

(a) Ordering method	(b) Billing method
(ii) Personal charge card, (iii) Personal cash.	

§ 102–118.50 How does my agency pay for transportation services?

Your agency may pay for transportation services in three ways:

(a) *Electronic funds transfer (EFT) (31 U.S.C. 3332, et seq.*). Your agency is required by statute to make all payments by EFT unless your agency receives a waiver from the Department of the Treasury.

(b) *Check.* For those situations where EFT is not possible and the Department of the Treasury has issued a waiver, your agency may make payments by check.

(c) *Cash.* In very unusual circumstances and as a last option, your agency payments may be made in cash in accordance with Department of the Treasury regulations (31 CFR part 208).

§ 102–118.55 What administrative procedures must my agency establish for payment of freight, household goods, or other transportation services?

Your agency must establish administrative procedures which assure that the following conditions are met:

(a) The negotiated price is fair and reasonable;

(b) A document of agreement signifying acceptance of the arrangements with terms and conditions is filed with the participating agency by the TSP;

(c) The terms and conditions are included in all transportation agreements and referenced on all transportation documents (TDs);

(d) Bills are only paid to the TSP providing service under the bill of lading to your agency and may not be waived;

(e) All fees paid are accounted for in the aggregate delivery costs;

(f) All payments are subject to applicable statutory limitations;

(g) Procedures (such as an unique numbering system) are established to prevent and detect duplicate payments, properly account for expenditures and discrepancy notices;

(h) All transactions are verified with any indebtedness list. On charge card transactions, your agency must consult any indebtedness list if the charge card contract provisions allow for it; and

(i) Procedures are established to process any unused tickets.

§ 102–118.60 To what extent must my agency use electronic commerce?

Your agency should use electronic commerce (*i.e.,* electronic methods for ordering, receiving bills, and paying for transportation and transportation services) to the maximum extent possible.

§ 102–118.65 Can my agency receive electronic billing for payment of transportation services?

Yes, when mutually agreeable to the agency and the GSA Audit Division, your agency is encouraged to use electronic billing for the procurement and billing of transportation services.

§ 102–118.70 Must my agency make all payments via electronic funds transfer?

Yes, under 31 U.S.C. 3332, *et seq.*, your agency must make all payments for goods and services via EFT (this includes goods and services ordered using charge cards).

§ 102–118.75 What if my agency or the TSP does not have an account with a financial institution or approved payment agent?

Under 31 U.S.C. 3332, *et seq.*, your agency must obtain an account with a financial institution or approved payment agent in order to meet the statutory requirements to make all Federal payments via EFT unless your agency receives a waiver from the Department of the Treasury. To obtain a waiver, your agency must contact:

The Commissioner
Financial Management Service
Department of the Treasury
401 Fourteenth Street, SW.
Washington, DC 20227
http://www.fms.treas.gov/

§ 102–118.80 Who is responsible for keeping my agency's electronic commerce transportation billing records?

Your agency's internal financial regulations will identify responsibility for recordkeeping. In addition, the GSA Audit Division keeps a central repository of electronic transportation billing records for legal and auditing purposes. Therefore, your agency must forward all relevant electronic transportation billing documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.85 Can my agency use a Government contractor issued charge card to pay for transportation services?

Yes, your agency may use a Government contractor issued charge card to purchase transportation services if permitted under the charge card contract or task order. In these circumstances your agency will receive a bill for these services from the charge card company.

§ 102–118.90 If my agency orders transportation and/or transportation services with a Government contractor issued charge card or charge account citation, is this subject to prepayment audit?

Generally, no transportation or transportation services ordered with a Government contractor issued charge card or charge account citation can be prepayment audited because the bank or charge card contractor pays the TSP directly, before your agency receives a bill that can be audited from the charge card company. However, if your agency contracts with the charge card or charge account provider to provide for a prepayment audit, then, as long as your agency is not liable for paying the bank for improper charges (as determined by the prepayment audit verification process), a prepayment audit can be used. As with all prepayment audit programs, the charge card prepayment audit must be approved by the GSA Audit Division prior to implementation. If the charge card contract does not provide for a prepayment audit, your agency must submit the transportation line items on the charge card to the GSA Audit Division for a postpayment audit.

§ 102–118.95 What forms can my agency use to pay transportation bills?

Your agency must use commercial payment practices and forms to the maximum extent possible; however, when viewed necessary by your agency, your agency may use the following Government forms to pay transportation bills:

(a) Standard Form (SF) 1113, Public Voucher for Transportation Charges, and SF 1113–A, Memorandum Copy;

(b) Optional Form (OF) 1103, Government Bill of Lading and OF 1103A Memorandum Copy (used for movement of things, both privately owned and Government property for official uses);

(c) OF 1169, Government Transportation Request (used to pay for tickets to move people); and

(d) OF 1203, Privately Owned Personal Property Government Bill of Lading, and OF 1203A, Memorandum Copy (used by the Department of Defense to move private property for official transfers).

Note to § 102–118.95: By September 30, 2001, your agency may no longer use the GBLs (OF 1103 and OF 1203) for domestic shipments. After September 30, 2000, your agency should minimize the use of GTRs (OF 1169).

§ 102–118.100 What must my agency ensure is on each SF 1113?

Your agency must ensure during its prepayment audit of a TSP bill that the TSP filled out the Public Vouchers, SF 1113, completely including the taxpayer identification number (TIN), and standard carrier alpha code (SCAC). An SF 1113 must accompany all billings.

§ 102–118.105 Where can I find the rules governing the use of a Government Bill of Lading?

The ''U.S. Government Freight Transportation—Handbook'' contains information on how to prepare this GBL form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.110 Where can I find the rules governing the use of a Government Transportation Request?

The ''U.S. Government Passenger Transportation—Handbook'' contains information on how to prepare this GTR form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.115 Must my agency use a GBL?

No, your agency is not required to use a GBL and must use commercial payment practices to the maximum extent possible. Effective September 30, 2001, your agency must phase out the use of the Optional Forms 1103 and 1203 for domestic shipments. After this date, your agency may use the GBL solely for international shipments.

§ 102–118.120 Must my agency use a GTR?

No, your agency is not required to use a GTR. Your agency must adopt commercial practices and eliminate GTR use to the maximum extent possible.

§ 102–118.125 What if my agency uses a TD other than a GBL?

If your agency uses any other TD for shipping under its account, the requisite and the named safeguards must be in place (i.e., terms and conditions found herein and in the ''U.S. Government Freight Transportation—Handbook,'' appropriate numbering, etc.).

§ 102–118.130 Must my agency use a GBL for express, courier, or small package shipments?

No, however, in using commercial forms all shipments must be subject to the terms and conditions set forth for use of a bill of lading for the Government. Any other non-conflicting applicable contracts or agreements between the TSP and an agency involving buying transportation services for Government traffic remain binding. This purchase does not require a SF 1113. When you are using GSA's schedule for small package express delivery, the terms and conditions of that contract are binding.

102–118.135 Where are the mandatory terms and conditions governing the use of bills of lading?

The mandatory terms and conditions governing the use of bills of lading are contained in this part and the ''U.S. Government Freight Transportation Handbook.''

102–118.140 What are the major mandatory terms and conditions governing the use of GBLs and bills of lading?

The mandatory terms and conditions governing the use of GBLs and bills of lading are:

(a) Unless otherwise permitted by statute, the TSP must not demand prepayment or collect charges from the consignee. The TSP, providing service under the bill of lading, must present the original, properly certified GBL or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges, to the paying office for payment;

(b) The shipment must be made at the restricted or limited valuation specified in the tariff or classification or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the GBL or bill of lading. (This is commonly referred to as an alternation of rates);

(c) Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the nearest office of the last delivering TSP and extend to the TSP the privilege of examining the shipment;

(d) The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered to valid;

(e) Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 31 U.S.C. 3717); and

(f) Additional mandatory terms and conditions are in this part and the ''U.S. Government Freight Transportation—Handbook.''

102–118.145 Where are the mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are contained in this part and the ''U.S. Government Passenger Transportation—Handbook.''

102–118.150 What are the major mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are:

(a) Government travel must be via the lowest cost available, that meets travel requirements; e.g., Government contract, fare, through, excursion, or reduced one way or round trip fare. This should be done by entering the term ''lowest coach'' on the Government travel document if the specific fare basis is not known;

(b) The U.S. Government is not responsible for charges exceeding those applicable to the type, class, or character authorized in transportation documents;

(c) The U.S. Government contractor-issued charge card must be used to the maximum extent possible to procure passenger transportation tickets. GTRs must be used minimally;

(d) Government passenger transportation documents must be in accordance with Federal Travel Regulation Chapters 300 and 301 (41 CFR chapters 300 and 301), and the ''U.S. Government Passenger Transportation—Handbook'';

(e) Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982;

(f) The TSP must insert on the TD any known dates on which travel commenced;

(g) The issuing official or traveler, by signature, certifies that the requested transportation is for official business;

(h) The TSP must not honor any request containing erasures or alterations unless the TD contains the authentic, valid initials of the issuing official; and

(i) Additional mandatory terms and conditions are in this part and the ''U. S. Government Passenger Transportation—Handbook.''

§ 102–118.155 How does my agency handle supplemental billings from the TSP after payment of the original bill?

Your agency must process, review, and verify supplemental billings using the same procedures as on an original billing. If the TSP disputes the findings, your agency must attempt to resolve the disputed amount.

§ 102–118.160 Who is liable if my agency makes an overpayment on a transportation bill?

If the agency conducts prepayment audits of its transportation bills, agency transportation certifying and disbursing officers are liable for any overpayments made. If GSA has granted a waiver to the prepayment audit requirement and the agency performs a postpayment audit (31 U.S.C. 3528 and 31 U.S.C. 3322) neither the certifying nor disbursing officers are liable for the reasons listed in these two cited statutes.

§ 102–118.165 What must my agency do if it finds an error on a TSP bill?

Your agency must advise the TSP via statement of difference of any adjustment that you make either electronically or in writing within 7 days of receipt of the bill, as required by the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). This notice must include the TSP's taxpayer identification number, standard carrier alpha code, bill number and document reference number, agency name, amount requested by the TSP, amount paid, payment voucher number, complete tender or tariff authority, the applicable rate authority and the complete fiscal authority including the appropriation.

§ 102–118.170 Will GSA continue to maintain a centralized numbering system for Government transportation documents?

Yes, GSA will maintain a numbering system for GBLs and GTRs. For commercial TDs, each agency must create a unique numbering system to account for and prevent duplicate numbers. The GSA Audit Division must approve this system. Write to:

General Services Administration
Federal supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

Subpart C—Use of Government Billing Documents

Terms and Conditions Governing Acceptance and Use of a Government Bill of Lading (GBL) or Government Transportation Request (GTR) (Until Form Retirement)

§ 102–118.175 Must my agency prepare for the GBL retirement?

Yes, your agency must prepare for the GBL retirement. Effective September 30, 2001, your agency must phase out the use of the SF 1103, Government Bill of Lading, GBL, and SF 1203, Privately Owned Personal Property Government Bill of Lading (PPGBLs), for domestic shipments. After September 30, 2001, your agency may use the GBL or PPGBL solely for international shipments (including domestic overseas shipments).

§ 102–118.180 Must my agency prepare for the GTR retirement?

Yes, your agency must use the GTR only in situations that do not lend themselves to the use of commercial payment methods.

§ 102–118.185 When buying freight transportation, must my agency reference the applicable contract or tender on the bill of lading (including a GBL)?

Yes, your agency must reference the applicable contract or tender when buying transportation on a bill of lading (including GBLs). However, the referenced information on a GBL or bill of lading does not limit an audit of charges.

§ 102–118.190 When buying passenger transportation must my agency reference the applicable contract?

Yes, when buying passenger transportation, your agency must reference the applicable contract on a GTR or passenger transportation document (e.g., ticket).

§ 102–118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?

For shipments bought on a TD, the TSP must submit an original properly certified GBL, PPGBL, or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges. The TSP must submit this package and all supporting documents to the agency paying office.

§ 102–118.200 Can a TSP demand advance payment for the transportation charges submitted on a bill of lading (including GBL)?

No, a TSP cannot demand advance payment for transportation charges submitted on a bill of lading (including GBL), unless authorized by law.

§ 102–118.205 May my agency pay an agent functioning as a warehouseman for the TSP providing service under the bill of lading?

No, your agency may only pay the TSP with whom it has a contract. The bill of lading will list the TSP with whom the Government has a contract.

§ 102–118.210 May my agency use bills of lading other than the GBL for a transportation shipment?

Yes, as long as the mandatory terms and conditions contained in this part (as also stated on a GBL) apply. The TSP must agree in writing to the mandatory terms and conditions (also found in the ''U.S. Government Freight Transportation Handbook'') contained in this part.

§ 102–118.215 May my agency pay a TSP any extra fees to pay for the preparation and use of the GBL or GTR?

No, your agency must not pay any additional charges for the preparation and use of the GBL or GTR. Your agency may not pay a TSP a higher rate than comparable under commercial procedures for transportation bought on a GBL or GTR.

§ 102–118.220 If a transportation debt is owed to my agency by a TSP because of loss or damage to property, does my agency report it to GSA?

No, if your agency has administratively determined that a TSP owes a debt resulting from loss or damage, follow your agency regulations.

§ 102–118.225 What constitutes final receipt of shipment?

Final receipt of the shipment occurs when the consignee or a TSP acting on behalf of the consignee with the agency's permission, fully signs and dates both the delivering TSP's documents and the consignee's copy of the same documents indicating delivery and/or explaining any delay, loss, damage, or shrinkage of shipment.

§ 102–118.230 What if my agency creates or eliminates a field office approved to prepare transportation documents?

Your agency must tell the GSA Audit Division whenever it approves a new or existing agency field office to prepare transportation documents or when an agency field office is no longer authorized to do so. This notice must show the name, field office location of the bureau or office, and the date on which your agency granted or canceled its authority to schedule payments for transportation service.

Agency Responsibilities When Using Government Bills of Lading (GBLs) or Government Transportation Requests (GTRs)

§ 102–118.235 Must my agency keep physical control and accountability of the GBL and GTR forms or GBL and GTR numbers?

Yes, your agency is responsible for the physical control and accountability of the GBL and GTR stock and must have procedures in place and available for inspection by GSA. Your agency must consider these Government transportation documents to be the same as money.

§ 102–118.240 How does my agency get GBL and GTR forms?

Your agency can get GBL and GTR forms, in either blank or prenumbered formats, from:

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM–WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102–118.245 How does my agency get an assigned set of GBL or GTR numbers?

If your agency does not use prenumbered GBL and GTR forms, you may get an assigned set of numbers from:

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM–WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102–118.250 Who is accountable for the issuance and use of GBL and GTR forms?

Agencies and employees are responsible for the issuance and use of GBL and GTR forms and are accountable for their disposition.

§ 102–118.255 Are GBL and GTR forms numbered and used sequentially?

Yes, GBL and GTR forms are always sequentially numbered when printed and/or used. No other numbering of the forms, including additions or changes to the prefixes or additions of suffixes, is permitted.

Quotations, Tenders or Contracts

§ 102–118.260 Must my agency send all quotations, tenders, or contracts with a TSP to GSA?

(a) Yes, your agency must send two copies of each quotation, tender, or contract of special rates, fares, charges, or concessions with TSPs including those authorized by 49 U.S.C. 10721 and 13712, upon execution to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) When this information is in an electronic format approved by the GSA Audit Division, your agency will transfer the information electronically.

Subpart D—Prepayment Audits of Transportation Services

Agency Requirements for Prepayment Audits

§ 102–118.265 What is a prepayment audit?

A prepayment audit is a review of a transportation service provider (TSP) bill that occurs prior to your agency making payment to a TSP. This review compares the charges on the bill against the charge permitted under the contract, rate tender, or other agreement under which the TSP provided the transportation and/or transportation related services.

§ 102–118.270 Must my agency establish a prepayment audit program?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a prepayment audit program. Your agency must send a preliminary copy of your prepayment audit program to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://policyworks.gov/org/main/MT

(b) The final plan must be approved and in place by April 20, 2000.

§ 102–118.275 What must my agency consider when designing and implementing a prepayment audit program?

As shown in § 102–118.45, the manner in which your agency orders transportation services determines how and by whom the bill for those services will be presented. Your agency's prepayment audit program must consider all of the methods that you use to order and pay for transportation services. With each method of ordering transportation services, your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated. Each method of ordering transportation and transportation services may require a different kind of prepayment audit.

§ 102–118.280 What advantages does the prepayment audit offer my agency?

Prepayment auditing will allow your agency to detect and eliminate billing errors before payment and will eliminate the time and cost of recovering agency overpayments.

§ 102–118.285 What options for performing a prepayment audit does my agency have?

Your agency may perform a prepayment audit by:

(a) Creating an internal prepayment audit program;

(b) Contracting directly with a prepayment audit service provider; or

(c) Using the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services.

Note to § 102–118.285: Either of the choices in paragraph (a), (b) or (c) of this section might include contracts with charge card companies that provide prepayment audit services.

§ 102–118.290 Must every electronic and paper transportation bill undergo a prepayment audit?

Yes, all transportation bills and payments must undergo a prepayment audit unless your agency's prepayment audit program uses a statistical sampling technique of the bills or the Administrator of General Services grants a specific waiver from the prepayment audit requirement. If your agency chooses to use statistical sampling, all bills must be at or below the Comptroller General specified limit of $2,500.00 (31 U.S.C. 3521(b) and General Accounting Office Policy and

Procedures Manual Chapter 7, obtainable from:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884–6015
http://www.gao.gov

§ 102–118.295 What are the limited exceptions to every bill undergoing a prepayment audit?

The limited exceptions to bills undergoing a prepayment audit are those bills subject to a waiver from GSA (which may include bills determined to be below your agency's threshold). The waiver to prepayment audit requirements may be for bills, mode or modes of transportation or for an agency or subagency.

§ 102–118.300 How does my agency fund its prepayment audit program?

Your agency must pay for the prepayment audit from those funds appropriated for transportation services.

§ 102–118.305 Must my agency notify the TSP of any adjustment to the TSP's bill?

Yes, your agency must notify the TSP of any adjustment to the TSP's bill either electronically or in writing within 7 days of receipt of the bill. This notice must refer to the TSP's bill number, agency name, taxpayer identification number, standard carrier alpha code, document reference number, amount billed, amount paid, payment voucher number, complete tender or tariff authority, including item or section number.

§ 102–118.310 Must my agency prepayment audit program establish appeal procedures whereby a TSP may appeal any reduction in the amount billed?

Yes, your agency must establish an appeal process that directs TSP appeals to an agency official who is able to provide adequate consideration and review of the circumstances of the claim. Your agency must complete the review of the appeal within 30 days.

§ 102–118.315 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency should forward all relevant documents including a complete billing history, and the appropriation or fund charged, to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) The GSA Audit Division will review the appeal of an agency's final, full or partial denial of a claim and issue a decision. A TSP must submit claims within 3 years under the guidelines established in § 102–118.460.

§ 102–118.320 What information must be on transportation bills that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation bills that have completed a prepayment audit:

(1) The date received from a TSP;

(2) A TSP's bill number;

(3) Your agency name;

(4) A Document Reference Number (DRN);

(5) The amount billed;

(6) The amount paid;

(7) The payment voucher number;

(8) Complete tender or tariff authority, including item or section number;

(9) The TSP's taxpayer identification number (TIN);

(10) The TSP's standard carrier alpha code (SCAC);

(11) The auditor's authorization code or initials; and

(12) A copy of any statement of difference sent to the TSP.

(b) Your agency can find added guidance in the ''U.S. Government Freight Transportation—Handbook,'' obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

Maintaining an Approved Program

§ 102–118.325 Must I get approval for my agency's prepayment audit program?

Yes, your agency must get approval for your prepayment audit program. The highest level budget or financial official of each agency, such as the Chief Financial Officer, initially approves your agency's prepayment audit program. After internal agency approval, your agency submits the plan in writing to the GSA Audit Division for final approval.

§ 102–118.330 What are the elements of an acceptable prepayment audit program?

An acceptable prepayment audit program must:

(a) Verify all transportation bills against filed rates and charges before payment;

(b) Comply with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Allow for your agency to establish minimum dollar thresholds for transportation bills subject to audit;

(d) Require your agency's paying office to offset debts from amounts owed to the TSP within the 3 years as per 31 U.S.C. 3726(b);

(e) Be approved by the GSA Audit Division. After the initial approval, the agency may be subject to periodic program review and reapproval;

(f) Complete accurate audits of transportation bills and notify the TSP of any adjustment within 7 calendar days of receipt;

(g) Create accurate notices to the TSPs that describe in detail the reasons for any full or partial rejection of the stated charges on the invoice. An accurate notice must include the TSP's invoice number, the billed amount, TIN, standard carrier alpha code, the charges calculated by the agency, and the specific reasons including applicable rate authority for the rejection;

(h) Forward documentation monthly to the GSA Audit Division, which will store paid transportation bills under the General Records Schedule 9, Travel and Transportation (36 CFR Chapter XII, 1228.22) which requires keeping records for 3 years. GSA will arrange for storage of any document requiring special handling (*e.g.*, bankruptcy, court case, *etc.*). These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;

(i) Establish procedures in which transportation bills not subject to prepayment audit (*i.e.*, bills for unused tickets and charge card billings) are handled separately and forwarded to the GSA Audit Division; and

(j) Implement a unique agency numbering system to handle commercial paper and practices (see § 102–118.55).

§ 102–118.335 What does the GSA Audit Division consider when verifying an agency prepayment audit program?

The GSA Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102–118.340 How does my agency contact the GSA Audit Division?

Your agency may contact the GSA Audit Division by writing to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.345 If my agency chooses to change an approved prepayment audit program, does the program need to be reapproved?

Yes, you must receive approval of any changes in your agency's prepayment

audit program from the GSA Audit Division.

Liability for Certifying and Disbursing Officers

§ 102–118.350 Does establishing a prepayment audit system or program change the responsibilities of the certifying officers?

Yes, in a prepayment audit environment, an official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102–118.355 Does a prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a GBL or passenger transportation request when the Administrator of General Services or designee waives the prepayment audit requirement and your agency uses postpayment audits.

§ 102–118.360 What relief from liability is available for the certifying official under a postpayment audit?

The agency counsel relieves a certifying official from liability for overpayments in cases where postpayment is the approved method of auditing and:

(a) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(b) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102–118.365 Do the requirements of a prepayment audit change the disbursing official's liability for overpayment?

Yes, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102–118.370 Where does relief from prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

Waivers from Mandatory Prepayment Audit

§ 102–118.375 Who has the authority to grant a waiver of the prepayment audit requirement?

Only the Administrator of General Services or designee has the authority to grant waivers from the prepayment audit requirement.

§ 102–118.380 How does my agency apply for a waiver from a prepayment audit of requirement?

Your agency must submit a request for a waiver from the requirement to perform a prepayment in writing to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://policyworks.gov/org/main/MT

§ 102–118.385 What must a waiver request include?

A waiver request must explain in detail how the use of a prepayment audit increases costs over a postpayment audit, decreases efficiency, involves a relevant public interest, adversely affects the agency's mission, or is not feasible for the agency. A waiver request must identify the mode or modes of transportation, agency or subagency to which the waiver would apply.

§ 102–118.390 On what basis does GSA grant a waiver to the prepayment audit requirement?

GSA issues waivers to the prepayment audit requirement based on:

(a) Cost-effectiveness;

(b) Government efficiency;

(c) Public interest; or

(d) Other factors the Administrator of General Services considers appropriate.

§ 102–118.395 How long will GSA take to respond to a waiver request?

GSA will respond to a written waiver request within 30 days from the receipt of the request.

§ 102–118.400 Must my agency renew a waiver of the prepayment audit requirements?

Yes, your agency waiver to the prepayment audit requirement will not exceed 2 years. Your agency must reapply to ensure the circumstances at the time of approval still apply.

§ 102–118.405 Are my agency's prepayment audited transportation bills subject to periodic postpayment audit oversight from the GSA Audit Division?

Yes, two years or more after starting prepayment audits, the GSA Audit Division (depending on its evaluation of the results) may subject your agency's prepayment audited transportation bills to periodic postpayment audit oversight rather than blanket postpayment audits. The GSA Audit Division will then prepare a report analyzing the success of your agency's prepayment audit program. This report will be on file at GSA and available for your review.

Suspension of Agency Prepayment Audit Programs

§ 102–118.410 Can GSA suspend my agency's prepayment audit program?

(a) Yes, the Director of the GSA Audit Division may suspend your agency's prepayment audit program based on his or her determination of a systematic or frequent failure of the program to:

(1) Conduct an accurate prepayment audit of your agency's transportation bills;

(2) Abide by the terms of the Prompt Payment Act;

(3) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 days of receipt;

(4) Follow Comptroller General decisions, GSA Board of Contract Appeals decisions, the Federal Management Regulation and GSA instructions or precedents about substantive and procedure matters; and/or

(5) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

(b) A systematic or a multitude of individual failures will result in suspension. A suspension of an agency's prepayment audit program may be in whole or in part for failure to conduct proper prepayment audits.

Subpart E—Postpayment Transportation Audits

§ 102–118.415 Will the widespread mandatory use of prepayment audits eliminate postpayment audits?

No, the mandatory use of prepayment audits will not eliminate postpayment audits because:

(a) Postpayment audits will continue for those areas which do not lend themselves to the prepayment audit; and

(b) The GSA Audit Division will continue to review and survey the progress of the prepayment audit by performing a postpayment audit on the bills. The GSA Audit Division has a Congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bill payments. During the early startup period for prepayment audits, transportation bills are subject to a

possible postpayment audit to discover the effectiveness of the prepayment audit process.

§ 102–118.420 Can the Administrator of General Services waive the postpayment auditing provisions of this subpart?

Yes, in certain circumstances, the Administrator of General Services or designee may waive the postpayment audit oversight requirements of this subpart on a case by case basis.

§ 102–118.425 Is my agency allowed to perform a postpayment audit on our transportation bills?

No, your agency must forward all transportation bills to GSA for a postpayment audit regardless of any waiver allowing for postpayment audit.

§ 102–118.430 What information must be on my agency's transportation bills submitted for a postpayment audit?

Your agency must annotate all of its transportation bills submitted for postpayment audit with:

(a) The date received from a TSP;

(b) A TSP's bill number;

(c) Your agency name;

(d) A Document Reference Number;

(e) The amount requested;

(f) The amount paid;

(g) The payment voucher number;

(h) Complete tender or tariff authority, including contract price (if purchased under the Federal Acquisition Regulation), item or section number;

(i) The TSP's taxpayer identification number; and

(j) The TSP's standard carrier alpha code (SCAC).

§ 102–118.435 What procedures does GSA use to perform a postpayment audit?

When GSA performs a postpayment audit, the GSA Audit Division has the delegated authority to implement the following procedures:

(a) Audit selected TSP bills after payment;

(b) Audit selected TSP bills before payment as needed to protect the Government's interest (i.e., bankruptcy, fraud);

(c) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of agencies;

(d) Adjudicate and settle transportation claims by and against agencies;

(e) Offset an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issue a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid, the basis for the proper charge for the document reference number, and cites applicable tariff or tender along with other data relied on to support the overcharge. A separate Notice of Overcharge is prepared and mailed for each bill; and

(g) Issue a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102–118.440 What are the postpayment audit responsibilities and roles of the GSA Audit Division?

When the GSA Audit Division performs a postpayment audit for your agency, GSA will:

(a) Examine and analyze payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements or tenders and make adjustments to protect the interest of an agency;

(b) Examine, adjudicate, and settle transportation claims by and against the agency;

(c) Collect from TSPs by refund, setoff, offset or other means, the amounts determined to be due the agency;

(d) Adjust, terminate or suspend debts due on TSP overcharges;

(e) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or against an agency and provide technical, fiscal, and factual data from relevant records;

(f) Provide transportation specialists and lawyers to serve as expert witnesses, assist in pretrial conferences, draft pleadings, orders, and briefs, and participate as requested in connection with transportation suits by or against an agency;

(g) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(h) Furnish information on rates, fares, routes, and related technical data upon request;

(i) Tell an agency of irregular shipping routing practices, inadequate commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(j) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters and acquainting them with agency requirements.

§ 102–118.445 Must my agency pay for a postpayment audit when using the GSA Audit Division?

No, the expenses of postpayment audit contract administration and audit-related functions are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds.

Subpart F—Claims and Appeal Procedures

General Agency Information for All Claims

§ 102–118.450 Can a TSP file a transportation claim against my agency?

Yes, a TSP may file a transportation claim against your agency under 31 U.S.C. 3726 for:

(a) Amounts owed but not included in the original billing;

(b) Amounts deducted or set off by an agency that are disputed by the TSP;

(c) Requests by a TSP for amounts previously refunded in error by that TSP; and/or

(d) Unpaid original bills requiring direct settlement by GSA, including those subject to doubt about the suitability of payment (mainly bankruptcy or fraud).

§ 102–118.455 What is the time limit for a TSP to file a transportation claim against my agency?

The time limits on a TSP transportation claim against the Government differ by mode as shown in the following table:

TIME LIMITS ON ACTIONS TAKEN BY TSP

Mode	Freight charges	Statute
(a) Air Domestic	6 years	28 U.S.C. 2401, 2501.

TIME LIMITS ON ACTIONS TAKEN BY TSP—Continued

Mode	Freight charges	Statute
(b) Air International	6 years	28 U.S.C. 2401, 2501.
(c) Freight Forwarders (subject to the IC Act)	3 years	49 U.S.C. 14705(f).
(d) Motor	3 years	49 U.S.C. 14705(f).
(e) Rail	3 years	49 U.S.C. 14705(f).
(f) Water (subject to the IC Act)	3 years	49 U.S.C. 14705(f).
(g) Water (not subject to the IC Act)	2 years	46 U.S.C. 745.
(h) TSPs exempt from regulation	6 years	28 U.S.C. 2401, 2501.

§ 102–118.460 What is the time limit for my agency to file a court claim with a TSP for freight charges, reparations, and loss or damage to the property?

Statutory time limits vary depending on the mode and the service involved and may involve freight charges. The following tables list the time limits:

(A) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPS

Mode	Freight charges	Reparations	Loss and damage
(1) Rail	3 years 49 U.S.C. 11705	3 years 49 U.S.C. 11705	6 years. 28 U.S.C. 2415.
(2) Motor	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(3) Freight Forwarders subject to the IC Act.	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(4) Water (subject to the IC Act).	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(5) Water (not subject to the IC Act).	6 years 28 U.S.C. 2415	2 years 46 U.S.C. 821	1 year. 46 U.S.C. 1303(6) (if subject to Carriage of Goods by Sear Act, 46 U.S.C. 1300–1315).
(6) Domestic Air	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.
(7) International Air	6 years 28 U.S.C. 2415		2 years. 49 U.S.C. 40105.

(B) Time Limits on Actions Taken by the Federal Government Against TSPs Exempt From Regulation

Mode	Freight	Reparations	Loss and damage
(1) All	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.

§ 102–118.465 Must my agency pay interest on a disputed amount claimed by a TSP?

No, interest penalties under the Prompt Payment Act, (31 U.S.C. 3901, *et seq.*), are not required when payment is delayed because of a dispute between an agency and a TSP.

§ 102–118.470 Are there statutory time limits for a TSP on filing an administrative claim with the GSA Audit Division?

Yes, an administrative claim must be received by the GSA Audit Division or its designee (the agency where the claim arose) within 3 years beginning the day after the latest of the following dates (except in time of war):

(a) Accrual of the cause of action;

(b) Payment of charges for the transportation involved;

(c) Subsequent refund for overpayment of those charges; or

(d) Deductions made to a TSP claim by the Government under 31 U.S.C. 3726.

§ 102–118.475 Does interest apply after certification of payment of claims?

Yes, interest under the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) begins 30 days after certification for payment by GSA.

§ 102–118.480 How does my agency settle disputes with a TSP?

As a part of the prepayment audit program, your agency must have a plan to resolve disputes with a TSP. This program must allow a TSP to appeal payment decisions made by your agency.

§ 102–118.485 Is there a time limit for my agency to issue a decision on disputed claims?

Yes, your agency must issue a ruling on a disputed claim within 30 days of receipt of the claim.

§ 102–118.490 What if my agency fails to settle a dispute within 30 days?

(a) If your agency fails to settle a dispute within 30 days, the TSP may appeal to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC 1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) If the TSP disagrees with the administrative settlement by the Audit Division, the TSP may appeal to the General Services Board of Contract Appeals.

§ 102–118.495 May my agency appeal a decision by the General Services Board of Contract Appeals (GSBCA)?

No, your agency may not appeal a decision made by the GSBCA.

§ 102–118.500 How does my agency handle a volunary refund submitted by a TSP?

(a) An agency must report all voluntary refunds to the GSA Audit Division (so that no Notice of Overcharge or financial offset occurs), unless other arrangements are made (*e.g.*, charge card refunds, etc.). These reports must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) Once a Notice of Overcharge is issued by the GSA Audit Division, then any refund is no longer considered voluntary and the agency must forward the refund to the GSA Audit Division.

§ 102–118.505 Must my agency send a voluntary refund to the Treasurer of the United States?

No, your agency may keep and use voluntary refunds submitted by a TSP, if the refund was made prior to a Notice of Overcharge issued by the GSA Audit Division.

§ 102–118.510 Can my agency revise or alter a GSA Form 7931, Certificate of Settlement?

Generally, no, an agency must not revise or alter amounts on a GSA Form 7931. The only change an agency can make to a GSA Form 7931 is to change the agency financial data to a correct cite. Any GSA Form 7931 that cannot be paid (*e.g.*, an amount previously paid), must be immediately returned to the GSA Audit Division with an explanation.

§ 102–118.515 Does my agency have any recourse not to pay a Certificate of Settlement?

No, a Certificate of Settlement is the final administrative action.

§ 102–118.520 Who is responsible for determining the standards for collection, compromise, termination, or suspension of collection action on any outstanding debts to my agency?

Under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), the Comptroller General and the Attorney General have joint responsibility for issuing standards for your agency.

§ 102–118.525 What are my agency's responsibilities for verifying the correct amount of transportation charges?

Your agency's employees are responsible for diligently verifying the correct amount of transportation charges prior to payment (31 U.S.C. 3527).

§ 102–118.530 Will GSA instruct my agency's disbursing offices to offset unpaid TSP billings?

Yes, GSA will instruct one or more of your agency's disbursing offices to deduct the amount due from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debts (31 U.S.C. 3716).

§ 102–118.535 Are there principles governing my agency's TSP debt collection procedures?

Yes, the principles governing your agency collection procedures for reporting debts to the General Accounting Office (GAO) or the Department of Justice are found in 4 CFR parts 101 through 105 and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies. The manual may be obtained by writing:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
http://www.access.gpo.gov/

§ 102–118.540 Who has the authority to audit, settle accounts, and/or start collection action for all transportation services provided for my agency?

The Director of the GSA Audit Division has the authority and responsibility to audit and settle all transportation related accounts (31 U.S.C. 3726). The reason for this is that he or she has access to Governmentwide data on a TSP's payments and billings with the Government. Your agency has the responsibility to correctly pay individual transportation claims.

Transportation Service Provider (TSP) Filing Requirements

§ 102–118.545 What information must a TSP claim include?

Transportation service provider (TSP) claims received by GSA or its designee must include one of the following:

(a) The signature of an individual or party legally entitled to receive payment for services on behalf of the TSP;

(b) The signature of the TSP's agent or attorney accompanied by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the TSP; or

(c) An electronic signature, when mutually agreed upon.

§ 102–118.550 How does a TSP file an administrative claim using EDI or other electronic means?

The medium and precise format of data for an administrative claim filed electronically must be approved in advance by the GSA Audit Division. GSA will use an authenticating EDI signature to certify receipt of the claim. The data on the claim must contain proof of the delivery of goods, and an itemized bill reflecting the services provided, with the lowest charges available for service. The TSP must be able to locate, identify, and reproduce the records in readable form without loss of clarity.

§ 102–118.555 Can a TSP file a supplemental administrative claim?

Yes, a TSP may file a supplemental administrative claim. Each supplemental claim must cover charges relating to one paid transportation document.

§ 102–118.560 What is the required format that a TSP must use to file an administrative claim?

A TSP must bill for charges claimed on a SF 1113, Public Voucher for Transportation Charges, in the manner prescribed in the ''U.S. Government Freight Transportation—Handbook'' or the ''U.S. Government Passenger Transportation—Handbook.'' To get a copy of these handbooks, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.565 What documentation is required when filing an administrative claim?

An administrative claim must be accompanied by the transportation document, payment record, reports and information available to GSA and/or to the agency involved and the written and documentary records submitted by the TSP. Oral presentations supplementing the written record are not acceptable.

Transportation Service Provider (TSP) and Agency Appeal Procedures for Prepayment Audits

§ 102–118.570 If my agency denies the TSP's challenge to the statement of difference, may the TSP appeal?

Yes, the TSP may appeal if your agency denies its challenge to the statement of difference. However, the appeal must be handled at a higher level in your agency.

§ 102–118.575 If a TSP disagrees with the decision of my agency, can the TSP appeal?

Yes, the TSP may file a claim with the GSA Audit Division, which will review the TSP's appeal of your agency's final full or partial denial of a claim. The TSP may also appeal to the GSA Audit Division if your agency has not responded to a challenge within 30 days.

§ 102–118.580 May a TSP appeal a prepayment audit decision of the GSA Audit Division?

(a) Yes, the TSP may appeal to the GSA's Board of Contract Appeals (GSBCA), under guidelines established in this subpart, or file a claim with the United States Court of Federal Claims. The TSP's request for review must be received by the GSBCA in writing within 6 months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The TSP must address requests to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501–0664.

§ 102–118.585 May a TSP appeal a prepayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy available and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any of the TSP's rights. A TSP may still pursue a legal remedy through the courts.

§ 102–118.590 May my agency appeal a prepayment audit decision of the GSA Audit Division?

No, your agency may not appeal. A GSA Audit Division decision is administratively final for your agency.

§ 102–118.595 May my agency appeal a prepayment audit decision by the GSBCA?

No, your agency may not appeal a prepayment audit decision. Your agency must follow the ruling of the GSBCA.

Transportation Service Provider (TSP) and Agency Appeal Procedures for Postpayment Audits

§ 102–118.600 When a TSP disagrees with a Notice of Overcharge resulting from a postpayment audit, what are the appeal procedures?

A TSP who disagrees with the Notice of Overcharge may submit a written request for reconsideration to the GSA Audit Division at:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.605 What if a TSP disagrees with the Notice of Indebtedness?

If a TSP disagrees with an ordinary debt, as shown on a Notice of Indebtedness, it may:

(a) Inspect and copy the agency's records related to the claim;

(b) Seek administrative review by the GSA Audit Division of the claim decision; and/or

(c) Enter a written agreement for the payment of the claims.

§ 102–118.610 Is a TSP notified when GSA allows a claim?

Yes, the GSA Audit Division will acknowledge each payable claim using GSA Form 7931, Certificate of Settlement. The certificate will give a complete explanation of any amount that is disallowed. GSA will forward the certificate to the agency whose funds are to be charged for processing and payment.

§ 102–118.615 Will GSA notify a TSP if they internally offset a payment?

Yes, the GSA Audit Division will inform the TSP if they internally offset a payment.

§ 102–118.620 How will a TSP know if the GSA Audit Division disallows a claim?

The GSA Audit Division will furnish a GSA Form 7932, Settlement Certificate, to the TSP explaining the disallowance.

§ 102–118.625 Can a TSP request a reconsideration of a settlement action by the GSA Audit Division?

Yes, a TSP desiring a reconsideration of a settlement action may request a review by the Administrator of General Services.

§ 102–118.630 How must a TSP refund amounts due to GSA?

(a) TSPs must promptly refund amounts due to GSA, preferably by EFT. If an EFT is not used, checks must be made payable to ''General Services Administration'', including the document reference number, TSP name, bill number(s), taxpayer identification number and standard carrier alpha code, then mailed to:

General Services Administration
P.O. Box 93746
Chicago, IL 60673

(b) If an EFT address is needed, please contact the GSA Audit Division at:

General Services Administration

Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

Note to § 102–118.630: Amounts collected by GSA are returned to the Treasurer of the United States (31 U.S.C. 3726).

§ 102–118.635 Can the Government charge interest on an amount due from a TSP?

Yes, the Government can charge interest on an amount due from a TSP. This procedure is provided for under the Debt Collection Act (31 U.S.C. 3717), the Federal Claims Collection Standards (4 CFR parts 101 through 105), and 41 CFR part 105–55.

§ 102–118.640 If a TSP fails to pay or to appeal an overcharge, what actions will GSA pursue to collect the debt?

GSA will pursue debt collection through one of the following methods:

(a) When an indebted TSP files a claim, GSA will apply all or any portion of the amount it determines to be due the TSP, to the outstanding balance owed by the TSP, under the Federal Claims Collection Standards (4 CFR parts 101 through 105) and 41 CFR part 105–55;

(b) When the action outlined in paragraph (a) of this section cannot be taken by GSA, GSA will instruct one or more Government disbursing offices to deduct the amount due to the agency from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debt (31 U.S.C. 3716);

(c) When collection cannot be accomplished through either of the procedures in paragraph (a) or (b) of this section, GSA normally sends two additional demand letters to the indebted TSP requesting payment of the amount due within a specified time. Lacking a satisfactory response, GSA may place a complete stop order against amounts otherwise payable to the indebted TSP by adding the name of that TSP to the Department of the Army ''List of Contractors Indebted to the United States''; and/or

(d) When collection actions, as stated in paragraphs (a) through (c) of this section are unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR parts 101 through 105.

§ 102–118.645 Can a TSP file an administrative claim on collection actions?

Yes, a TSP may file an administrative claim involving collection actions resulting from the transportation audit performed by the GSA directly with the GSA Audit Division. Any claims submitted to GSA will be considered ''disputed claims'' under section 4(b) of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). The TSP must file all other transportation claims with the agency out of whose activities they arose. If this is not feasible (e.g., where the responsible agency cannot be determined or is no longer in existence) claims may be sent to the GSA Audit Division for forwarding to the responsible agency or for direct settlement by the GSA Audit Division. Claims for GSA processing must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.650 Can a TSP request a review of a settlement action by the Administrator of General Services?

Yes, a TSP desiring a review of a settlement action taken by the Administrator of General Services may request a review by the GSA Board of Contract Appeals (GSBCA) or file a claim with the United States Court of Federal Claims (28 U.S.C. 1491).

§ 102–118.655 Are there time limits on a TSP request for an administrative review by the GSBCA?

(a) Yes, the GSBCA must receive a request for review from the TSP within six months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The request must be addressed to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501–0664.

§ 102–118.660 May a TSP appeal a postpayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any rights of the TSPs. A TSP may still pursue a legal remedy through the courts.

§ 102–118.665 May my agency appeal a postpayment audit decision by the GSBCA?

No, your agency may not appeal a postpayment audit decision and must follow the ruling of the GSBCA.

Transportation Service Provider (TSP) Non-Payment of a Claim

§ 102–118.670 If a TSP cannot immediately pay a debt, can they make other arrangements for payment?

Yes, if a TSP is unable to pay the debt promptly, the Director of the GSA Audit Division has the discretion to enter into alternative arrangements for payment.

§ 102–118.675 What recourse does my agency have if a TSP does not pay a transportation debt?

If a TSP does not pay a transportation debt, GSA may refer delinquent debts to consumer reporting agencies and Federal agencies including the Department of the Treasury and Department of Justice.

Dated: April 20, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–10271 Filed 4–21–00; 12:47 pm]

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Federal Register

Wednesday,
April 26, 2000

Part IV

Environmental Protection Agency

40 CFR Part 152

Pesticides; Procedural Regulations for Registration Review; Advanced Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP–36195; FRL–6488–9]

RIN 2070–AD29

Pesticides; Procedural Regulations for Registration Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced Notice of Proposed Rulemaking.

SUMMARY: The Food Quality Protection Act (FQPA) of 1996 amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to require periodic review of pesticide registrations to ensure that over time they continue to meet statutory standards for safety. FIFRA section 3(g) specifies that EPA establish procedural regulations for conducting registration review and that the goal of the regulations shall be the Agency review of pesticide registrations on a 15–year cycle. This advance notice of proposed rulemaking (ANPRM) alerts stakeholders that EPA is beginning development of procedural regulations for registration review under FIFRA section 3(g). It explains EPA's preliminary interpretation of the authorizing legislation, presents EPA's goals in implementing the statutory provisions, presents the Agency's initial concept of how the registration review program might operate, identifies several issues that should be addressed in developing the program, and invites public comment on these and other issues relating to registration review.

DATES: Comments, identified by the docket control number [OPP–36195], must be received on or before June 26, 2000.

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.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36195 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9341; fax number: 703–305–5884; e-mail address: prunier.vivian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by the planned rulemaking described in this document if you hold pesticide registrations or may hold pesticide registrations in the future. Pesticide users or other persons interested in the regulation of the sale, distribution, or use of pesticides may also be interested in these planned procedural rules. As such, the Agency is soliciting comments from the public in general. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT.**

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 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 [OPP–36195]. 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 Public Information and Records Integrity Branch telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36195 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, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., 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 Hwy., 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–36195. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various issues we raise, new approaches or options we haven't considered and the potential impacts, including possible unintended consequences, of the Agency's initial concept. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible and provide any supporting data where appropriate.
- Describe any assumptions that you used.
- Make sure to submit your comments by the deadline in this notice.
- 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. Purpose of the ANPRM

With this ANPRM, the Agency presents the statutory requirement for pesticide registration review and alerts its stakeholders that it is initiating the development of rulemaking to establish procedures for a registration review program. Second, the Agency explains its preliminary interpretation of the statutory provisions and its preliminary ideas regarding goals and objectives for this program. Third, the Agency describes its preliminary ideas about how registration review might operate. Fourth, the Agency solicits public input on critical issues about registration review early in the planning process. Finally, EPA solicits public input to identify potential problems as early as possible.

III. Legal Authority

A. EPA's Authority to License Pesticide Products

FIFRA sections 3(a) and 12(a)(1) require a person to register a pesticide product with the EPA before the pesticide product may be lawfully sold or distributed in the United States. A pesticide registration is a license that allows a pesticide product to be sold and distributed for specific uses under specified terms and conditions such as use instructions and precautions. A pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5), as follows:

> (A) Its composition is such as to warrant the proposed claims for it.
>
> (B) Its labeling and other material required to be submitted comply with the requirements of this Act.
>
> (C) It will perform its intended function without unreasonable adverse effects on the environment.
>
> (D) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

FIFRA 2(bb) defines ''unreasonable adverse effects on the environment'' as (1) ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food Drug and Cosmetic Act.''

The proponent of initial or continued registration always bears the burden of demonstrating that a pesticide product meets the statutory standard for registration.

B. EPA's Authority for Registration Review

The FQPA amended FIFRA to add, among other things, section 3(g), ''REGISTRATION REVIEW,'' as follows:

> (1)(A) GENERAL RULE. The registrations of pesticides are to be periodically reviewed. The Administrator shall by regulation establish a procedure for accomplishing the periodic review of registrations. The goal of these regulations shall be a review of a pesticide's registration every 15 years. No registration shall be canceled as a result of the registration review process unless the Administrator follows the procedures and substantive requirements of section 6.
>
> (B) LIMITATION. Nothing in this subsection shall prohibit the Administrator from undertaking any other review of a pesticide pursuant to this Act.
>
> (2)(A) DATA. The Administrator shall use the authority in subsection (c)(2)(B) to require the submission of data when such data are necessary for a registration review.
>
> (B) DATA SUBMISSION, COMPENSATION, AND EXEMPTION.—For purposes of this subsection, the provisions of subsections (c)(1), (c)(2)(B), and (c)(2)(D) shall be utilized for and be applicable to any data required for registration review.

IV. What is Registration Review?

EPA believes that ''registration review'' would consist of the review of a pesticide to determine whether the pesticide continues to meet the statutory standard for registration under FIFRA section 3(c)(5). During a registration review, EPA would evaluate elements of FIFRA 3(c)(5) including the composition, labeling and other required material (including studies and other data), risks and benefits of a pesticide, and incident data or other information relating to its use. FIFRA section 3(g) contemplates that EPA may determine whether or not a pesticide meets the statutory standard for registration in FIFRA section 3(c)(5). If EPA determines that a pesticide no longer meets the statutory standard, it should not remain registered. In this event, EPA may need to pursue other actions such as cancellation under other statutory authority.

FIFRA section 3(g) instructs EPA to establish, by regulation, a procedure for accomplishing registration review. The goal of these regulations shall be Agency review of pesticide registrations on a 15–year cycle. EPA believes the activities that should be addressed under the procedural regulations include, but are not limited to: setting priorities for review, establishing a mechanism for setting schedules for reviewing all pesticides every 15 years, and articulating the general approach to conducting and concluding the review.

FIFRA section 3(g) also instructs the Agency to rely on existing authorities for data submission, data compensation, data exemption, or cancellation of registrations. Therefore, the procedural regulations need not be concerned with procedures for acquiring new information, assuring compensation for data developers, data exemption, or canceling a pesticide registration. Authorities and procedures for such activities already exist and FIFRA 3(g) did not require EPA to develop alterative procedures for these activities. Existing regulations such as those concerning good laboratory practice for data generation and FIFRA section 8 recordkeeping requirements would also apply.

EPA has already issued regulations and guidelines under FIFRA 3(c)(2)(A) to specify the kinds of information that are required to support a pesticide registration. EPA modifies this guidance periodically to reflect new developments in science areas such as hazard characterization and exposure assessment. Additionally, as explained in an October 29, 1998 **Federal Register** notice (63 FR 58030) (FRL–6041–5), EPA is in the process of issuing guidance for meeting the new safety standard mandated by the FQPA. Accordingly it is not necessary to specify such information in procedural regulations issued under FIFRA section 3(g)(1)(A).

EPA may determine that reviews accomplished under other authorities, e.g., section 408 of the FFDCA, could potentially contribute to registration reviews. In any event, EPA believes that it would not be necessary to specify procedures for these activities because authorities and procedures already exist for them.

Finally, FIFRA section 3(g)(1)(B) stipulates that EPA retains its authority to undertake any other review of a pesticide under FIFRA. This provision means that EPA may continue to undertake any review that is authorized by FIFRA or EPA regulations such as reregistration or special review. EPA also interprets this provision to mean, among other things, that the Agency may continue its practice of requiring submission of data whenever the Agency believes that such data are needed to support the continued registration of a pesticide.

V. What are EPA's Goals for Registration Review?

EPA's ultimate goal for registration review is to ensure continued protection of human health and the environment throughout the ''life'' of each pesticide's registration. To achieve this goal, EPA will periodically review all pesticide registrations to assure that they continue to meet the FIFRA statutory standard for registration based on the science, policies, and regulations current at the time of the review. EPA will conduct this review efficiently and effectively by building on existing knowledge about the pesticide.

EPA will evaluate any new test data, monitoring data, and field information. EPA will consider the effects of any changes in data requirements, risk assessment methodologies and labeling policies. If the risk assessment changes for any of these reasons, EPA may need to change the regulatory requirements pertaining to the registration. In some cases, EPA may find significant new risks that were not considered when the pesticide was registered or reregistered. This could trigger further review of risks or benefits. In such cases, EPA may determine that the pesticide does not meet the statutory standard for registration under FIFRA section 3(c)(5) and therefore should not remain registered. In other cases, EPA may find that originally it had overestimated risks and it may be possible to ease regulatory restrictions.

A. Keeping a Registration Up-to-Date

EPA has identified several aspects involved in keeping a pesticide registration up-to-date. These include receipt of new data; changes in data requirements and associated test guidelines (or protocols); changes in risk assessment methods; new information gained through use and practical experience with a pesticide; and changes in labeling policy.

1. *Availability of new data.* At any time, registrants or other persons may submit new studies on a pesticide. These studies may be undertaken in response to an Agency request or upon the data generator's own initiative. FIFRA section 6(a)(2) requires submission of certain kinds of data, as specified in 40 CFR part 159.

2. *Changes in data requirements and test guidelines.* From time to time, EPA changes data requirements or testing guidelines to reflect advances in the science of hazard characterization or exposure assessment. When changes are significant, EPA may require registrants to submit new testing to EPA to support registration. New testing may be necessary to evaluate an aspect of toxicity or exposure that was not previously considered, to replace particular studies that are no longer adequate as a result of advances in test design or protocols, or for many other possible reasons.

3. *Changes in risk assessment methodologies.* EPA continually seeks to improve its risk assessment methodologies. Currently, the Agency is reviewing a number of risk assessment methodologies as part of its implementation of the FQPA. Undoubtedly, there will be further changes as science and policy advance.

4. *Use and practical experience with a pesticide.* EPA evaluates whether practical experience from using a pesticide changes our understanding of the risks and benefits of the pesticide. EPA has established registrant reporting requirements for risk/benefit information (see 40 CFR part 159) and has a process for quickly assessing the safety implications of such information. The EPA will also maintain incident databases, sponsor a toll free telephone service that gathers information related to pesticide incident, and obtain incident related information from poison control centers. In addition, EPA is considering the establishment of a Pesticide Field Data Plan for capturing key information about pesticide use or misuse. Under this plan, States would standardize their procedures for collecting and reporting information from State pesticide compliance and enforcement records. EPA would analyze information from thousands of federally-funded investigations and inspections for trends and patterns of problems related to pesticide use or misuse. EPA may eventually be able to use these analyses to shape or confirm regulatory decisions.

5. *Changes in labeling policy.* From time to time, EPA publishes guidance on the format and content of pesticide product labels. EPA would, as part of registration review, evaluate existing labeling to determine whether it needs to be changed to reflect current policies and regulations pertaining to matters such as restrictions in use, requirements for protective clothing, and other precautionary label language associated with reducing exposure and environmental risk. Additionally, EPA may assess alternative ways to communicate risk management information to pesticide users.

B. Incorporate Lessons Learned from Reregistration

FIFRA section 4, established by the 1988 amendments to FIFRA, instructed EPA to review the human health and environmental effects of all pesticide active ingredients originally registered before November 1, 1984, in order to determine whether they are eligible for reregistration. To be ''eligible,'' an older pesticide must have a substantially complete data base, and must be found not to cause unreasonable risks to man or the environment when used in accordance with its approved labeling. As of August 1, 1999, of 612 reregistration cases (composed of a pesticide active ingredient or group of related pesticide active ingredients), 415 cases have completed reregistration (including 231 cases where registrants requested voluntary cancellation of all registrations of the pesticide). That leaves 197 cases awaiting reregistration decisions.

The Agency's experience with the reregistration program offers insights into the construction of an efficient registration review program. Chief among these are the importance of effective organization of large quantities of data for review, the efficient conduct of the review of these data, and the need for flexibility in defining the scope of the review for each pesticide. In addition, public participation at critical junctures helps ensure that the Agency develops practical risk mitigation measures where needed, and that stakeholders better understand the bases for decisions. To the extent possible, EPA plans to:

1. Review first those pesticide registrations for which EPA believes registration review will produce the greatest human health and environmental benefits.

2. Establish methods and approaches for ensuring that it has all necessary

data to make good regulatory decisions on schedule.

3. Standardize data submission by adopting guidance for data submitters such as the guidance developed by the Organization for Economic Cooperation and Development (OECD). Standard submission formats could expedite EPA's review and promote sharing the work of pesticide evaluation with other governments.

4. Review related pesticides simultaneously. This would allow effective use of review resources and promote more practical and comprehensive risk mitigation measures.

5. Tailor the level and nature of the review to the specific facts and concerns of each case.

6. Build on the results of prior review efforts such as reregistration and tolerance reassessment and on updates such as evaluations of applications for registration of new uses. EPA would avoid re-reviewing data to the fullest extent possible.

7. Adopt, or use to the extent practicable, state and foreign governments' reviews of pesticide studies. For several years, EPA has been developing experience in sharing the work of pesticide evaluation with North American Free Trade Agreement (NAFTA) partners. We intend to build on this experience by developing work share relationships with additional countries through OECD initiatives.

8. Standardize its approach to documenting data reviews by adapting OECD guidance for development of government monographs. Standard formats would promote sharing work between countries and can enhance understanding of EPA reviews.

9. Seek stakeholder views and input through an open process that offers the public and the regulated community clearly defined, time-limited, opportunities for input to various aspects of the review process for an individual pesticide.

VI. EPA's Initial Thinking on How Registration Review Might Operate

EPA has developed an initial concept for registration review, which is presented in this document. It is intended to stimulate thought about and comment on all aspects of developing procedures to implement registration review. EPA believes that the conceptual model presented in this Unit meets the statutory requirements and Agency goals and objectives for the registration review program for all pesticides.

EPA intends for registration review to be implemented within the next 5 years. EPA expects that the reregistration program will be completed by then, and the registration review program will become the Agency's primary review program for all pesticide registrations. We anticipate that the registration review program will incorporate the application of the FQPA safety standard and, as appropriate, the use of reviews conducted under other authorities and programs such as reregistration, tolerance assessment and reassessment, and our proposed endocrine disrupter screening program.

VII. EPA's Initial Conceptual Model

This conceptual model has five steps. EPA expects that each pesticide would start registration review at step one and proceed step-wise through the process. At key points in the conceptual model, EPA may decide to omit one or more steps in the registration review of a pesticide. Registrants who are responsible for generating generic data on an active ingredient would likely be involved in all five steps of the process described in this preliminary model. Registrants who are generally not responsible for generating generic data would likely participate in fewer steps.

A. Step 1: Plan and Schedule Candidates for Review

The first step in EPA's conceptual model of a Registration Review Program would be planning and scheduling of pesticides for review. This step might consist of two tasks: (1) Assembling the historic record; and (2) selecting and prioritizing candidates.

EPA would assemble the historic record for a pesticide, including prior reviews and associated documentation (for example, a Registration Eligibility Document (RED) if the pesticide had been evaluated in the reregistration program); use and enforcement history, including information on compliance with Good Laboratory Practice regulations and other FIFRA requirements. The selection and priority of candidates for review would depend on a number of factors such as: (1) The relative importance of benefits to human health and the environment which might accrue by completing the review of a particular pesticide; (2) whether the pesticide is part of a class or group that should be considered together; (3) state of the data base relative to current guideline requirements; (4) length of time since last comprehensive review; (5) incident data, existence of information required to be submitted under FIFRA section 6(a)(2); (6) any compliance issues; and (7) the pesticide's status in the reregistration and tolerance reassessment programs.

B. Step 2: Publish Schedule, Define Initial Scope and Level of Review, and Issue Needed Data Call-Ins and Requests for Applications for Scheduled Candidates

The second step would also consist of two principle tasks: (1) publication in the **Federal Register** of the list of review candidates and the tentative schedule for review; and (2) case-specific determinations of the level and scope of review and the development of needed data call-in notices.

EPA believes that the schedule for registration review candidates should be announced at least 5 years in advance of the review to provide time for generating and submitting new data. In addition to publishing a **Federal Register** notice listing the registration review candidates, EPA could publish the listing in the Code of Federal Regulations (CFR), make the list available as part of a registration review docket, and/or maintain a list electronically on the OPP Internet Home Page.

In making case-specific determinations about the level and scope of review appropriate to any given pesticide, EPA might conduct a preliminary analysis of the completeness of the data base; the potential significance of any real-world monitoring and field data collected since the last regulatory action; the need to revise the risk assessment using updated methodologies; and any applicable labeling policy changes. This analysis would provide an initial characterization of the level and type of risks possibly posed by the pesticide, critical data needs, and an early assessment of the appropriate level and scope of review (e.g., whether tolerances should be reassessed). EPA might then publish a pesticide-specific notice in the **Federal Register** describing the preliminary analysis, the initial assessment of data needs, and the proposed level and scope of review. EPA would invite comment on these issues. After analysis of comments received, EPA would issue notices to registrants to call-in any needed data and establish a deadline for submitting applications for registration review.

EPA expects that the deadline set for the submission of an application for registration review will depend in large part on the scope, level, and focus of registration review for the pesticide and the type of data that are being called in.

The case-specific determination of the level and scope of review may show that the pesticide meets the requirements of FIFRA section 3(c)(5) and that no additional data or review are needed. In

such cases, EPA would issue a preliminary determination, as described in Step 4 below.

C. Step 3: Registrants Submit Applications for Review

The third step would be the registrant's submission of an application for registration review. EPA envisions that the registrant's application for registration review would contain all required data and all needed use and usage information and any relevant data reviews conducted by regulatory officials in the states or other countries. The format for the submission could be modeled after the OECD data submission guidelines noted earlier in this document. The application might also include the registrant's opinion of which hazard, exposure or risk assessments should be updated (possibly including an evaluation of monitoring data and their impact on the assessment), the registrant's assessment of the pesticide's risks, and the registrant's risk mitigation proposals, including proposed label changes. Finally, if the registrant is considering changes in the pesticide registration that would result in changes in tolerances for the pesticide, a tolerance petition might be needed, along with the appropriate tolerance petition processing fees. The tolerance petition processing fees would be based on the new tolerance fee schedule, which EPA proposed to establish as required by FQPA (64 FR 31039, June 9, 1999) (FRL–6028–2).

EPA would screen the application for completeness, identify issues and questions, and decide whether any issues or questions warrant public discussion before proceeding with the review. EPA does not anticipate routinely soliciting public input at this stage in the process and EPA expects that most pesticides will move to Step 4 without a public meeting. However, in those cases where, for example, the registrant's application potentially raises significant risk-related issues or where the registrant is proposing risk mitigation measures which would potentially be of interest to certain stakeholders -- such as protective clothing requirements, establishment of buffer zones, or voluntary cancellation of minor uses, EPA would expect to hold a public meeting before progressing to Step 4.

D. Step 4: EPA Conducts the Review and Issues It for Public Comment

The fourth step would be to conduct the registration review. This review could include evaluation of all new data and data reviews done by other regulatory officials, review and evaluation of the registrant's risk assessments and public comments (including data) submitted in Step 3, revision of the Agency's risk assessments (where necessary), review of pesticide labeling for conformance to current policy, and development of proposed risk mitigation measures. At this step in the process, EPA envisions making a preliminary determination whether the pesticide continues to meet the statutory standard for registration under FIFRA section 3(c)(5). EPA would announce the availability of the preliminary determination for public review and comment.

If EPA preliminarily determines that the pesticide no longer meets the standard for registration under FIFRA section 3(c)(5), EPA would immediately collect and review any benefits information which it believed it needed. If it appears that there would be a significant change in the existing registration, EPA would seek public input on proposed risk management action before taking such action.

E. Step 5: Consider Comments, Issue Final Review, and Review Registrant's Proposed Labels

In the final step EPA would evaluate public comments on its updated risk assessment and proposed regulatory position and issue its final review. EPA would request submission of product-specific data or new labels if the registration review shows that they are needed. In cases where EPA decides that the registration appears to no longer meet the requirements for registration under FIFRA section 3(c)(5), EPA would undertake appropriate regulatory action, including, if necessary, cancellation action under FIFRA section 6.

VIII. Issues for Public Comment

Although EPA is soliciting your comments on all aspects of the discussion presented in this document regarding registration review, EPA is particularly interested in receiving your comments on the following topics. You may submit comments on any other issue related to registration review, including your own views on what registration review procedures should look like.

1. *EPA's interpretation of the requirements in FIFRA section 3(g).* Do you agree with EPA's interpretation of the statutory mandate for registration review as set forth in Unit IV? If not, why? How would you interpret FIFRA section 3(g)?

2. *Interpretation of ''Review of a Pesticide's Registration every 15 years.''* EPA recognizes that there may be various interpretations of ''review of a pesticide's registration every 15 years.'' This term could be interpreted to mean that EPA would complete a registration review of each pesticide within 15 years of the pesticide's registration or reregistration. This term could also be interpreted to mean that the Agency would complete registration reviews of all pesticides within a 15–year period that could begin when EPA's procedural regulations for registration review go into effect.

3. *Commencement of a 15–year registration review cycle.* The Agency believes that the effective date of the procedural regulations for registration review could be a possible starting date of the 15–year period for completing registration review, but recognizes that another date or series of dates may also be possible starting dates for registration review.Do you have any suggestions for designing a system of staggered scheduling for registration reviews?

4. *Goals and objectives for the registration review program.* Do you agree with the goals that EPA has identified? What changes do you suggest?

5. *Relationship of registration review to other mandates.* A key design issue is how registration review fits in with other activities such as the implementation of the new FQPA safety standard, reregistration, registration of new uses, and tolerance assessment or reassessment, and endocrine disrupter screening and testing. In what way could EPA integrate these activities to promote the efficiency of registration review?

6. *Non-conventional pesticides.* Do the Agency's proposed goals, objectives and procedures for registration review work for all pesticides, including non-conventional pesticides such as antimicrobial or biological pesticides? How should the Agency's concepts be modified to accommodate any special issues pertaining to the registration review of non-conventional pesticides?

7. *Criteria for setting priorities and scheduling compounds for review.* In selecting candidates for Registration Review, should the relative risk, length of time since its last review, relationship to a high priority initiative (for example, EPA's current initiative on persistent bioaccumulative toxics), or other similar programmatic activities (e.g., tolerance reassessment schedule) be considered? What additional factors should the agency consider in selecting and prioritizing pesticides for Registration Review?

8. *Process for announcing schedules for registration review.* Should the agency announce its registration review

scheduling priority in the **Federal Register**? The Agency anticipates announcing tentative schedules 5 years in advance of the initiation of the review. Because review priorities or time estimates for preparing for a review may change after a review schedule has been announced, should EPA publish updated schedules, and if so, how frequently?

9. *Scope and depth of registration review*. Should all pesticides undergo the same level of review or should the review be tailored to the level of risk posed, exposure potential, severity of hazard, level of benefits, degree of uncertainty, length of time since its last review, completeness of database and related factors?

10. *Submission of applications for registration review by registrants*. The Agency is considering requiring a registrant to submit an application for registration review of its pesticides. The application could follow a standard format and content and include any required data, risk mitigation proposal if applicable, information on use and usage and related information. Registrants may also include proposed risk assessments as part of their submissions. Do you believe this requirement will be cost effective and contribute to the overall efficiency of the registration review program? Should EPA require, encourage, or discourage the preparation of proposed risk assessments by registrants?

11. *Potential penalties for submission of incomplete applications*. If an application for registration review is ''material required to be submitted,'' the product registration would be subject to cancellation if the registrant fails to comply with the requirement. If a registrant fails to submit required data as specified in the data call-in notice requiring the data, the product registration would be subject to suspension. What could the Agency do to promote compliance with a requirement to submit a registration review application? If submission of an application for registration review were not mandatory, what should the Agency do if a registrant fails to submit a registration review application or submits an incomplete application?

12. *Incentives and opportunities for registrant participation in registration review*. EPA believes that the public may benefit when a registrant takes the initiative to identify and provide data needed for refining a risk assessment. What can be done to encourage and promote voluntary compliance and registrants taking the initiative?

13. *Maximize work sharing opportunities*. In order to avoid duplication of effort, EPA wishes to use existing reviews wherever possible, provided that these reviews are based on current scientific standards. In addition to its own recent reviews, EPA could use data reviews prepared by state or foreign governments that have participated in harmonization efforts. Are there any reasons why harmonized data reviews should not be used in registration review?

14. *Public participation*. EPA envisions public participation at several critical junctures of the registration review process. How can the public have access to sufficient information to participate meaningfully? At which junctures in the process would public input be most valuable? Is a public meeting on the registrant's data and associated analyses a good way to involve stakeholders in the registration review process? If not, how can the agency best involve stakeholders? Would making information available to the public substantially affect any stakeholder's interests? How can efficiencies be achieved?

15. *Role of the Internet in involving outside stakeholders*. EPA intends to publish notices in the **Federal Register** and maintain a docket for registration review actions, but wants to expand its outreach efforts. Is the Internet an effective supplement to the published notice and is it an equitable way of meaningfully involving stakeholders in the registration review program? What other opportunities using electronic and Internet technology should the Agency consider?

16. *Participation of small entities in the rulemaking process*. What can be done to ensure that the rulemaking process is accessible to small entities and that the Agency identifies issues of concern to small entities regarding procedures for registration review?

IX. Do Any of the Regulatory Assessment Requirements Apply to this Action?

The Office of Management and Budget (OMB) has determined that this advanced notice of proposed rulemaking is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Nevertheless, the Agency provided OMB with an opportunity to review a draft of this advanced notice of proposed rulemaking, and did not receive any comments that resulted in changes to this document.

This advanced notice of proposed rulemaking does not impose any requirements. Instead, it seeks comments and suggestions on possible approaches that the Agency should consider in developing a procedural rulemaking to implement the registration review requirements contained in FIFRA section 3(g). As such, the various other regulatory assessment requirements that apply when an agency imposes requirements do not apply to this advance notice of proposed rulemaking.

As a part of your comments on this document, you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would facilitate the Agency's assessment of the potential impact of a procedural rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.); the Agency's 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); and the Agency's consideration of environmental health or safety effects on children pursuant to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). The Agency will consider such comments during the development of the procedural rulemaking as it takes appropriate steps to address any applicable requirements.

List of Subjects

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

Dated: April 19, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–10433 Filed 4–25–00; 8:45 am]

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Federal Register

Wednesday,
April 26, 2000

Part V

The President

Executive Order 13148—Greening the Government Through Leadership in Environmental Management

Executive Order 13149—Greening the Government Through Federal Fleet and Transportation Efficiency

Executive Order 13150—Federal Workforce Transportation

Federal Register
Vol. 65, No. 81
Wednesday, April 26, 2000

Presidential Documents

Title 3—

The President

Executive Order 13148 of April 21, 2000

Greening the Government Through Leadership in Environmental Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

Section 101. *Federal Environmental Leadership.* The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

PART 2—GOALS

Sec. 201. *Environmental Management.* Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

Sec. 202. *Environmental Compliance.* Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

Sec. 203. *Right-to-Know and Pollution Prevention.* Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

Sec. 204. *Release Reduction: Toxic Chemicals.* Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

Sec. 205. *Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants.* Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable

to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

Sec. 206. *Reductions in Ozone-Depleting Substances.* Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010.

Sec. 207. *Environmentally and Economically Beneficial Landscaping.* Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

PART 3—PLANNING AND ACCOUNTABILITY

Sec. 301. *Annual Budget Submission.* Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A–11.

Sec. 302. *Application of Life Cycle Assessment Concepts.* Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A–11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

Sec. 303. *Pollution Prevention to Address Compliance.* Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

Sec. 304. *Pollution Prevention Return-on-Investment Programs.* Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

Sec. 305. *Policies, Strategies, and Plans.*

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies

do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103–62.

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessioners, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessioners.

Sec. 306. *Interagency Environmental Leadership Workgroup.* Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

Sec. 307. *Annual Reports.* Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP

Sec. 401. *Agency and Facility Environmental Management Systems.* To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based

on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

Sec. 402. *Facility Compliance Audits.* To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

Sec. 403. *Environmental Leadership and Agency Awards Programs.*

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998.

Sec. 404. *Management Leadership and Performance Evaluations.*

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contractors, concessioners, and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

Sec. 405. *Compliance Assistance.*

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

Sec. 406. *Compliance Assurance.*

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

Sec. 407. *Improving Environmental Management.* To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance Plans required by the Government Performance and Results Act of 1993, Public Law 103–62, starting with performance plans accompanying the FY 2002 budget.

PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION

Sec. 501. *Toxics Release Inventory/Pollution Prevention Act Reporting.* To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or

exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA's EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of existing regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this subsection will not be included in the accounting established under sections 503(a) and (c) of this order.

Sec. 502. *Release Reduction: Toxic Chemicals.* To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer

of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide: (1) an explanation of the mission critical use of the chemical; (2) an explanation of the nature of the need for the chemical to protect human health; (3) a description of efforts to identify a less harmful substitute chemical or alternative processes to reduce the release and transfer of the chemical in question; and (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856, that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

Sec. 503. *Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants.* To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 toxic chemicals and, where appropriate, other regulated hazardous substances or pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider: (1) environmental factors including toxicity, persistence, and bio-accumulation; (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes; (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes; (4) relative costs of alternative chemicals or processes; and (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101.

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates,

the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order, develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

Sec. 504. *Emergency Planning and Reporting Responsibilities.* Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA, all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.

Sec. 505. *Reductions in Ozone-Depleting Substances.* To attain the goals of section 206 of this order:

(a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section, evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DoD). Where the recovered ozone-depleting substance is a critical requirement for DoD missions, the agency shall transfer the materials to the DoD. The DoD will bear the costs of such transfer.

PART 6—LANDSCAPING MANAGEMENT PRACTICES

Sec. 601. *Implementation.*

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping programs, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmentally and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

Sec. 602. *Technical Assistance and Outreach.* The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

PART 7—ACQUISITION AND PROCUREMENT

Sec. 701. *Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants.*

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., ''pharmacy'') programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DoD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

Sec. 702. *Environmentally Benign Adhesives.* Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

Sec. 703. *Ozone-Depleting Substances.* Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

Sec. 704. *Environmentally and Economically Beneficial Landscaping Practices.*

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

PART 8—EXEMPTIONS

Sec. 801. *National Security Exemptions.* Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions: (a) an exemption issued under this section will be for a specified period of time that may exceed 1 year; (b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and (c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978, and were not contained in the President's budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

Sec. 802. *Compliance.* After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB's decision to modify the requirements for that agency's compliance with the order.

PART 9—GENERAL PROVISIONS

Sec. 901. *Revocation.* Executive Order 12843 of April 21, 1993, Executive Order 12856 of August 3, 1993, the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994, Executive Order 12969 of August 8, 1995, and section 1–4. ''Pollution Control Plan'' of Executive Order 12088 of October 13, 1978, are revoked.

Sec. 902. *Limitations.*

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however,

is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA , PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency's reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections 304 and EPCRA sections 325 and 326 applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

Sec. 903. *Community Outreach.* Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

PART 10—DEFINITIONS

For purposes of this order:

Sec. 1001. *General.* Terms that are not defined in this part but that are defined in Executive Orders 13101 and 13123 have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

Sec. 1002. ''Administrator'' means the Administrator of the EPA.

Sec. 1003. ''Environmental cost accounting'' means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

Sec. 1004. ''Facility'' means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

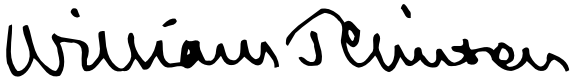
Sec. 1005. ''Environmentally benign pressure sensitive adhesives'' means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

Sec. 1006. ''Ozone-depleting substance'' means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

Sec. 1007. ''Pollution prevention'' means ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Sec. 1008. ''Greening the Government Executive orders'' means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998, Executive Order 13123 of June 3, 1999, Executive Order 13134 of August 12, 1999, and other future orders as appropriate.

Sec. 1009. ''Environmental aspects'' means the elements of an organization's activities, products, or services that can interact with the environment.



THE WHITE HOUSE,
April 21, 2000.

[FR Doc. 00–10550
Filed 4–25–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13149 of April 21, 2000

Greening the Government Through Federal Fleet and Transportation Efficiency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102–486), section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105–388), it is hereby ordered as follows:

PART 1 PREAMBLE

Section 101. *Federal Leadership.* The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

PART 2 GOALS

Sec. 201. *Reduced Petroleum Fuel Consumption.* Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

Sec. 202. *Performance Strategies.* Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) AFV Acquisition and Use of Alternative Fuels. Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) Acquisition of Higher Fuel Economy Vehicles. Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

PART 3 ORGANIZATION AND ACCOUNTABILITY

Sec. 301. *Leadership Responsibilities.* The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

Sec. 302. *Designation of Senior Agency Official.* Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

(a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;

(b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;

(c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;

(d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and

(e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

Sec. 303. *Management and Government Performance.* Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards.* Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

Sec. 304. *Applicability.* This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

PART 4 IMPLEMENTATION

Sec. 401. *Vehicle Reporting Credits.* When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure bio-diesel used in diesel vehicles.

Sec. 402. *Infrastructure.* To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

Sec. 403. *Procurement of Environmentally Preferable Motor Vehicle Products.*

(a) Consistent with Executive Order 13101 and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5–10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

PART 5 GENERAL PROVISIONS

Sec. 501. *Revocation.* Executive Order 13031 of December 13, 1996, is revoked.

Sec. 502. *Statutory Authority.* Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

Sec. 503. *Limitations.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 504. *Independent Agencies.* Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

Sec. 505. *Government-Owned Contractor-Operated Vehicles.* Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

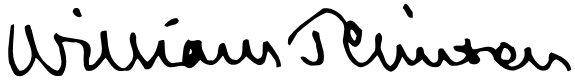
Sec. 506. *Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles.* Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

Sec. 507. *Compliance.* (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB

under section 302(c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

Sec. 508. *Definitions.* Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 and Executive Order 13101, unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.



THE WHITE HOUSE,
April 21, 2000.

[FR Doc. 00–10551
Filed 4–25–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13150 of April 21, 2000

Federal Workforce Transportation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Transportation Equity Act for the 21st Century (Public Law 105–178), section 1911 of the Energy Policy Act of 1992 (Public Law 102–486), section 531(a)(1) of the Deficit Reduction Act of 1984 (26 U.S.C. 132), and the Federal Employees Clean Air Incentives Act (Public Law 103–172), and in order to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives, it is hereby ordered as follows:

Section 1. *Mass Transportation and Vanpool Transportation Fringe Benefit Program.* (a) By no later than October 1, 2000, Federal agencies shall implement a transportation fringe benefit program that offers qualified Federal employees the option to exclude from taxable wages and compensation, consistent with section 132 of title 26, United States Code, employee commuting costs incurred through the use of mass transportation and vanpools, not to exceed the maximum level allowed by law (26 U.S.C. 132 (f)(2)). These agency programs shall comply with the requirements of Internal Revenue Service regulations for qualified transportation fringe benefits under section 1.132–9 of title 26, Code of Federal Regulations, and other guidance.

(b) Federal agencies are encouraged to use any nonmonetary incentive that the agencies may otherwise offer under any other provision of law or other authority to encourage mass transportation and vanpool use, as provided for in section 7905(b)(2)(C) of title 5, United States Code.

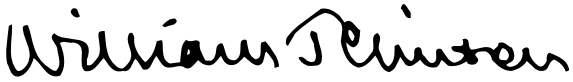
Sec. 2. *Federal Agencies in the National Capital Region.* Federal agencies in the National Capital Region shall implement a ''transit pass'' transportation fringe benefit program for their qualified Federal employees by no later than October 1, 2000. Under this program, agencies shall provide their qualified Federal employees, in addition to current compensation, transit passes as defined in section 132(f)(5) of title 26, United States Code, in amounts approximately equal to employee commuting costs, not to exceed the maximum level allowed by law (26 U.S.C. 132(f)(2)). The National Capital Region is defined as the District of Columbia; Montgomery, Prince George's, and Frederick Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

Sec. 3. *Nationwide Pilot Program.* The Department of Transportation, the Environmental Protection Agency, and the Department of Energy shall implement a ''transit pass'' transportation fringe benefit program, as described in section 2 of this order, for all of their qualified Federal employees as a 3 year pilot program by no later than October 1, 2000. Before determining whether the program should be extended to other Federal employees nationwide, it shall be analyzed by an entity determined by the agencies identified in section 4 of this order to ascertain, among other things, if it is effective in reducing single occupancy vehicle travel and local area traffic congestion.

Sec. 4. *Guidance.* Federal agencies shall develop plans to implement this order in consultation with the Department of the Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget. Federal agencies that currently have more generous programs or benefits in place may continue to offer those programs

or benefits. Agencies shall absorb the costs of implementing this order within the sums received pursuant to the President's FY 2001 budget request to the Congress.

Sec. 5. *Judicial Review.* This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
April 21, 2000.

[FR Doc. 00–10552
Filed 4–25–00; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
April 26, 2000

Part VI

Department of Transportation

Coast Guard

33 CFR Part 26 et al.

Vessel Traffic Service Lower Mississippi River; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26, 161, and 165

[USCG–1998–4399]

RIN 2115–AF75

Vessel Traffic Service Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Vessel Traffic Service (VTS) on the Lower Mississippi River and transfer certain vessel traffic management provisions of the Mississippi River, LA—Regulated Navigation Area to the VTS. The Coast Guard would implement the proposed transition to VTS in a phased manner which would allow for the orderly transition from existing regulations and practices to operating procedures appropriate to an Automatic Identification System (AIS)-based VTS. This proposed rule would facilitate vessel transits, enhance good order, promote safe navigation, and improve upon existing operating measures on the waterway. In addition to establishing a VTS, minor revisions to the existing vessel traffic management provisions, and related regulations are proposed.

DATES: Comments and related material must reach the Docket Management Facility on or before July 25, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1998–4399), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Jorge Arroyo, Office of Vessel Traffic Management (G–MWV), Coast Guard, telephone 202–267–6277, or via email at jarroyo@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–4399), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard held a public meeting on October 28, 1998, in New Orleans, LA. The meeting was announced in a notice published in the **Federal Register** on September 18, 1998 (63 FR 49939). This meeting gave the Coast Guard the opportunity to discuss the Vessel Traffic Service (VTS) concept and the envisioned impact of Automatic Identification System (AIS) technology to the VTS program. It also was an opportunity to report the preliminary results of AIS tests conducted on the Lower Mississippi River. Further efforts in AIS and their impact on the proposed VTS are not discussed in depth in this proposal. However, AIS requirements will be subject of a forthcoming rulemaking.

In addition, the Coast Guard has discussed the VTS concept at various Lower Mississippi River Waterways Safety Advisory Committee (LMRWSAC) meetings. LMRWSAC is a Federally chartered advisory committee, chaired by the Eighth Coast Guard District Commander and charged with making recommendations to the Coast Guard on matters relating to the transit of vessels and products on the Lower Mississippi River. These open-forums have afforded the public the opportunity to comment on both VTS and AIS issues. Their input has and will be taken into account prior to the final rulemaking.

The Coast Guard is still considering whether or not to have another public meeting on this issue. We would like your comments on the reasons why another meeting would be beneficial. Send your comments requesting a public meeting to the Docket Management Facility at the address under **ADDRESSES.** If we determine that another public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed rule would amend vessel traffic measures within the Mississippi River Regulated Navigation Area and would create a VTS that will serve the Lower Mississippi River. The purpose of this rulemaking is to update certain operating practices, adopt standard traffic management procedures, and to inform the mariner of certain services provided by a Coast Guard Vessel Traffic Service.

1. Vessel Traffic Services

The Coast Guard operates eight VTSs in the United States. A VTS provides pertinent navigation and safety information for mariners to make informed decisions during their voyage. The Coast Guard has operated variations of a VTS in New Orleans in the past. The efforts have been plagued by budgetary constraints, the limitations of voluntary participation, and the temporary or part-time nature of the VTS operation. Since the last VTS New Orleans in the 1980s, the Coast Guard, as directed by the Oil Pollution Act of 1990, has:

(1) Validated the need for a VTS in certain ports;

(2) Made participation mandatory in all VTS ports; and

(3) Invested in infrastructure improvement to VTS equipment and

standardized operating procedures across all United States VTSs.

The Coast Guard has long recognized the potential benefits of a properly constituted VTS on the Lower Mississippi River and the Algiers Point/Crescent area in particular. Additionally, the Congress has expressed its desire that the Lower Mississippi River receive a ''state-of-the-art'' VTS (Congressional Record, H10398, September 16, 1996).

A federally operated and locally adopted vessel traffic management facility has been in place in the New Orleans Harbor since the 1930s. In an effort to assist the mariner, safeguard the port, ensure good order, and improve safety, the Algiers Point Control Lights were implemented. This system has evolved from one that was operated by local river pilots who stood watch using lanterns and whistle signals to communicate when the Algiers Point was clear for traffic, to a 24 hour federally-staffed communication station with twin control light towers (at Governor Nicholls Street Wharf and Gretna). Although, not formally recognized as a VTS, it has provided longstanding traffic management services from its inception.

The Algiers Point/Crescent area is currently subject to regulatory provisions established in Title 33 CFR 165.810(c). The current regulations have been in place, unmodified, for years, and reflect old practices that have long been abandoned by both the Coast Guard and mariners. In the intervening years since these outmoded procedures were put in place, newer procedures, better suited to improved technology (VHF voice radiotelephone in particular), and changing river conditions have entered into general use. The procedures and practices proposed for codification in this rule are essentially the same as those currently in use at the Algiers Point/Crescent area at this time.

The primary objective of the existing regulatory system is to provide for orderly traffic flow around Algiers Point. Mandatory vessel traffic measures, represented by the light signals, are in place to lessen the potential for mishap during periods of high water. Algiers Point is one of the most challenging bends to safely navigate on the Mississippi River, particularly in high water conditions. Vessels must negotiate a 120 degree bend in the river amidst constantly changing hydrographic conditions, congested waters, and various bridges and piers in one of the busiest industrial harbors in the world. The consequences of improper navigation in this segment of the river are both significant and well documented. Since 1991, there have been over 350 reportable marine casualties within this area. The failure to safely transit this area can quickly lead to a mishap causing substantial property damage, serious environmental and economic consequences, or loss of life.

The Coast Guard and local mariners recognize that this segment of the waterway warrants great vigilance. The nature of vessel traffic within this segment, and the anticipated increase in traffic, requires certain vessel traffic measures be in place at all times, or at least available at a moments notice. These measures can only be assured by operating a Vessel Traffic Center (VTC) within the framework of a VTS. A VTC is a shore-side facility that operates within a VTS and has the capability to interact with marine traffic and respond to situations that develop. The existing Control Light operation in the Lower Mississippi River and around Algiers Point has proven itself valuable in some measures of vessel traffic management. However, these measures are narrow in scope, limited to this area, and only operate during high water periods. Limitations of equipment, staffing, and site location hamper the light operator's ability to provide for the overall safety and efficiency of anticipated vessel traffic beyond the immediate vicinity of Algiers Point. The Coast Guard intends to enhance system capabilities in order to improve navigation at Algiers Point and on the entire Lower Mississippi River through implementation of a 24-hour VTS.

2. Stakeholder Involvement

The Coast Guard has long recognized that a VTS on the Lower Mississippi River would be a valuable asset to all stakeholders. A stakeholder is any entity that may be impacted by the waterway either directly or indirectly. In addition, many stakeholders have pointed out that to achieve success, the next VTS must meet the needs of the users while imposing the least amount of burden, especially in terms of VHF voice radio communications. In 1997, the Coast Guard formed the Ports and Waterways Safety Systems Committee (PWSSC). This ad-hoc committee, under LMRWSAC, of maritime, port community, government, and public stakeholders, was created to define user requirements for a VTS that would accomplish the joint overall goals of safety and efficiency. Since its formation, PWSSC has met several times, and the product of these meetings was a conceptual baseline VTS plan (see U.S. Coast Guard Docket USCG–1998–4399–3 at http://dms.dot.gov), endorsed by LMRWSAC. One key aspect of this plan was the need to implement AIS technology, and to incorporate AIS as a key component of future VTS implementation.

3. Automatic Identification System Concept

AIS technology relies upon global navigational positioning systems, navigation sensors, and digital communication equipment operating according to standardized protocols (*i.e.,* AIS transponders) that permit the voiceless exchange of navigation information between vessels and shore-side vessel traffic centers. AIS transponders on vessels can broadcast information about the vessel, such as its name or call sign, dimensions, type, position (derived from a global navigation system), course, speed, and navigation status. This information is continually updated and received by all AIS-equipped vessels in its vicinity. An AIS-based VTS would be able to augment this broadcast with additional safety and navigation information such as weather, tides, currents, and status of navigational aids. This additional information could be relayed to all VTS users for their consideration in voyage planning and execution. The advantage of this automatic exchange of information is that it can be accessed by all, tailored to the mariners needs and desires, and greatly reduce voice radio exchanges. The ease of operation of the VTS and the reduction of voice interactions should greatly enhance mariners' ability to navigate, improve their situational awareness, and assist them in the performance of their duties; thus reducing the risk of collisions.

The Coast Guard recognizes the importance of AIS and has led the way on various international fronts for acceptance and adoption of this technology. Through its national representation role in the International Maritime Organization (IMO), International Telecommunications Union (ITU), and participation in various other international working groups, including groups within the International Electrocommunications Commission (IEC), the Coast Guard has been a leader in the drafting and/or adoption of various technical standards (*e.g.,* ITU–R M.1371, IEC 61993–2). This should ensure the universal inter-operability of each AIS unit. The Coast Guard permits certain variations of AIS in VTS Prince William Sound (see 33 CFR 164.43), and has conducted or participated in extensive operational tests of several Universal AIS precursors. However, the most

comprehensive test bed has been on the Lower Mississippi River. Through recent testing, and based on feedback received from test participants and other stakeholders in the area, the Coast Guard proposes the establishment of a VTS on the Lower Mississippi River, which will eventually incorporate full use of Universal AIS technology.

Thus, this rulemaking proposes the creation of the Vessel Traffic Service Lower Mississippi River (VTS LMR). This effort is part of a comprehensive safety improvement initiative being implemented by the Coast Guard in consultation with various stakeholders in the area, including LMRWSAC. The Coast Guard began the initial phase of this initiative with a capitalization program that will provide New Orleans and the mariners of the Lower Mississippi River with additional Coast Guard personnel and a modernized VTC on One Canal Place, in New Orleans, LA. From this VTC, the Coast Guard has the capability to monitor the movement of VTS users and provide navigation services to all requesting mariners that will help them plan their transits of the Lower Mississippi River. Initially, the Coast Guard intends to hire and train additional personnel and conduct concurrent operations from both the VTC and Control Light Towers. During these concurrent operations (e.g., *shadow operations*), the Control Light functions will be transitioned gradually to the VTC. During the initial period, light operators will conduct the actual watch from the Control Light Towers while other watchstanders will simultaneously monitor vessel traffic at Algier Point (*shadow operations*) from the VTC. Over time, these roles will reverse with the intended final stage being a gradual phase-out of manning the Control Light Towers. These *shadow operations* will last for as long as it takes the VTC to operate as seamlessly and effectively as it's predecessor, Control Light operations. The objective in this *shadow operations* and transition period will be to verify that the light operator function can be successfully performed from the VTC as a first step in shifting from the current situation to the future AIS-based VTS. The changes under the *shadow operations* and through transition from the current towers to the VTC should be transparent to the mariner transiting the Algiers Point/Crescent area. This is in keeping with the expressed desire of waterway users, voiced through the LMRWSAC, that this section of river continues to receive the highest level of scrutiny and navigational assistance/control. The Coast Guard estimates this transition will take approximately 12 months. Since the bend at Algiers Point remains an area of great concern, and warrants extra precaution, we also propose that the segment of the river between 93.5 and 95 miles Above Head of Passes be designated a VTS Special Area, and that provisions formerly set forth in 33 CFR 165.810(c) continue to apply in periods of high water.

The Coast Guard proposes to have the area of operation of VTS LMR eventually extend from 20 miles above Baton Rouge to the outer limit of the 12 mile territorial sea boundary. However, it recognizes and accepts that mariners would be unable to comply with reporting requirements set forth in the National VTS regulations until AIS transponder carriage requirements become mandatory. Although VTS LMR will not be able to accept movement reports or provide vessel movement information until AIS transponders become mandatory, it could still provide a host of services to the mariner throughout the proposed Vessel Traffic Service Area (VTSA) in the interim, such as information on navigational aids outages, potential hazardous circumstances, and weather conditions. The Coast Guard would provide full VTS services throughout the entire VTSA once universal AIS carriage becomes mandated. A future Coast Guard rulemaking will address proposed AIS carriage requirements and their impact on VTS operations nationwide. In the meantime, the Coast Guard has an adequate infrastructure of radar, cameras, communications, integrated navigational displays, and computers to provide all VTS services and capabilities in those waters within the VTS Special Area outlined in the proposed regulation. In this segment of the river, the Coast Guard proposes requiring that VTS users meet the provisions of the Vessel Movement Reporting System (VMRS) found in 33 CFR part 161.

Discussion of Proposed Rule

This rule proposes revising regulations in 33 CFR parts 26, 161, and 165 as follows:

Section 26.03 Radiotelephone Required

The Coast Guard proposes removing Table § 26.03(F) to avoid duplication and possible confusion to the mariner. Instead, § 26.03 would direct the reader to Table § 161.12(B) in 33 CFR 161.12 for the appropriate VTS monitoring requirements.

Section 161.2 Definitions

The Coast Guard proposes clarifying the term ''Hazardous Vessel Operating Condition'' to make it clear that in addition to equipment and manning shortcomings, any vessel condition that ''may affect the positive control or safe handling'' of a vessel, and towing vessels in particular, is deemed a ''hazardous vessel operating condition.''

Section 161.65 Vessel Traffic Service Lower Mississippi River

The Coast Guard proposes adding a new entry that would describe the Lower Mississippi River VTS area and the Algiers Point VTS Special Area. The VTS area would extend from 20 miles north of Baton Rouge to the outer limit of the territorial sea seaward of Southwest Pass. The VTS Special Area would consist of those waters of the Lower Mississippi River 93.5 and 95 miles Above Head of Passes. In addition to the special operating requirements already in place in part 161, additional requirements and instructions would be added to mirror the existing Control Light operations.

Also, we clarify that not all VTS services nor vessel movement reporting requirements would be in effect in the VTSA until AIS carriage requirements become mandatory. The Coast Guard will await standardization and availability of AIS equipment before requiring vessel movement reports throughout the entirety of the VTS area. Reporting points for the Algiers Point VTS Special Area are added, and will be in effect during periods of high water.

Another clarifying note has been added to define the term navigable water as denoted in the description of the VTS Lower Mississippi River. The VTS boundary would extend to the 12 nautical mile territorial sea in section 102 of the Ports and Waterways Safety Act (33 U.S.C. 1222), as added by section 301 of the Coast Guard Authorization Act of 1998, and Presidential Proclamation 5928.

Section 165.810 Mississippi River, LA-Regulated Navigation Area

In paragraph (c), the Coast Guard will amend the existing Mississippi River, LA-Regulated Navigation Area (RNA) to remove the provisions on *Control Lights.* The core of these provisions would be added to the special operating requirements of the Algiers Point VTS Special Area in § 161.65.

Regulatory Evaluation

This proposed 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)(3) of that Order. The Office of Management and Budget has not reviewed it 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Since vessels presently follow the rules outlined in this proposal, the Coast Guard believes that this proposal, if adopted, would only have a minimal economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

Small entities were represented on the Ports and Waterways Safety System Committee (PWSSC), and were invited to participate in the Public Meeting held on October 28, 1998, in New Orleans. Both the PWSSC and the public meeting are discussed elsewhere in this preamble. Small entities, through their participation, have assisted in the developed user requirements for a VTS in the Lower Mississippi River area.

Additionally, vessels are presently following the rules outlined in this proposal, thus the adoption of these rules would not have a significant impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies, and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et. seq.*) (PWSA) authorizes the Secretary to promulgate regulations to establish and maintain vessel traffic services consisting of measures for controlling or supervising vessel traffic to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a VTS. The Coast Guard throughout the history of the development of the VTS on the Lower Mississippi River has consulted with the State of Louisiana, the affected state and federal pilot's associations, vessel operators, users, and all affected stakeholders. An example of stakeholder consultation is the PWSSC, which was formed in 1997. This ad-hoc committee of maritime, port community, and public stakeholders has met several times, and the product of these meetings was a conceptual baseline VTS plan (see U.S. Coast Guard Docket USCG–1998–4399–3 at http://dms.dot.gov). The State was an active participant of PWSSC meetings and contributed to this plan. The Coast Guard will continue to consult with all involved as the final rule is developed and implemented.

Presently, there are no Louisiana State laws or regulations concerning the same subjects as are contained in the rules proposed. Throughout the consultations, the State of Louisiana and the Coast Guard have worked closely in developing these proposed regulations. We understand that no State law or regulation on the subject of these proposed rules is contemplated. The rules for operation and equipment required on vessels proposed in this rulemaking would preempt any State laws or regulations that may be enacted on the same subject matter and having the same purpose as this proposed rule under the principles announced by the U.S. Supreme Court in *United States* v. *Locke,*—U.S.—No. 98–1701 (March 6, 2000) and *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978).

We will continue to consult with the State of Louisiana, the Governor's Task Force on Maritime Industry representative, as well as all affected stakeholders as this proposed rule progresses, and during its implementation as a final rule. Their concerns will continue to be received, considered, and addressed in a spirit of cooperation to ensure that the waters of the Lower Mississippi River affected by this proposed rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule, and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraphs 34(g) and (i) Commandant Instruction M16475.1C (for Regulated Navigation Areas and VTS respectively), this proposed 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

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 165

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 26, 161, and 165 as follows:

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

1. The authority citation for part 26 continues to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 1201–1208; 49 CFR 1.45(b), 1.46; Rule 1, International Regulations for the Prevention of Collisions at Sea.

2. In § 26.03, remove Table 26.03(F) and revise paragraph (f) to read as follows:

§ 26.03 Radiotelephone required.

* * * * *

(f) In addition to the radiotelephone required by paragraph (b) of this section, each vessel described in paragraph (a) of this section while transiting any waters within a Vessel Traffic Service Area, must have on board a radiotelephone capable of transmitting and receiving on the VTS designated frequency in Table 161.12(B)—Vessel Traffic Services (VTS) Call Signs, Designated Frequencies, and Monitoring Areas, found in 33 CFR 161.12.

* * * * *

PART 161—VESSEL TRAFFIC MANAGEMENT

3. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

4. In § 161.2 amend the definition of ''Hazardous Vessel Operating Condition'' by revising the introductory text and paragraph (3) to read as follows:

§ 161.2 Definitions.

* * * * *

Hazardous Vessel Operating Condition means any condition related to a vessel's ability to safely navigate or maneuver, and includes, but is not limited to:

* * * * *

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo or tow arrangement, trim, loaded condition, underkeel or overhead clearance, speed capabilities, power availability or similar characteristics which may affect the positive control or safe handling of the vessel or the tow.

* * * * *

5. In § 161.12 amend Table 161.12(B) by adding the following entry to the end of the table as well as footnotes 8 and 9:

§ 161.12 Vessel operating requirements.

* * * * *

TABLE 161.12(B).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic service call sign	Designated [1] frequency (channel designation)	Monitoring area
* *	*	* * * *
Lower Mississippi River: [8]		
New Orleans Traffic	156.700 MHz (Ch.14).	The navigable waters [9] of the Lower Mississippi River below 30° 38.7′ N 91° 17.5′ N (Port Hudson Light at 255 miles Above Head of Passes (AHP)), the Southwest Pass, and, within a 12 nautical miles radius around 28° 54.3′ N 89° 25.7′ N (Southwest Pass Entrance Light at 19.9 miles Below Head of Passes).
	156.600 MHz (Ch.12).	*New Orleans Sector.* The navigable waters of the Lower Mississippi River bounded on the north by a line drawn perpendicularly at 29° 56.4′ N 90° 08.36′ W and on the south by a line drawn perpendicularly at 29° 56.24′ N 89° 59.86′ W (88 and 106 miles AHP)
* *	*	* * * *

[8] Until July 1, 2002 and unless otherwise directed, VTS users outside of the New Orleans Sector are exempted of all VMRS requirements (33 CFR 161, Subpart B). As a result, only limited VTS services are available throughout the entire monitoring area. In particular the services denoted in 33 CFR 161.10(c), (f), and (g) will not be available.

[9] *'Navigable waters'* includes all of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, which states, ''The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.''

* * * * *

6. Add § 161.65 and Table 161.65(D) to read as follows:

§ 161.65 Vessel Traffic Service Lower Mississippi River.

(a) The VTS area consists of navigable waters of the Lower Mississippi River below 30° 38.7′ N 91° 17.5′ W [Port Hudson Light at 255 miles Above Head of Passes (AHP)], the Southwest Pass, and those within a 12 nautical mile radius around 28° 54.3′ N 89° 25.7′ W (Southwest Pass Entrance Light at 19.9 miles Below Head of Passes).

(b) The Algiers Point VTS Special Area consists of the navigable waters of the Lower Mississippi River bounded on the north by a line drawn from 29° 57.62′ N 90° 02.61′ W to 29° 57.34′ N 90° 02.60′ W, and, on the south by a line drawn from 29° 56.89′ N 90° 03.72′ W to 29° 56.93′ N 90° 03.34′ W (95 and 93.5 miles AHP) during periods of high water; that is when the Carrolton Gage reads 8.0 feet or above on a rising stage or 9.0 feet or above on a falling stage, or under any other water conditions the Captain of the Port (COTP) deems necessary.

(c) *Additional VTS Special Area Operating Requirements.* The following additional requirements are applicable in the Algiers Point VTS Special Area:

(1) A VMRS User must abide by the signals of the Governor Nicholls, 29° 57.6′ N 90° 03.4′ W, and Gretna, 29° 55.5′ N 90° 03.7′ W, Control Lights (94.3 and 96.6 miles AHP, respectively) in the following manner:

(i) *Green Light*—May proceed as intended.

(ii) *Red Light*—Do not proceed, unless otherwise directed by the VTC.

(iii) *No Light*—Do not proceed, immediately notify VTC and await further directions.

Note: To provide advance notification to downbound vessels, a traffic repeater signal of Gretna Light is located at Westwego, LA, 29° 54.8′ N 90° 08.3′ W, (101.4 miles AHP).

(2) A vessel awaiting a signal change or VTC directions shall keep clear of other vessels transiting the area.

(d) *Reporting Points.*

TABLE 161.65(D).—VTS LOWER MISSISSIPPI RIVER REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude/mile marker	Notes
A	Chalmette Slip	90.4 AHP	29 56.2′ N; 90 59.86′ W	Towing vessels exempted.
B	Industrial Canal	92.7 AHP	29 57.2′ N; 90 01.68′ W.	
C	Crescent Towing Smith Fleet.	93.5 AHP	29 57.50′ N; 90 02.62′ W	Towing vessels only.
D	Marlex Terminal (Naval Ships).	99.0 AHP	29 54.65′ N; 90 05.87′ W.	
E	Cargill Grain Elevator, Westwego.	103.1 AHP	29 56.24′ N; 90 08.3′ W.	

PART 165—NAVIGATION SAFETY REGULATIONS

7. 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.

§ 165.810 [Amended]

8. Amend § 165.810 by: a. Removing paragraph (c) and redesignate paragraphs (d), (e), and (f) as (c), (d), and (e) respectively; and

b. Adding a note at the end of the section to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

* * * * *

Note: Control Light provisions (previously referenced in this section) used to manage vessel traffic during periods of high waters in the vicinity of Algiers Point are found in 33 CFR 161.65(c).

Dated: April 19, 2000.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

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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.

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H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the ''John K. Rafferty Hamilton Post Office Building''. (Apr. 13, 2000; 114 Stat. 200)

H.R. 3189/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the ''Joseph Ileto Post Office''. (Apr. 14, 2000; 114 Stat. 201)

Last List April 11, 2000

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