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WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

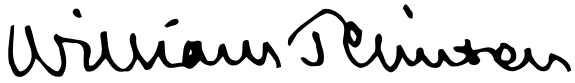
Presidential Determination No. 2000–20 of May 31, 2000

Presidential Determination on Assistance for Peacekeeping in Sierra Leone

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President, including under section 10(d)(1) of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287 *et seq.*) (the ''Act''), I hereby determine that the furnishing, without regard to section 10(a) of the Act, of assistance covered by section 10 of the Act that is provided in support of peacekeeping efforts in Sierra Leone is important to the security interests of the United States.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 31, 2000.

[FR Doc. 00–14619
Filed 6–7–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

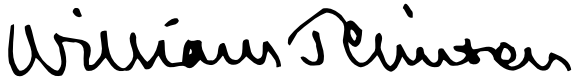
Presidential Determination No. 2000–21 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for Vietnam

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the ''Act''), 19 U.S.C. 2432(d)(1), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 2000.

[FR Doc. 00–14620
Filed 6–7–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

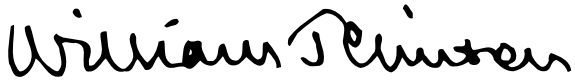
Presidential Determination No. 2000–22 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for Belarus

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the ''Act''), I have determined, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the Republic of Belarus will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 2000.

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Presidential Documents

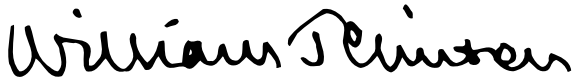
Presidential Determination No. 2000–23 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for the People's Republic of China

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the ''Act''), I have determined, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 2000.

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Rules and Regulations

Federal Register
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Thursday, June 8, 2000

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AC92

National School Lunch Program and School Breakfast Program: Identification of Blended Beef, Pork, Poultry or Seafood Products

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule addresses the use of products or dishes containing more than 30 parts fully hydrated vegetable protein products to less than 70 parts beef, pork, poultry or seafood in the National School Lunch Program and the School Breakfast Program. To the extent that participating school food authorities identify foods in a menu or on the serving line or through other available means of communicating with program participants, this interim rule requires that school food authorities identify such products or dishes in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. This interim rule is intended to ensure that program participants are not misinformed regarding the use of blended products and dishes.

DATES: *Effective Date:* This interim rule will become effective July 10, 2000. *Comment Date:* To be assured of consideration, comments must be postmarked on or before August 7, 2000.

ADDRESSES: Comments must be sent to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or via E:Mail at CNDPROPOSAL@fns.usda.gov. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner or Ms. Janice Fabina, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Is the Purpose of This Rule?

On March 9, 2000, the U.S. Department of Agriculture (USDA or we) published a rule in the **Federal Register** (65 FR 12429) updating the requirements for using vegetable protein products in the Child Nutrition Programs. Among the provisions of that rule, we removed the requirement that the meat/meat alternate component of the food-based menu planning approaches could consist of no more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total).

Subsequent to the publication of the final rule, concerns have been raised about the possibility that blended beef, pork, poultry or seafood products or dishes containing more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total) might be presented as beef, pork, poultry or seafood.

While these blended products and dishes fulfill an essential role in the programs, misrepresentation or misperception of the nature of those products serves neither industry nor program participants well. In addition to the primary mission of providing nutritious meals to school children, the lunch and breakfast programs serve as vehicles for nutrition and consumer education. Children and their parents must be aware of what is in the foods offered in the lunch and breakfast programs if they are to make informed food choices.

Thus, to the extent that school food authorities identify foods in the menu, or on the serving line or through other available means of communicating with program participants, they must identify beef, pork, poultry or seafood products and dishes containing more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total) in a manner which does not characterize the products or dishes solely as beef, pork, poultry or seafood. This interim rule revises 7 CFR 210.10(h) and 220.8 (m) to effect this change.

How Are Program Participants To Be Advised of the Use of Blended Products and Dishes?

This interim rule requires school food authorities to advise children and their parents of the use of these blended products and dishes through whatever means they currently use. If a school sends menus home, blended products and dishes must not be portrayed solely as beef, pork, poultry or seafood products or dishes on the menu. If a school uses point of service menu identification, it must not portray blended products and dishes solely as beef, pork, poultry or seafood products or dishes so that students and their parents can make choices that meet their dietary needs.

Miscellaneous

Commentors will note that the term ''vegetable protein product'' has been used in the preamble since this term reflects common usage; however, for technical reasons, the term ''alternate protein products'' is used in the regulatory text. The reasons for this change in terminology are discussed in the preamble to the proposed rule published in the **Federal Register** (64 FR 38839) on July 20, 1999.

Public Participation

This action is being issued as an interim rule without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and opportunity for public comments prior to issuing this interim rule is unnecessary and contrary to the public interest. The Department believes that program participants should be given the opportunity to make informed menu choices about the foods they eat without undue delay. However, the Department is encouraging interested parties to comment during the public comment period.

Executive Order 12866

This interim rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This interim rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes no changes to the National School Lunch and School Breakfast Program meal patterns. However, when certain products are used, this rule would require schools to use existing methods of communication to advise children and their parents of the use of such products.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This interim rule was reviewed under Executive Order 12988, Civil Justice Reform. This interim rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This interim rule is not intended to have retroactive effect unless so specified in the ''Dates'' section of this preamble. Prior to any judicial challenge to the provisions of this interim rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

For the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

Sections 210.10(h) and 220.8(m) of this interim rule contain third-party disclosure requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), USDA has submitted a copy of these sections to the Office of Management and Budget for its review.

Written comments must be received on or before July 10, 2000.

Comments concerning the third-party disclosure of this interim rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Manish Desai, Desk Officer for FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their comments on the third-party disclosure aspects from their comments on the remainder of this interim rule.

OMB is required to make a decision concerning the third-party disclosure aspects contained in this interim regulation between 30 and 60 days after the 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 the Department on the interim regulation.

Comments are invited on: (a) Whether the third-party disclosure is necessary for the proper performance of the functions of the agency, including whether the disclosure will have practical utility; (b) the accuracy of the agency's estimate of the burden of the third-party disclosure aspects, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the third-party disclosure; and (d) ways to minimize the burden of the third-party disclosure, including through the use of appropriate automated, electronic, mechanical, or other techniques.

The title, description, and respondent description of the third-party disclosure are shown below with an estimate of the annual burden. Included in the estimate is the time for making the third-party disclosure.

Abstract

In order to give schools enhanced flexibility in planning menus, we now allow them to offer foods that may consist of up to 100 percent vegetable protein products. This interim rule requires that, to the extent a method (such as a menu) is already in place to communicate what foods are offered, school food authorities identify products or dishes with more than 30 percent vegetable protein products in a manner which does not characterize the products or dishes solely as beef, pork, poultry or seafood products or dishes. This is done in the interest of allowing program participants to make informed decisions about their choices under the school meals programs. Please note that we are only requiring this modification for school food authorities that already provide menus or otherwise communicate with program participants. This could include information provided on serving lines. This interim rule does not *require* that school food authorities use menus or other methods of communication.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the third-party disclosure aspects of the interim rule as noted below:

ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

	Section	Annual number of affected entities	Annual frequency	Average burden per disclosure	Annual burden hours
For the National School Lunch Program, school food authorities modify existing menus, etc. to identify beef, pork, poultry or seafood products or dishes with more than 30 percent vegetable protein products in a manner that does not characterize these products or dishes as solely containing beef, pork, poultry or seafood:					
Total existing	7 CFR 210.10(h)	0	0	0	0
Total proposed	7 CFR 210.10(h)	10,000	1	.016	160
For the School Breakfast Program, school food authorities modify existing menus, etc. to identify beef, pork, poultry or seafood products or dishes with more than 30 percent vegetable protein products in a manner that does not characterize these products or dishes as solely containing beef, pork, poultry or seafood:					
Total existing	7 CFR 220.8(m)	0	0	0	0
Total proposed	7 CFR 220.8(m)	5,000	1	.016	80
Total Third-party Disclosure Burden:					
Total existing	0				
Total proposed	+240				
Change	+240				

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10, revise the section heading and paragraph (h) to read as follows:

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

* * * * *

(h) *What must schools do about nutrition disclosure?* To the extent that school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (b) of this section) for school lunches.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8, revise paragraph (m) to read as follows:

§ 220.8 What are the nutrition standards and menu planning approaches for breakfasts?

* * * * *

(m) *What must schools do about nutrition disclosure?* To the extent that school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (a) of this section) for school breakfasts.

Dated: June 2, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–14385 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–07–AD; Amendment 39–1171; AD 2000–11–22]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines. This AD requires revisions to the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD also requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program will be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual or establish an acceptable alternate method

of record keeping. This amendment is prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that, if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective August 7, 2000.

ADDRESSES: The Rules Docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chung-Der Young, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7309, fax (847) 294–7834.

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 Allison Engine Company AE 3007A and AE 3007C series turbofan engines was published in the **Federal Register** on August 17, 1999 (64 FR 44667). That action proposed to require revisions to the Airworthiness Limitations Section in the Allison Engine Company AE 3007A and AE 3007C Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. It also proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures.

Editorial Change

The FAA has deleted the phrase ''of this chapter'' from the first sentence of paragraph (e) to eliminate confusion.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter supports the rule as written. No comments were received on the FAA's economic analysis. The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously.

Revised Economic Analysis

Since the FAA issued the notice of proposed rulemaking (NPRM), the Allison AE3007A and AE3007C engine fleet has increased to 660 engines worldwide, but the U.S. fleet has decreased to 429 engines. The FAA continues to estimate that it will take approximately one work hour per engine to accomplish the required fan inspections and that the average labor rate is $60 per work hour. Assuming every engine underwent an inspection every year, based on these figures the total cost impact of this AD would be $60 per engine per year, for a total annual cost on U.S. operators of $25,740.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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 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:

2000–11–22 Allison Engine Company: Amendment 39–11771. Docket 99–NE–07–AD.

Applicability

Allison Engine Company AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE 3007A3, AE 3007A1P and AE 3007C series turbofan engines, installed on but not limited to EMBRAER EMB–135 and EMB–145 series and Cessna 750 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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; if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless previously accomplished.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''*MANDATORY INSPECTIONS*

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Wheel, Fan	All	72–21–21 (Task 72–21–21–200–801)

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Heavy Maintenance Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals.

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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

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

Ferry Flights

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

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)). However, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Effective Date

(f) This amendment becomes effective on August 7, 2000.

Issued in Burlington, Massachusetts, on June 2, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14441 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 352, and 700

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Final Monograph; Extension of Effective Date; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of effective date; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 31, 2002, the effective date for the final monograph for over-the-counter (OTC) sunscreen drug products that published in the **Federal Register** of May 21, 1999 (64 FR 27666). The final monograph established conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded. The extension of the effective date applies to all OTC sunscreen drug products that would be regulated under parts 310, 352, and 700 (21 CFR parts 310, 352, and 700). In addition, FDA is reopening the administrative record for the rulemaking for OTC sunscreen drug products to allow for comment specifically on the information requested in this document. FDA is taking this action in response to a citizen petition requesting that the agency, among other things, initiate an administrative process to publish a ''comprehensive'' sunscreen final monograph that addresses formulation, labeling, and testing requirements for both ultraviolet B (UVB) and ultraviolet A (UVA) radiation protection.

DATES: *Effective date:* The effective date of the amendments to parts 310, 352, and 700 in the regulation published at 64 FR 27666, May 21, 1999, is delayed until December 31, 2002. The amendment in this final rule to § 310.545 is effective December 31, 2002.

Compliance dates: For products with annual sales less than $25,000 compliance is December 31, 2003. For all other OTC drug products compliance is December 31, 2002.

Comment date: Submit written comments by September 6, 2000. The administrative record will remain open until September 6, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald Dobbs, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 12, 1993 (58 FR 28194), the agency published a notice of proposed rulemaking in the form of a tentative final monograph (TFM) for OTC sunscreen drug products. The TFM proposed the conditions under which sunscreen drug products would be considered generally recognized as safe and effective, under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and not misbranded under section 502 of the act (21 U.S.C. 352).

The TFM proposed labeling for products that claim to protect against UVB radiation and discussed the types of labeling claims that could be used for products that contain UVA-absorbing ingredients. The TFM included a list of proposed sunscreen active ingredients, including ingredients that were believed to have absorption spectra extending into the UVA range.

The TFM proposed a set of testing procedures for measuring a product's sun protection factor (SPF). The SPF value measures the performance of sunscreens that absorb erythema-causing UV radiation, but does not fully describe a product's UVA protection. As the agency acknowledged in the TFM, ''currently there is no generally acceptable method for determining a

meaningful UVA protection factor that is analogous to the SPF'' (58 FR 28194 at 28249).

Following publication of the TFM, the agency continued to work closely with interested parties to develop standardized UVA testing procedures and an accurate, helpful way to present information about UVA protection in product labeling. The agency held a public meeting, on May 12, 1994, to discuss UVA testing procedures. The agency also reopened the administrative record to allow additional submissions on UVA-related issues until July 31, 1994 (59 FR 16042, April 5, 1994).

In the **Federal Register** of September 16, 1996 (61 FR 48645) and October 22, 1998 (63 FR 56584), the agency amended the TFM to add the UVA-absorbing sunscreen ingredients avobenzone and zinc oxide to the proposed list of monograph ingredients. The agency proposed indications for these ingredients, such as ''provides broad spectrum protection'' and ''provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin'' (61 FR 48645 at 48655 and 63 FR 56584 at 56589).

On November 21, 1997, Congress enacted the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA section 129 provided as follows:

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue regulations for over-the-counter sunscreen products for the prevention or treatment of sunburn.

Section 129 of FDAMA prompted FDA to identify those parts of the TFM for OTC sunscreen drug products that could be finalized within the timeframe set by FDAMA. In late 1997, FDA was still working on the development of testing standards and labeling for UVA radiation protection. As recently as January 27, 1999, the agency held a public meeting to continue developing UVA testing methods and labeling (Ref. 1). Given these outstanding issues, the agency decided to address the FDAMA deadline by finalizing the UVB portions of the monograph (and related provisions on water resistant test methods and cosmetic labeling).

In the **Federal Register** of May 21, 1999 (64 FR 27666), FDA published a final rule in the form of a final monograph for OTC sunscreen drug products. The monograph included 16 active ingredients, required labeling for products that contain one or more of these active ingredients, a standardized test for measuring SPF values, and standard methods for measuring the water resistant properties of sunscreens. The monograph included modifications to the agency's general OTC drug product labeling rule in § 201.66 (21 CFR 201.66) to accommodate certain sunscreen drug products that are packaged in small containers, are intended to be applied to limited areas of the face, and otherwise meet the factors discussed in the OTC drug product labeling rule for monograph-specific modifications (64 FR 27666 at 27681 to 27682 and 64 FR 13254 at 13270). The monograph did not, however, address active ingredients, labeling, and test methods for products intended to provide UVA protection.

The agency set a 2-year effective date (May 21, 2001) for part 352 and the related nonmonograph conditions in § 310.545(a)(29). The agency also set a 2-year effective date for new § 700.35, which addresses cosmetic products that contain sunscreen active ingredients for nontherapeutic, nonphysiologic uses (e.g., as a color additive or to protect the color of the product). The agency set a 1-year effective date (May 22, 2000) for new § 740.19 (21 CFR 740.19), which addresses a warning statement for cosmetic suntanning preparations that do not contain a sunscreen active ingredient. The extension of the effective date in this document does not apply to § 740.19.

II. Citizen Petition

Prior to publication of the sunscreen final rule, a citizen petition (Ref. 2) requested the agency, among other things, to initiate an administrative process for publishing a ''comprehensive'' sunscreen final monograph that addresses formulation, labeling, and testing for both UVB and UVA radiation protection.

On July 22, 1999, the agency held a public meeting to hear the views of interested parties regarding the sunscreen final monograph (Ref. 3). At the meeting, the petitioner requested that FDA defer the effective date of the final rule until 2 years after it completes a comprehensive final monograph that includes UVA radiation protection. After several subsequent meetings with the agency (Ref. 4), the petitioner proposed that a 19-month extension of the effective date of the sunscreen final monograph would be sufficient time for it to submit the appropriate data to assist FDA in completing a comprehensive final monograph in time for a target December 2002 effective date.

FDA granted the petition in part by agreeing to extend the effective date of the monograph to December 31, 2002, with the expectation that appropriate data would be received within a reasonable timeframe so that a comprehensive UVA–UVB monograph could be issued in advance of that date. Accordingly, the agency is issuing this document to extend the effective date of the sunscreen final monograph for the reasons set forth in its October 1, 1999, response to the citizen petition (Ref. 5). Copies of the petition and the agency's response are on file in the Dockets Management Branch (address above) and are available through a freedom of information request.

III. Process for Completion of a Comprehensive Final Monograph

The agency has requested at public meetings on January 27, July 22, and October 26, 1999 (Refs. 1, 3, and 6, respectively), and in letters of July 16, and September 2, 1999, and March 20, 2000, to the petitioner (Refs. 7, 8, and 9, respectively), the type of specific data and information that would be helpful for the completion of a comprehensive final monograph for OTC sunscreen drug products. These data and information concerned: (1) Testing and labeling of high SPF products, (2) testing and labeling for UVA radiation protection and, (3) integration of UVA and UVB indications for use and performance statements. To date, the agency has received only a portion of this requested information (Ref. 9). As part of this reopening of the administrative record, the agency is including the above information and any other information submitted to the sunscreen docket related to the completion of a comprehensive UVA–UVB final monograph.

In order to complete a comprehensive final monograph by the target December 31, 2002, effective date, the agency intends to move forward and publish a proposed rule for a comprehensive final monograph, receive comments on that proposal, and issue a final rule by December 31, 2001. That final rule would then have a 1-year effective date of December 31, 2002. Therefore, in order not to delay this process, the agency has determined that all data and information to be considered for the proposed rule must be received by the close of the administrative record as stated in this document. After the administrative record closes on September 6, 2000, the agency will use the information in the administrative record to prepare a proposed rule for a comprehensive final monograph for OTC sunscreen drug products. The agency has determined that 90 days provides industry with a reasonable amount of time to prepare and submit the data requested in this document.

IV. Request for Comment

The agency stated in the sunscreen final rule that SPF values above 30 are not supported at this time and that sunscreen drug products with SPF values above 30 should be limited to one collective term, i.e., SPF 30 ''plus'' or ''+'' (64 FR 27666 at 27675). While the agency believes that the sunscreen final monograph test procedures for measuring SPF values up to 30 represent a straightforward, well-understood, and sound method for measuring these values, a number of comments submitted in response to the May 12, 1993, tentative final monograph for OTC sunscreen drug products (58 FR 28194) questioned the ability of current testing methods to accurately and reproducibly determine SPF values for high SPF (i.e., above SPF 30) sunscreen drug products (64 FR 27666 at 27680).

Most of the comments' concerns related to potential interlaboratory variation when utilizing SPF test methodology. Primary concerns included the potential for overestimation of high SPF values due to the spectra of currently used solar simulators and the need for one or more high SPF standard sunscreens (i.e., as laboratory controls). Long radiation exposures necessitated by SPF values well above 30 and the use of a relatively low SPF laboratory control may significantly increase the potential for decreased interlaboratory accuracy and reproducibility for high SPF sunscreen drug products. The agency invited interested persons to continue developing the test methods needed to measure high SPF values and to provide FDA data to support such methods. The agency is currently evaluating data and information subsequently received from two comments (Refs. 10 and 11) concerning this issue.

In the final rule, the agency discussed the difficulty in explaining the nonlinearity (i.e., percent reduction in erythemogenic UV radiation) of the SPF rating system in the limited space on a product label (64 FR 27666 at 27675). The agency also invited interested persons to consider proposed methods for communicating in labeling the level of protection associated with high SPF values. To date, the agency has not received any proposals relative to the labeling of sunscreens with high SPF values.

After review of the comments concerning the adequacy of current testing procedures for determining high SPF numbers, the agency has identified eight areas in which it seeks additional data and information. The agency is requesting further comment in these areas to provide interested parties the opportunity to submit data and information to address these issues. It is not necessary to resubmit data and information previously provided to the agency. A cross-reference to an earlier submission will be sufficient.

A. Solar Simulator Spectral Power Distribution

The agency has received several comments, including a recent citizen petition (Ref. 10), suggesting the adoption of a spectral power distribution that specifies the proportion of erythema-effective radiation in a table format. The comments suggested that the spectra of currently used solar simulators (especially around 290 nanometers (nm) and above 350 nm) could cause overestimation of SPF values for high SPF sunscreens. Because shorter wavelengths can make a very large contribution to erythema, the comments stated that small errors in the 290 nm region of solar simulator spectra could have considerable effects. In addition, the comments noted that spectral power deficiencies above 350 nm may give artificially high SPF values for sunscreen drug products that absorb poorly in the long wavelength UVA region. The comments suggested that the agency replace the specifications in § 352.71 of the sunscreen monograph that state ''sun at a zenith angle of 10½'' and ''less than 1 percent shorter than 290 nm'' with the European Cosmetic, Toiletry, and Perfumery Association (COLIPA) table of ''percent erythemal contribution'' (Ref. 10) as the spectral power distribution standard for the light source used in the SPF test procedures.

The agency is requesting comment on whether the solar simulator spectral distribution specifications contained in the COLIPA standard are appropriate for use in SPF testing procedures. The agency would also like comment on a potential modification of the standard that would modify the erythema-effective radiation contribution of wavelengths below 290 nm to less than 0.1 percent (to prevent overestimation of SPF values). The agency believes that this specification is readily obtainable with commercially available cut-off filters. In addition, the agency is interested in comment concerning the practicality of lowering the below-290 nm specification to 0.01 percent. Therefore, a solar simulator using the following modification of the COLIPA standard for determining the SPF of a sunscreen drug product would be filtered so that it provides a continuous emission spectrum from 290 to 400 nm with the following percentage of erythema-effective radiation in each specified range of wavelengths:

TABLE 1.—SOLAR SIMULATOR EMISSION SPECTRUM

Wavelength Range (nm)	Percent Erythemal Contribution
< 290	< 0.1
290–310	46.0–67.0
290–320	80.0–91.0
290–330	86.5–95.0
290–340	90.5–97.0
290–350	93.5–99.0

B. Thermal Overloading of the Skin

The testing of high SPF sunscreen drug products necessitates longer exposure times than testing of lower SPF values. Such increases in irradiance levels have the potential to produce thermal overloading of the skin and influence the UV radiation dose reciprocity relationship (and therefore SPF values). The comments suggested that limits such as 1,250 to 1,500 watts/meter^2 be placed on the total irradiance delivered to the skin for all wavelengths. Several comments, including a recent citizen petition (Ref. 10), also suggested that the ''out of band'' specification in § 352.71 of the sunscreen monograph (i.e., that not more than 5 percent of a solar simulator's total energy output can be contributed by wavelengths longer than 400 nm) is not obtainable from many devices currently utilized for evaluating sunscreens.

The agency considers it important to limit total energy delivered to the skin

so that skin temperature does not reach a point that influences the UV dose reciprocity relationship when encountering the long exposure times necessary to test high SPF sunscreen drug products. The agency is requesting comment on whether replacing the ''out of band'' specifications in § 352.71 with a limit on total solar simulator irradiance for all wavelengths may be an appropriate modification of current testing procedures that will improve the testing of high SPF sunscreens. In addition, the agency is also requesting comment on an appropriate irradiance limit for this modification.

C. High SPF Standard Sunscreen

The agency received several comments suggesting that standard sunscreens (i.e., controls) with SPF values of 15 or higher be developed for testing high SPF sunscreen drug products. Studies submitted by the comments tend to support the conclusion that a specific control(s) may be needed to accurately test high SPF sunscreen drug products. However, these studies lacked sufficient numbers of subjects, did not address suitability of a standard across different laboratories, and did not document the following properties required in a standard sunscreen: (1) Low level of interlaboratory variation, (2) sensitivity to experimental error, and (3) ease of preparation with a reasonable degree of accuracy.

One comment supplied ''round-robin,'' collaborative SPF testing data from 7 laboratories on 153 subjects, with 2 possible SPF 15 standard sunscreens, ''Formulation A'' and ''Formulation B'' (Refs. 12 and 13). The agency believes that the data could support ''Formulation B'' as an appropriate SPF 15 standard sunscreen if additional information is submitted and found acceptable. Because the formulation was supplied to all laboratories by a single source, there are no data to demonstrate that multiple laboratories can prepare, assay, and utilize the standard successfully. Further, the standards were not analyzed by the spectrophotometric method in § 352.70(c) of the sunscreen monograph, but rather by an alternate proposed method (see section IV.D of this document). The agency is requesting the submission of the additional data necessary to document the suitability of Formulation ''B'' and the analytical method.

In addition, the agency is requesting comment and any supporting data and information concerning the need for additional standard sunscreens (with SPF values higher than 15) as well as the use of specific standard sunscreens for specific ranges of SPF values (i.e., bracketing).

D. High-Performance Liquid Chromatography (HPLC) Assay

As discussed in section IV.C of this document, data supplied in support of an SPF 15 standard sunscreen preparation included the use of an HPLC assay instead of the spectrophotometric assay in § 352.70(c). The comment suggested that the HPLC protocol is now commonly used by analytical laboratories for the assay of sunscreen formulations (and that it can also be used for the homosalate standard sunscreen). The agency invites specific comment and data from analytical laboratories as to which assay method they use and why they use that particular method.

Before the agency can evaluate the HPLC method supplied with the SPF 15 standard sunscreen data, method validation data are necessary. The agency is requesting a validation package that documents specificity, accuracy, limit of detection, linearity, precision, and reproducibility of the method. The agency is especially concerned that the presence of any impurities (particularly UV radiation-absorbing impurities) in the standard sunscreen and product formulations can be detected by the HPLC method, because interfering substances could affect the SPF determination. The validation package should include chromatograms and demonstrate that the HPLC method is suitable for both the SPF 4 (homosalate) and SPF 15 standards (or other standard sunscreens, if appropriate). The chemistry guideline entitled ''Reviewer Guidance, Validation of Chromatographic Methods'' explains these requirements in greater detail and is available on the agency's Internet website for the Center for Drug Evaluation and Research (CDER) (http://www.fda.gov/cder/guidance/index.htm), or may be obtained from the Drug Information Branch (HFD–211), CDER, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

E. Number of Test Subjects

Several comments suggested that the ''limitation'' of 20 to 25 subjects in the SPF test in § 352.72(g) may be an issue for sunscreen drug products with high SPF values due to potential for high variability in the responses obtained. The comments indicated that more than 20 to 25 subjects may be necessary. The agency is requesting data and information on the testing of SPF values over 30 in relation to this issue and suggestions for an appropriate number of test subjects to be used in such testing.

F. Exposure Doses

Determination of the minimal erythemal dose on protected skin (MED(PS)) is described in § 352.73(c) of the SPF testing procedures as follows:

* * * A series of seven exposures shall be administered to the protected test sites to determine the MED of the protected skin (MED(PS)). The doses selected shall consist of a geometric series of five exposures, where the middle exposure is placed to yield the expected SPF plus two other exposures placed symmetrically around the middle exposure. * * *

The agency proposed this format in the tentative final monograph (58 FR 28194 at 28269 to 28272), in the context of SPF values up to 30, because of its concern that a widely-spaced geometric progression offers less accuracy and precision in the upper SPF ranges and may produce overestimation of the true SPF. Exposure dose intervals in the above geometric series decrease as expected SPF values increase.

The agency is requesting comment and any supporting data and information concerning the adequacy of the current exposure dose format in the testing of sunscreen drug products claiming to have SPF values over 30.

G. Labeling

In the sunscreen final rule (64 FR 27666 at 27675), the agency stated that the nonlinearity (i.e., percent reduction in erythemogenic UV radiation) of the SPF rating system is a concept difficult to explain in the limited space on a product label. The agency noted the relatively small difference in additional sunburn protection for most people provided by SPF 30 and SPF 50 sunscreens in terms of their absorption of erythemal UV radiation. The agency has a continuing concern about consumers' perception and understanding of the difference in screening abilities between, for example, an SPF 4 and SPF 15 as opposed to an SPF 30 and SPF 50.

The agency is concerned that an average sunscreen consumer may ascribe more to high SPF values than is clinically relevant and that such products may further encourage the use of sunscreens as a safe way to prolong sun exposure. The concept of increasing SPF values has been described in the context of increasing the time for which a person could be exposed to the sun without burning. While such a description may be true, it omits

essential information about skin cancers and photoaging that may occur from different (i.e., nonerythemogenic) wavelengths and/or at suberythemal doses of UV radiation in the erythemogenic wavelength region. Sunscreen use alone will not prevent all of the possible harmful effects of the sun for all consumers, even with the use of high SPF sunscreen drug products. Variation between individuals, UV radiation absorption and substantivity of sunscreen drug products, exposure conditions, and conditions of use (e.g., inadequate application/reapplication) preclude a precise result for each individual. Sunscreens are part of a sun protection program in which it is clear that the goal is to limit sun exposure even with the use of a sunscreen. Without adequate labeling, high SPF numbers may dilute the desired public health message. In addition, previously submitted labeling comprehension data, which were discussed at a public meeting (Ref. 14), indicated a fair amount of confusion concerning consumer comprehension of the SPF rating system.

The agency is requesting comment on any proposed methods for meaningfully communicating in product labeling the level of sun protection associated with high SPF sunscreen drug products. In addition to this information, the agency is also requesting comment relative to the use of professional labeling (and what that labeling might state) specifically to provide high SPF value information to health professionals.

H. Technical and Human Limitations

The agency is aware that the testing of sunscreen drug products with high SPF values necessitates the use of longer ultraviolet radiation exposure times. Such exposures can result in test subjects remaining in front of the light source for several hours, especially when a standard sunscreen and water resistance test are also included (Ref. 11).

Considering the generally available SPF test equipment currently used in testing laboratories, the agency is requesting comment on the practical human limitations of the test relative to high SPF values. Is the determination of an SPF value routinely practicable for SPF values of, for example, 60 or higher? What total exposure times would be involved at such SPF levels? What is the practical limit in terms of the SPF value?

V. Comment on the Extension of the Effective Date

In its October 1, 1999, citizen petition response (Ref. 5), the agency set forth in detail its finding that a stay of the effective date for the sunscreen final monograph, until December 31, 2002, would be in the public interest. Since the agency is extending the effective date of the sunscreen final monograph based on the citizen petition response, it finds, for good cause, that this extension of the effective date of the final monograph does not require further notice and comment procedures (5 U.S.C. 553(b)). More than 6 months have passed since the agency issued the petition response and the agency has received no adverse correspondence or comments with respect to its decision. Therefore, the agency is now extending the effective date of the final rule. However, in accordance with 21 CFR 10.40(e)(1), the agency will accept comment on this extension for a period of 90 days.

VI. Analysis of Impacts

The economic impact of the final monograph was discussed in the final rule (64 FR 27666 at 27683). This extension of the effective date provides additional time for companies to relabel, retest, and reformulate affected products and will reduce label obsolescence, as there will be additional time to use up more existing labeling. This extension will also eliminate a second relabeling of sunscreen drug products when UVA labeling is included in the monograph. Thus, extending the effective date of the final rule until December 31, 2002, and the compliance date for products with annual sales less than $25,000 to December 31, 2003, will significantly reduce the economic impact on industry.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The purpose of the final rule is to reopen the administrative record and to extend the effective date which will provide manufacturers additional time to use up existing product labeling. The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this final rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation.

The agency also certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. References

The following references are on display in Docket No. 78N–0038 in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. MM16.
2. Comment No. CP11.
3. Comment No. MM21.
4. Comment No. MM17, MM18, and MM19.
5. Comment No. PAV2.
6. Comment No. MM22.
7. Comment No. LET168.
8. Comment No. ANS6.
9. Comment No. Let170
10. Comment No. CP12.
11. Comment No. C557
12. Comment No. C111 and RPT7.
13. Letter from T. J. Donegan, The Cosmetic, Toiletry, and Fragrance Association, to J. D. Lipnicki, FDA, in OTC Vol. 06FREXT.
14. Comment No. MM14.

List of Subjects in 21 CFR Part 310

Administrative practice and procedures, Drugs, Labeling, Medical

devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by revising paragraph (d)(31) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

* * * * *

(d) * * *

(31) December 31, 2002, for products subject to paragraph (a)(29) of this section.

Dated: May 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–14212 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 98N–0786]

General Hospital and Personal Use Devices; Classification of Liquid Chemical Sterilants/High Level Disinfectants and General Purpose Disinfectants

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying liquid chemical sterilants/high level disinfectants intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use into class II (special controls), and general purpose disinfectants intended to process noncritical medical devices and equipment surfaces into class I (general controls). FDA is also exempting the general purpose disinfectants from the premarket notification requirements. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: This rule is effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (CDRH) (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and the FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f))) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the General Hospital and Personal Use Devices Panel (the Panel), an FDA advisory committee, regarding the classification of these devices.

The FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as ''reserved criteria.'' FDA has considered the general purpose disinfectants in accordance with the reserved criteria and determined that these devices do not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

II. Regulatory History of the Device

In the **Federal Register** of November 6, 1998 (63 FR 59917), FDA proposed to classify both liquid chemical sterilants intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use into class II and general purpose disinfectants intended to process noncritical medical devices and equipment surfaces into class I. In the same issue of the **Federal Register**, FDA proposed to exempt the general purpose disinfectants from the premarket notification requirements. FDA recognizes a ''high level disinfectant'' as a potential separate or subordinate condition of use of a sterilant and has included it in the final rule to clarify its classification status. Initially, interested persons were given until February 4, 1999, to comment on the proposed regulation. Subsequently, FDA extended the comment period to March 8, 1999, in response to an extension request.

FDA received one comment on the proposed rule from a non-profit trade association.

III. Summary of Final Rule

As required by 21 CFR 860.84(g)(1) of the regulations, FDA is classifying liquid chemical sterilants/high level disinfectants into class II with the following special controls: The 510(k) guidance document (Ref. 1) and user information and training. FDA is also classifying general purpose disinfectants into class I and exempting these devices from premarket notification.

Persons interested in obtaining a copy of the guidance (Ref. 1) may do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants'' available at http://www.fda.gov/cdrh/ode/397.pdf.

IV. Analysis of Comment and FDA's Response

The one comment FDA received requested that general purpose disinfectants, in addition to being exempt from the premarket notification procedures, also be exempt from the good manufacturing practice (GMP) requirements set forth in the Quality System Regulation (21 CFR part 820). The comment stated that general purpose disinfectants should be exempt from the GMP requirements because the Environmental Protection Agency (EPA) and state controls on them are sufficient to assure their quality for commercial distribution.

FDA disagrees with the comment. The agency recognizes the dual regulatory functions and responsibilities of the FDA and EPA, but the functions and responsibilities of these agencies address different aspects of the product. Because of the continued classification of the general purpose disinfectants as a medical device, they remain subject to the GMP requirements of the act.

General purpose disinfectants are also regulated by EPA as environmental pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The EPA controls (EPA product registration, Good Laboratory Practices, State registration and testing, maintenance of records, and EPA establishment registration) focus on the quality and integrity of pesticide data. Although some States have programs regulating the sale and use of general purpose disinfectants as pesticides, not all States have adopted the same enforcement programs. This lack of uniformity does not provide the additional safeguard needed for the national use of these products for disinfection of medical devices.

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based, in their entirety. FDA also agrees with the assessment of the risks to public health stated in the proposed rule published on November 6, 1998. FDA is issuing this final rule, which classifies these generic types of devices as follows: Liquid chemical sterilants/high level disinfectants into class II and general purpose disinfectants into class I.

V. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Center for Devices and Radiological Health, Office of Device Evaluation, ''Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants,'' January 3, 2000.

VI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The classification of these devices formalizes the current process for the class I and II devices. For the class I devices, FDA is not adding any additional burden, because they are effectively regulated as class I devices now. For the class II devices, they are in compliance with the guidance. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 880.6885 is added to subpart G to read as follows:

§ 880.6885 Liquid chemical sterilants/high level disinfectants.

(a) *Identification.* A liquid chemical sterilant/high level disinfectant is a germicide that is intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use. Critical devices make contact with normally sterile tissue or

body spaces during use. Semicritical devices make contact during use with mucous membranes or nonintact skin.

(b) *Classification.* Class II (special controls). Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants, and user information and training.

3. Section 880.6890 is added to subpart G to read as follows:

§ 880.6890 General purpose disinfectants.

(a) *Identification.* A general purpose disinfectant is a germicide intended to process noncritical medical devices and equipment surfaces. A general purpose disinfectant can be used to preclean or decontaminate critical or semicritical medical devices prior to terminal sterilization or high level disinfection. Noncritical medical devices make only topical contact with intact skin.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

Dated: May 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–14462 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–1–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8887]

RIN 1545–AV02

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the availability of the safe harbor deposit rule based on look-back quarter liability and affects persons required to make deposits of excise taxes. This document also contains final regulations related to floor stocks taxes and affects persons liable for those taxes. The regulations implement changes made by the Small Business Job Protection Act of 1996 and the Airport and Airway Trust Fund Tax Reinstatement Act of 1997.

DATES: *Effective Date:* These regulations are effective June 8, 2000.

Applicability Dates: For dates of applicability of these regulations, see §§ 40.6302(c)–1(c)(2)(iv)(C) and 40.6302(c)–2(b)(2)(iii)(C).

FOR FURTHER INFORMATION CONTACT: Susan Athy, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (TD 8740) relating to the safe harbor deposit rule based on look-back quarter liability and to floor stock taxes were published in the **Federal Register** on December 29, 1997 (62 FR 67568) along with a notice of proposed rulemaking (REG–102894–97) cross-referencing the temporary regulations (62 FR 67589). Written comments and requests for a public hearing were solicited. However, no comments or requests were received and no public hearing was held.

The proposed regulations are adopted without revision by this Treasury decision.

Effect on Other Documents

The following publication is obsolete as of June 8, 2000:

Notice 97–15, 1997–1 C.B. 387.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 40.0–1, paragraph (a) is amended by revising the second sentence to read as follows:

§ 40.0–1 Introduction.

(a) * * * The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. * * *

* * * * *

§ 40.0–1T [Removed]

Par. 3. Section 40.0–1T is removed.

Par. 4. In § 40.6011(a)–1, paragraph (a)(2)(iii) is added to read as follows:

§ 40.6011(a)–1 Returns.

(a) * * *

(2) * * *

(iii) *Floor stocks tax return.* A return reporting liability for a floor stocks tax described in § 40.0–1(a) is a return for the calendar quarter in which the tax payment is due and not the calendar quarter in which the liability for tax is incurred.

* * * * *

§ 40.6011(a)–1T [Removed]

Par. 5. Section 40.6011(a)–1T is removed.

Par. 6. Section 40.6302(c)–1 is amended as follows:

1. Paragraph (c)(2)(iv) is added.

2. Paragraph (f)(1) is amended by adding a sentence to the end of the paragraph.

The additions read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(c) * * *

(2) * * *

(iv) *Modification for new or reinstated taxes*—(A) *Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for any calendar quarter in which a person's liability for

a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is—

(*1*) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(*2*) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) 1/6 of the net tax liability reported for the class of tax for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(*ii*) 1/6 of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(*2*) of this section applies only for calendar quarters beginning after December 31, 1997.

* * * * *

(f) * * * (1) * * * Also, no deposit is required in the case of any floor stocks tax described in § 40.0–1(a).

* * * * *

§ 40.6302(c)–1T [Removed]

Par. 7. Section 40.6302(c)–1T is removed.

Par. 8. In § 40.6302(c)–2, paragraph (b)(2)(iii) is added to read as follows:

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

* * * * *

(b) * * *

(2) * * *

(iii) *Modification for new chemicals*—(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (b)(2)(i) of this section does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) 1/6 of the net tax liability reported under section 4681 for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred under section 4681 with respect to the new chemical during the semimonthly period; and

(*ii*) 1/6 of the net tax liability reported under section 4681 with respect to all other chemicals for the look-back quarter.

(C) *Effective date.* This paragraph (b)(2)(iii) applies to tax liabilities for new chemicals incurred after February 28, 1997.

* * * * *

§ 40.6302(c)–2T [Removed]

Par. 9. Section 40.6302(c)–2T is removed.

Approved: May 22, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–14007 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Interpretive Guidance on Title I of the Americans with Disabilities Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This rule rescinds several sentences of the Equal Employment Opportunity Commission's (EEOC) Interpretive Guidance on Title I of the Americans with Disabilities Act that address mitigating measures used by persons with impairments. This action is necessary as a result of recent Supreme Court rulings.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, ADA Division, Office of Legal Counsel, or Sharon Rennert, Senior Attorney Advisor, ADA Division, Office of Legal Counsel. They can be reached at 202–663–4503. This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC's Publication Center by calling 1–800–669–3362 (voice) or 1–800–800–3302 (TDD).

SUPPLEMENTARY INFORMATION: The EEOC is rescinding several sentences of the Interpretive Guidance on Title I of the Americans with Disabilities Act, found in the Appendix to 29 CFR 1630.2(h) and (j), that address mitigating measures used by persons with impairments. The guidance set forth in those sentences is no longer valid in light of the Supreme Court's rulings in *Sutton* v. *United Airlines, Inc.,* 527 U.S. ____(1999), and *Murphy* v. *United Parcel Service, Inc.,* 527 U.S.—(1999). In those cases, the Supreme Court held that the determination of whether an individual has an impairment that substantially limits a major life activity under the ADA must be made by considering any mitigating measures (such as medications or assistive devices) that the individual uses to eliminate or reduce the effects of an impairment.

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Public Law 96–354, as amended by Public Law 104–121), the Commission has reviewed this regulation, and by approving it, certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Individuals with disabilities.

For the Commission.

Ida L. Castro,

Chairwoman.

Accordingly, the Commission amends 29 CFR chapter XIV as follows:

PART 1630—[AMENDED]

1. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 12116.

Appendix to Part 1630 [Amended]

2. Amend the Appendix to Part 1630 as follows:

a. Section 1630.2(h) is amended by removing the second paragraph.

b. Section 1630.2(j) is amended by removing the third, fourth, and fifth sentences of the sixth paragraph, and by removing '', without regard to mitigating measures such as medicines, or assistive or prosthetic devices'' from the first sentence of the eighth paragraph.

[FR Doc. 00–14476 Filed 6–7–00; 8:45 am]

BILLING CODE 6570–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Postlease Operations Safety, Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correction to final regulations.

SUMMARY: This document makes a correction to the final rule titled ''Postlease Operations Safety'' that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting a citation error in the table of Documents Incorporated by Reference.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, Engineering and Operations Division, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

The published final regulations contained a complete listing of all of the documents MMS has incorporated by reference in the 30 CFR part 250 regulations. The rulemaking also included revisions and reaffirmations of several documents. The table of documents incorporated by reference in § 250.198(e) of the published final rule contained an error, which we are correcting.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on December 28, 1999, of the final regulations, which were the subject of FR Doc. 99–31869, is corrected as follows:

§ 250.198 [Corrected]

On page 72792, in the table in § 250.198(e), the entry for API RP 14H, Recommended Practice for the Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, is corrected to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
* * * * * * *	
API RP 14H, Recommended Practice for the Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.802(d); 250.804(a)(4)
* * * * * * *	

Dated: May 23, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–13868 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–070–FOR]

Alabama Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to the Alabama Surface Mining Control and Reclamation Act (ASMCRA) concerning the repair or compensation for material damage to any occupied residential dwelling and related structures or any noncommercial building. The proposed revisions also concern the replacement of contaminated, diminished, or interrupted drinking, domestic or residential water supplies. The damage to the protected structures or water supplies has to have been caused by subsidence resulting from underground coal mining operations. Alabama proposed to revise its program at its own initiative.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

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 concerning the Alabama program and previous amendments at 30 CFR 901.15, 901.16, and 901.17.

II. Submission of the Amendment

By letter dated August 17, 1999 (Administrative Record No. AL–0589), Alabama submitted an amendment to its approved permanent regulatory program according to the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment at its own initiative.

We announced the proposed rulemaking in the September 7, 1999, **Federal Register** (64 FR 48573). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on October 7, 1999. We held a public hearing in Birmingham, Alabama, on October 4, 1999. We reopened the public comment period in the October 15, 1999, **Federal Register** (64 FR 55878) in order to allow the

public additional time to submit comments. The public comment period closed on November 1, 1999.

During our review of the amendment, we identified concerns regarding section 9–16–91(f) of ASMCRA, remedies for subsidence damage and subsidence damage agreements. We notified Alabama of these concerns by letter dated February 3, 2000 (Administrative Record No. AL–0627). By letter dated February 15, 2000, and May 3, 2000 (Administrative Record Nos. AL–0629 and AL–0634, respectively), Alabama sent us additional explanatory information. Because the explanatory information did not make any change to Alabama's amendment regarding remedies for subsidence damage and subsidence damage agreements, we did not reopen the public comment period.

III. Director's Findings

Below, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment on the Alabama permanent regulatory program. Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Alabama proposed to revise section 9–16–91(e)(1) of ASMCRA to read as follows:

(1) Promptly repair or compensate for material damage to any occupied residential dwelling and related structures or any noncommercial building caused by surface subsidence resulting from underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building which shall be in the full amount of the diminution in value resulting from subsidence caused damage. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

The above proposed revision involves minor wording changes to this previously approved statute and it does not change its meaning. Therefore, we are approving the revision because it is no less stringent than the Federal statute at section 720(a)(1) of SMCRA.

B. Alabama proposed to add new section 9–16–91(e)(3) of ASMCRA to read as follows:

(3) Promptly correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence.

We do not have a counterpart Federal statute in SMCRA for this proposed addition. However, the provision is consistent with requirements in section 516(b)(1) of SMCRA and is found in the Federal regulations at 30 CFR 817.121(c)(1). We are approving the addition of this provision to Alabama's statutes because it is consistent with our Federal regulations and SMCRA and will not make the Alabama statutes less stringent than the Federal statutes.

C. Alabama proposed to add new section 9–16–91(e)(4) of ASMCRA to read as follows:

(4) The regulatory authority shall issue such notices or orders and take such actions as necessary to compel compliance with these requirements.

This provision that Alabama proposed to add to its statutes is not found in our Federal statutes. Alabama's intent by adding this provision is to make it clear that it has the power to enforce the provision of section 9–16–91 of ASMCRA. We are approving this statute because it is not inconsistent with our Federal regulations or statutes and will not make the Alabama statutes less stringent than the Federal statutes.

D. Alabama proposed to add new section 9–16–91(f) to read as follows:

(f) Notwithstanding any other provision in this chapter to the contrary, the remedies prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water shall be the sole and exclusive remedies available to the owner for such damage and its effects. Neither punitive damages nor, except as specifically prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water, compensatory damages shall be awarded for subsidence damage caused by longwall mining or other mining process employing a planned subsidence method and conducted in substantial compliance with a permit issued under authority of this chapter. Nothing in this chapter shall prohibit agreements between the surface owner and the mineral owner or lessee that establish the manner and means by which repair or compensation for subsidence damage is to be provided. However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents (other than such subsidence damage agreements) which leave the owner without such prescribed remedies. Provided, however, the provisions of this subsection do not apply to any actions brought for, and in which the trier of the fact finds, intentional, willful, or wanton conduct; provided further, that conduct in substantial compliance with applicable mining permits may not be deemed to be intentional, willful, or wanton.

The above provision establishes that the remedies outlined in section 9–16–91 of ASMCRA are the sole and exclusive remedies available to a surface owner for subsidence damages, unless the operator violates the conditions or provisions of a permit issued under the authority of ASMCRA. It also allows a surface owner and mineral owner or lessee to enter into a subsidence damage agreement that establishes the manner and means that the mineral owner or lessee will provide repair or compensation.

1. *Remedies for Subsidence Damage.* Section 720(a) of SMCRA provides two remedies to surface landowners for material damage caused by subsidence to protected structures and water supplies. First, a coal operator must promptly repair or compensate a surface landowner for any material damage, caused by subsidence, to any occupied dwelling and related structures or non-commercial buildings. Second, a coal operator must promptly replace any drinking, domestic, or residential water supplies that are damaged as a result of subsidence.

Sections 9–16–91(e)(1) and (2) of ASMCRA provide the same remedies to surface landowners for material damage caused by subsidence to protected structures and water supplies that section 720(a) of SMCRA provides. Alabama's amendment at 9–16–91(f) establishes that these remedies found in 9–16–91 are the sole and exclusive remedies available to the surface owner for such damage and its effects as long as the operator is conducting longwall mining or other mining process employing a planned subsidence method in substantial compliance with a permit issued under the authority of ASMCRA. If the operator is found to have engaged in intentional, willful, or wanton conduct that is not in substantial compliance with a permit, the ability to seek additional damages is preserved. We interpret ''substantial compliance with the permit'' to be equivalent to ''compliance with all rules, regulations, orders, and permits.''

In a letter dated February 15, 2000 (Administrative Record No. AL–0629), Alabama confirmed that section 9–16–91(f) of ASMCRA does not limit any other remedies available under SMCRA.

The Alabama program contains all the remedies provided for under SMCRA for material damage caused to protected structures and water supplies. In addition, Alabama has stated that the provision does not limit any other remedies available under SMCRA.

Therefore, we are approving the above provisions concerning remedies for subsidence damage in section 9–16–91(f) of ASMCRA, as clarified by the above interpretations, because the remedies are consistent with and are no less stringent than the remedies provided by section 720(a) of SMCRA. We note that Alabama has established conditions under which a surface owner may obtain additional damages. However, comparable provisions are not found in SMCRA and they do not conflict with any requirements of SMCRA. Therefore, the provisions do not render the Alabama program less stringent than SMCRA and we are approving them.

2. *Subsidence Damage Agreements.* Section 9–16–91(f) of ASMCRA provides for subsidence damage agreements between surface owners and mineral owners or lessees, and further contains a sentence that reads as follows:

> * * * However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents (other than such subsidence damage agreements) which leave the owner without such prescribed remedies * * *

The reference to subsidence damage agreements in the above quoted sentence would be inconsistent with and less stringent than SMCRA if interpreted to allow a surface landowner and mineral owner or lessee to enter into subsidence damage agreements that diminish or waive the surface landowner's right to the remedies prescribed in section 9–16-91 of ASMCRA. This is because sections 515(b)(2) and 516(b)(1) of SMCRA, as well as the implementing Federal regulations at 30 CFR 817.121(c)(1), establish that a permittee has a duty under SMCRA to maintain the value and reasonably foreseeable use of the surface land and to restore all land which is materially damaged by subsidence. Also, section 720(a)(1) of SMCRA and the implementing Federal regulations at 30 CFR 817.121(c)(2) provide that a permittee has a duty to repair or compensate for material damage to non-commercial buildings and occupied residential dwellings. Finally, section 720(a)(2) of SMCRA and its implementing Federal regulation at 30 CFR 817.41(j) provide that a permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities. Nothing can exempt a permittee from any one of these duties.

We stated in a June 1, 1983, **Federal Register** (48 FR 24644) final rule that ''the duty to restore land materially damaged by subsidence will apply irrespective of the operator's liability under State law.'' In addition, in a March 31, 1995, **Federal Register** (62 FR 16735) final rule, we stated, ''[a]ny permittee/owner agreements cannot negate the requirement of the Energy Policy Act to repair or compensate for subsidence-related material damage to occupied residential dwellings and related structures as well as non-commercial buildings.''

Further, in the March 31, 1995, **Federal Register** (62 FR 16733) final rule, we stated that ''the terms of the Energy Policy Act unequivocally require replacement'' of water supplies adversely affected by underground mining operations. In other words, surface landowners and mineral owners or lessees may enter into private subsidence damage agreements, but these agreements cannot diminish or waive the surface landowner's right to the remedies prescribed in section 9–16–91 of ASMCRA. To do so would be inconsistent with and less stringent than sections 515(b)(2), 516(b)(1), and 720(a) of SMCRA and its implementing Federal regulations at 30 CFR 817.121(c)(1) and (2) and 817.41(j).

In its letter dated February 15, 2000 (Administrative Record No. AL–0629), Alabama responded to our concerns about the subsidence damage agreements provision in 9–16–91(f) of ASMCRA. The State asserted that the United States Court of Appeals for the District of Columbia had addressed the validity of subsidence damage agreements in its ruling in the case of *National Mining Association (NMA)* v. *Babbit*, No. 98–5320, decided April 27, 1999. Alabama interpreted the court's decision as saying that while a coal operator has an obligation to make full repair or compensation, the affected parties may agree among themselves as to what constitutes full repair or compensation.

In ruling on this issue, the court clearly confirmed OSM's longstanding policy that waiver agreements between surface landowners and underground coal operators cannot diminish or waive the surface landowner's right to full compensation for subsidence related damages to protected structures and water supplies.

We agree with Alabama's interpretation of the court's opinion that a mineral owner or lessee and a surface landowner may execute a pre-subsidence damage agreement in which they agree as to what constitutes full repair or compensation with the stipulation that such agreements do not constitute a waiver of the surface landowner's rights under the Energy Policy Act.

In addition, in a letter dated May 3, 2000 (Administrative Record No. AL–0634), Alabama stated that it recognizes that the Energy Policy Act mandates full compensation or repair for subsidence damage to protected structures and the prompt replacement of water for subsidence damage to protected water supplies. Alabama stated that it does not interpret section 9–16–91(f) to mean that a subsidence damage agreement can negate a surface owner's right to full and fair compensation or repair for subsidence damage to protected structures or replacement of water for subsidence damage to protected water supplies as provided for by the Alabama statutory equivalent to the Energy Policy Act requirements. Alabama further stated that it would take appropriate enforcement action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damage to protected water supplies.

Therefore, based on (1) Alabama's interpretation that the provisions of section 9–16–91(f) allow subsidence damage agreements only insofar as those agreements are consistent with the Energy Policy Act and do not purport to diminish or waive the surface landowner's right to full compensation for subsidence related damages to protected structures and water supplies and (2) Alabama's assurance that it will take appropriate action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damages to protected water supplies, we are approving section 9–16–91(f) of ASMCRA because it is no less stringent than SMCRA.

IV. Summary and Disposition of Comments

Federal Agency Comments

On August 25, 1999, we asked for comments from various Federal agencies who may have an interest in the Alabama amendment (Administrative Record No. AL–0590). We requested comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. We did not receive any comments.

Environmental Protection Agency (EPA)

According to 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the proposed program

amendment that relate to air or water quality standards put into force under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

According to 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA in a letter dated August 25, 1999 (Administrative Record No. AL–0590). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

According to 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 25, 1999, we requested comments on Alabama's proposed program amendment (Administrative Record No. AL–0590), but neither responded to our request.

Public Comments

We received comments on Alabama's proposed amendment from fourteen individuals and twelve representatives of various groups. The comments consisted of both supporting and opposing statements about the amendment in general, as well as supporting and opposing statements about the specific provisions of the amendment. Further, several of these comments pertained to the impact of SMCRA on Alabama common law. Therefore, for ease of discussion, we will first discuss the comments pertaining to the impact of SMCRA on Alabama common law. Then, we will discuss general comments in favor of Alabama's amendment and general comments opposing Alabama's amendment. Finally, we will discuss comments on specific provisions of the amendment.

A. Comments Pertaining to the Impact of SMCRA on Alabama Common Law

We received several comments, both opposing and supporting the Alabama amendment, that pertained to the impact of SMCRA on Alabama common law. As commenters have informed us, Alabama's common law gives a surface owner an absolute right to subjacent support of the surface absent an express waiver of that right. See *Williams* v. *Gibson,* 4 So. 350 (Ala.1888), *West Pratt Coal Co.* v. *Dorman,* 49 So. 849 (Ala.1909), *Bibby* v. *Bunch,* 58 So. 916 (Ala.1912), and *Alabama Clay Products Co.* v. *Black,* 110 So.151 (Ala.1926). The commenters, however, disagree on the impact that the enactment of SMCRA, including the Energy Policy Act, has on the respective rights of surface owners and the holders of mineral interests.

Citing section 505(a) of SMCRA, supporters of Alabama's amendment argue that the enactment of section 516 of SMCRA and the Alabama counterpart at section 9–16–91 of ASMCRA have preempted the state law pertaining to subjacent support. According to these commenters the state property law is inconsistent with SMCRA since it provides for land use and environmental controls and regulations that are different from those required by SMCRA.

Opponents, on the other hand, argue that the enactment of SMCRA did not impact Alabama's common law. They argue that common law provides more stringent land use and environmental controls and regulations than do the provisions of SMCRA or its implementing regulations. Accordingly, as section 505(b) of SMCRA states, any State law that provides for more stringent land use and environmental controls can not be construed to be inconsistent with SMCRA.

Response: We think that the use of section 505 of SMCRA, whether it be subsection 505(a) or 505(b), to resolve this debate over whether SMCRA preempts the common law of Alabama, however, is inappropriate. Section 505 of SMCRA applies to State laws that directly address matters covered under SMCRA—such as environmental protection standards, reclamation standards, and the like. Section 505(a) was not intended to invalidate as ''inconsistent'' with SMCRA State common law of property rights which affords protection to surface owners by establishing the property right of the subjacent support.

Generally, preemption analysis is informed by two basic presumptions: (1) that historic police powers of the States are not superseded by the Federal act unless that was the clear and manifest purpose of Congress, and (2) the purpose of Congress is the ultimate touchstone in every preemption case. *Cipollone* v. *Liggett Group, Inc.,* 505 U.S. 504, 516 (1992). Congress' intent is primarily discerned from the statutory text and from a ''fair understanding'' of the statute as a whole by looking at the statutory framework, the structure and purpose of the statute and the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law. *Medtronic* v. *Lohr,* 518 U.S. 470, 485 (1996).

The text and history of SMCRA reveal no ''clear and manifest'' congressional intent to modify the State common law pertaining to subjacent support. To the contrary, it is an express purpose of SMCRA to establish uniform national standards that will ''fully protect the rights of the nation's surface landowners.'' 30 U.S.C. 1202 (b). It would hardly protect the rights of surface landowners for SMCRA to be interpreted as extinguishing their property right of subjacent support in exchange for more limited protection under SMCRA. Congress expressly indicated, moreover, that the respective property rights of the mineral interest holder and the surface owner are matters beyond the scope of SMCRA. Two separate sections of SMCRA state that SMCRA does not authorize a regulatory authority to resolve property rights disputes. Section 507(b)(9) of SMCRA provides in pertinent part:

> Provided, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes;

30 U.S.C. 1257(b)(9). Section 510(b)(6)(C) of SMCRA contains an almost identical proviso:

> Provided, That nothing in this Act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

30 U.S.C. 1260(b)(6)(C). The legislative history of SMCRA indicates that the proper forum for resolving property rights disputes is the State courts and that it is the State common law that delineates the extent and scope of property rights. See H.R. Conf. Rep. No. 95–493, at 105,106 (1977). Consequently, contrary to the fears of at least one commenter, SMCRA does not authorize the regulatory authority to make a permitting decision that adjudicates a property rights dispute so as to augment the property rights of the mineral interest holder at the expense of the surface owner. See *Citizens Organized Against Longwalling* v. *Division of Reclamation,* 535 N.E.2d 687, 699–700 (Ohio App. 1987) where the Ohio court held that a permit obtained by a coal mine operator to continue longwall mining would not resolve property disputes between the operator and the owners of surface estates, and would not immunize the operator from liability for damages caused by mining pursuant to the permit. If, under Alabama's common law, a particular surface owner in fact possesses the absolute right to subjacent support of the surface absent an express waiver, SMCRA does not authorize a

decision by the regulatory authority to extinguish that right.

B. General Comments in Favor of Alabama's Amendment

We received comments in favor of Alabama's amendment from five representatives of various coal companies, the Alabama Coal Association, and the State of Alabama Surface Mining Commission (ASMC). All the comments assert that we should approve Alabama's amendment because it is consistent with, and no less stringent than, SMCRA and the existing Alabama program. The comments are discussed below.

1. Several commenters assert that the proposed amendment reflects the Alabama Legislature's intent to modify state law, a power which is entirely within their discretion. Because this is a state matter, the amendment does not run afoul of any federal regulatory purpose. The proposed amendment deals only with a surface owner's right to recover punitive damages in state court, and as such, is entirely a State law matter.

Response: We agree that the amendment reflects the Alabama Legislature's intent to modify state law. However, we disagree that the amendment only deals with a surface owner's right to recover punitive damages in state court. The amendment concerns the repair or compensation to any occupied residential dwelling and related structures or any noncommercial building for material damage caused by subsidence resulting from underground coal mining operations. It also concerns the replacement of protected water supplies that are adversely affected by underground coal mining operations. Both of these issues are addressed in section 720(a) of SMCRA. We are approving Alabama's amendment because it is either no less stringent than SMCRA or is not inconsistent with SMCRA. Please refer to III. Director's Findings.

2. Commenters also believe that the proposed amendment does not give an unfair advantage to Alabama coal mining companies or impose an unfair burden on Alabama landowners. They state that the amendment ''fairly balances the legal interests of surface landowners with Alabama's and the Nation's need for coal as an essential source of energy.'' This balance, the commenters point out, is exactly what SMCRA was designed to provide.

Response: In order to approve amendments to State program statutes, we must ensure that the amendments are consistent with and no less stringent than SMCRA or are not inconsistent with it. We believe that Alabama's amendment meets these criteria and we are approving it. Please refer to III. Director's Findings.

3. One commenter asserts that if the proposed amendment is not approved, the underground mining industry in Alabama will shut down. He writes, ''[d]eath of an industry was not the purpose of the carefully crafted federal and state programs now in place.''

Response: We agree that the demise of the underground mining industry in Alabama or any other State was not the purpose of the federal and state programs. Indeed, section 102(k) of SMCRA encourages the full use of coal resources through the development and application of underground extraction technologies. Therefore, we carefully review state statute amendments in light of SMCRA, including section 102(k), to ensure that they are consistent with and are no less stringent than SMCRA or are not inconsistent with it.

4. Several commenters allege that before the enactment of SMCRA and Alabama's counterpart to SMCRA, Alabama common law provided that coal mine operators could not subside the land unless they had the express permission of the surface owners. They state that the enactment of section 516 of SMCRA and the Alabama counterpart at section 9–16–91 of ASMCRA changed the applicability of Alabama's common law. They contend that the Federal and State Acts now allow coal mine operators to subside the land without the express consent of the surface owners, and provide specific remedies for correcting any damages that might result from such subsidence. The existing common law provision, they explain, is therefore inconsistent with SMCRA and the Alabama counterpart to SMCRA. The commenters further explain that section 505(a) of SMCRA states that SMCRA supercedes any state law that is inconsistent with its provisions. Therefore, the commenters maintain that Alabama's common law is superceded by SMCRA and Alabama's counterpart to SMCRA. The current proposed changes to Alabama's program merely ''eliminates the application of inconsistent and contrary State law'' which SMCRA specifically prohibits in the first place.

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.*

5. Some commenters point out that the proposed amendment does not seek to lessen the federal requirements. They maintain that it ''does not alter in any way a surface owner's right, or a coal company's obligation, to 'repair or compensation' for damages caused by subsidence.''

Response: We agree that Alabama's proposed revisions and additions at section 9–16–91(e) of ASMCRA do not affect a surface owner's right or a coal company's obligation to repair or compensation for damages caused by subsidence. Please refer to III. Director's Findings A. through C. Neither does section 9–16–91(f) of ASMCRA that pertains to the remedies for subsidence damage affect a surface owner's right or a coal company's obligation to repair or compensation for damages caused by subsidence in light of Alabama's statement in its letter dated May 3, 2000, that it will take appropriate enforcement action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damage to protected water supplies. Please refer to III. Director's Findings D.

6. Finally, many commenters argue that the amendment merely clarifies what is implicit in both the state and federal regulatory schemes—that the remedies for damages caused by subsidence outlined in section 9–16–91 of ASMCRA are the ''only'' remedies available to surface owners. One commenter wrote, ''The amendment simply makes clear that the 'repair or compensation' remedy available to surface owners for subsidence related damages is generally exclusive.'' The amendment clarifies that a surface owner cannot seek punitive damages in state court for subsidence related damage if the mining company is in substantial compliance with its mining permit. The remedy for the surface owner is the repair or compensation provisions of SMCRA.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). SMCRA provides minimum standards for repair and compensation of subsidence related damage to protected structures and for replacement of protected water supplies. States must, at the very least, adopt these minimum standards. Any remedies available under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those available remedies that exceed those found in SMCRA without

violating SMCRA. As discussed in III. Director's Findings, Alabama's program provides these minimum standards.

C. General Comments Opposing Alabama's Amendment

We received comments from fourteen individuals, two attorneys representing surface landowners, and representatives from five organizations (the Alabama Farmers Federation, WildLaw, the Alabama Environmental Council, Friends of Hurricane Creek, and the Citizen's Coal Council). These individuals and groups oppose Alabama's amendment and assert that we should disapprove it because it is inconsistent with and less stringent than SMCRA and the existing Alabama program. The comments are discussed below.

1. Many commenters contend that the amendment is unconstitutional because it: (1) Deprives property owners of their property without due process; (2) is an ex post facto law; (3) does not distinguish between the two types of surface rights ownership in Alabama: surface rights that require surface support and surface rights where mineral release is a statement on the deed; (4) gives coal companies the right of eminent domain; (5) gives coal companies the private right of condemnation; (6) prevents property owners from suing; (7) prevents any relief from the violation of their surface rights; (8) is an unconstitutional interference with contracts; and (9) is an unconstitutional redrafting of the common law.

Response: We found that we can approve the amendment. Please refer to III. Director's Findings. Also, in approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The constitutionality of changes to State law cannot be determined by OSM, but must be addressed by the institutions of the State with the authority to determine such issues.

2. One commenter asserts that if unlimited power of destruction is given to the coal companies, then it must also be given to any other big company that wants it. There will be no end to it. He writes, ''Act 99–593 could be the most devastating act ever introduced and passed through legislature, and if approved, would no doubt be the greatest threat to landownership ever recorded in history.''

Response: In section 102 of SMCRA, two of the purposes of SMCRA are to assure that: (1) The rights of surface landowners and other persons with a legal interest in the land or its related appurtenances are fully protected from the adverse effects of coal mining operations and (2) the coal supply essential to the Nation's energy requirements and its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy. Therefore, we carefully review state statute amendments in light of SMCRA to ensure that they are consistent with and are no less stringent than SMCRA or are not inconsistent with SMCRA. Please refer to III. Director's Findings.

3. Commenters also contend that the amendment would exempt coal companies from having to pay penalties and compensatory damages for subsidence on land, or prevent compensation in the full amount of the diminution in value resulting from subsidence. One commenter states that the amendment allows coal companies to set their own standards as to what constitutes repair to a house or structure.

Response: We disagree that the amendment prevents compensation in the full amount of the diminution in value resulting from subsidence or allows coal companies to set their own standards as to what constitutes repair to a house or structure. As stated in III. Director's Findings, Alabama's proposed revisions to sections 9–16–91(e)(1), (e)(3), (e)(4), and (f) of ASMCRA which pertain to the repair and compensation for material damage to protected structures and water supplies caused by subsidence and subsidence damage agreements are no less stringent than or are not inconsistent with SMCRA. To the extent that the amendment affects Alabama law concerning penalties for subsidence on land, other than repair, compensation, or replacement required by SMCRA sections 515(b)(2), 516(b)(1), and 720(a), such penalties are beyond the scope of SMCRA. Also, please refer to IV. Summary and Disposition of Comments *Public Comments* B.5. and B.6.

4. Another commenter expressed a concern about the lack of balance in this law. He writes, ''Under normal punitive damage laws, it is normal that if you take from one group, you give something to the other group. This law does not allow for that.''

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* C.2. and C.3.

5. One commenter asserts that the amendment is inconsistent with the basic premise of SMCRA, which is to regulate. He writes, ''The changes proposed by the Act do nothing to regulate or to control [the coal] industry. Instead, the Act takes one activity of the industry—which is not currently controlled by the regulatory authority because of the interpretation and enforcement of SMCRA—and removes all other restraint on that activity. The sole purpose of this change is to give underground coal operators the right to lawfully subside property without purchasing that right from the surface owner. It turns a regulatory act into an enabling act.''

Response: Although one of the premises of SMCRA involves regulating coal mining operations, other premises exist. Section 102(b) of SMCRA involves fully protecting the rights of surface landowners and other persons with a legal interest in the land or its related appurtenances from the adverse effects of coal mining operations. It is our responsibility when reviewing and approving amendments to State program statutes to make sure that the amendments are no less stringent than or are not inconsistent with SMCRA. We found that Alabama's proposed amendments in sections 9–16–91(e) and (f) of ASMCRA that pertain to the repair and compensation for material damage to protected structures and water supplies and subsidence damage agreements meet this requirement. Please refer to III. Director's Findings.

6. One commenter argues that the amendment is inconsistent with the Energy Policy Act of 1992 which added US Code section 1309(a) to SMCRA. The Energy Policy Act created federal substantive rights that extend beyond the protections afforded by inconsistent or less protective state laws. Accordingly, ''[s]ection 1309(a) rights are remedial—not preventative—and were intended to serve as additional rights—not replacement rights.'' The commenter argues that the proposed amendment attempts to interpret section 1309(a) of SMCRA to preempt all rights and remedies a surface owner has that are not expressly provided by SMCRA. Clearly, this is inconsistent with the purposes of SMCRA as amended by the Energy Policy Act.

Response: The purpose of section 720(a), which was added to SMCRA by the Energy Policy Act, is to establish minimum standards for the repair of or compensation for material damage to protected structures and water supplies caused by subsidence. Remedies under State law which exceed these standards are unaffected by SMCRA. As stated in III. Director's Findings D.1., Alabama provides the minimum standards for

repair or compensation. Therefore, we are approving this provision of Alabama's amendment.

In response to questions concerning the impact of SMCRA on State laws, please refer to IV. Summary and Disposition of Comments *Public Comments* A.

7. One commenter also asserts that the amendment is inconsistent with the fundamental principle that SMCRA is a minimum standard that cannot preempt more stringent State laws. He argues that the only real protection a surface landowner in Alabama has from subsidence is found outside of SMCRA under the Alabama common law. This common law, which is more stringent than SMCRA, allows a surface owner an absolute right to support and full recovery of damages for subsidence. The commenter argues that since section 505(a) of SMCRA prohibits the Federal Act from superceding any more stringent State law, Alabama's counterpart to SMCRA cannot supercede any more stringent State law. Therefore, the proposed amendment, which would supercede Alabama common law, makes Alabama's Act less stringent than SMCRA.

Response: We have addressed the impact of SMCRA on State laws in IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.* The changes to State law contained in section 9–16-91 of ASMCRA and enacted by the Alabama legislature do not conflict with the requirements of SMCRA. In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). We found that Alabama's proposed amendments in sections 9–16–91(e) and (f) of ASMCRA that pertain to the repair and compensation for material damage to protected structures and water supplies and subsidence damage agreements meet this requirement. Please refer to III. Director's Findings.

8. Two commenters contend that the intention of SMCRA, demonstrated at 30 U.S.C. 1255, 1270(e) and (f), 1271(d), and Public Law 102–486, Title XXV, § 2504(a)(2), was to leave in place all common, property, contract, and tort laws.

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State law.

9. Commenters contend that the amendment gives the Alabama regulatory authority the right to adjudicate property disputes, which is specifically prohibited in both federal and state law. One commenter writes, ''If the changes are approved, the [regulatory authority] will have the power to renegotiate deeds that are eighty years old in favor of the mineral owner merely by the grant of a permit to the operator.'' Since ASMC does not engage in any determination of whether an applicant has a right to subside in considering whether or not to grant a mining permit, it will allow the operator to decide unilaterally that the surface owner is not entitled to support of the surface. In effect, ASMC will have the jurisdiction to adjudicate title disputes without a hearing, without input from the surface owner, and will strip that surface owner of his right to be heard and strip his right to a jury.

Response: We disagree that this amendment gives the Alabama regulatory authority the right to adjudicate property disputes by the mere issuance of a mining permit. Nothing in the amendment addresses adjudication of property disputes. Further, the issuance of a permit does not automatically settle property disputes. Such disputes can be settled only in accordance with the appropriate State law. Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State laws.

10. One commenter suggests that if the proposed changes are accepted to any degree, it should be made clear that the changes apply only to those who have already waived their surface support right and not to those who have not waived it.

Response: Again, property rights issues are not addressed in SMCRA. Property rights are the topic of Alabama law. Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State laws.

11. Opponents contend that the proposed amendment is inconsistent with sections 101, 102, and 520(e) of SMCRA.

Response: We did not find that the above referenced sections of SMCRA were affected by changes to section 9–16–91 of ASMCRA. Therefore, we did not find that Alabama's amendment was inconsistent with or less stringent than any of the above referenced sections. Please refer to III. Director's Findings.

D. Comments on Specific Provisions of Alabama's Amendment

1. *Section 9–16–91(e)(1).* We received comments from three people on this section of Alabama's amendment. The first commenter stated that the provision in this section is fully consistent with the Energy Policy Act of 1992. Another commenter asserted that subparagraph (e)(1) merely makes modest amendments to language in the paragraph and does not make any substantive changes. Because the provision was previously approved by OSM as no less stringent than SMCRA, it should be approved in this instance. However, a third commenter questioned why Alabama is making changes in the language that was substantively identical to the language at the Federal counterpart if there are no changes to the substance of this provision.

Response: As stated in III. Director's Findings A., Alabama's revision at section 9–16-91(e)(1) involves minor wording changes to a previously approved statute, that do not change its meaning. Therefore, we are approving the revision because it is no less stringent than the Federal statute at section 720(a)(1) of SMCRA.

2. *Section 9–16–91(e)(3).* We received comments from two people on this section of Alabama's amendment. The first commenter stated that the provision extends a state legislative mandate to the existing requirement at section 880–X–10D–.58 of Alabama's surface mining regulations. Similarly, the second commenter contended that subparagraph (e)(3) is a necessary addition to the State program to make it compliant with the Federal regulation at 30 CFR 817.121(c)(1).

Response: As stated in III. Director's Findings B., we do not have a counterpart Federal provision in SMCRA for Alabama's section 9–16–91(e)(3) of ASMCRA. However, the provision is consistent with certain requirements of section 516(b)(1) of SMCRA and the language is substantively identical to the Federal regulations at 30 CFR 817.121(c). We are approving the addition of this provision to Alabama's statutes because it is consistent with our Federal regulations and statutes and will not make the Alabama statutes less stringent than the Federal statutes.

3. *Section 9–16–91(e)(4).* We received comments from two people on this section of Alabama's amendment. The first commenter stated that this new section makes no change to existing State program requirements. The second

commenter contended that new subparagraph (e)(4), as required and consistent with 30 CFR 732.15(d), merely clarifies and established ASMC's authority to enforce the subsidence control requirements in section 9–16–91 of ASMCRA.

Response: As stated in III. Director's Findings C., we do not have a counterpart Federal statute in SMCRA for Alabama's statute addition at section 9–16–91(e)(4) of ASMCRA. However, Alabama's intent by adding this provision is to make it clear that it has the power to enforce the provision of section 9–16–91 of ASMCRA. We are approving this statute because it is not inconsistent with our Federal regulations or statutes and will not make the Alabama statutes less stringent than the Federal statutes.

4. *Section 9–16–91(f).* a. Supporting Comments. (1) Commenters contend that this particular provision represents an expression of the state legislative will in regards to the rights of the potentially aggrieved persons to seek and obtain particular remedies through the state civil justice system. Since the provision is in the nature of a civil damage limitation statute and has no direct bearing on the regulation of coal mining operations, review or approval by the Department of Interior should not be required in order for it to become law.

Response: We disagree with the assertion that Alabama's amendment does not require review or approval by the Department of the Interior. The provisions at 30 CFR 732.17(g) require States to submit any changes to their laws or regulations concerning their approved surface mining programs to the Director of OSM (Director) for review and approval. Further, no changes in a State's law or regulations concerning surface mining can take effect until such time as the Director approves them. Section 9–16–91(f) of ASMCRA is a revision to Alabama's Surface Mining Act. The revisions contained in section 9–16–91 of ASMCRA involve substantive changes to Alabama's surface mining regulatory program and, therefore, require our review and approval. We agree that certain aspects of the statute involve matters that are not covered by SMCRA. As discussed in III. Director's Findings D. we have approved changes to section 9–16–91(f) of ASMCRA because they are consistent with or do not conflict with provisions contained in SMCRA. While we have approved the changes, we made no judgment on changes that do not relate to or conflict with SMCRA.

(2) Commenters also assert that this provision does not impose any additional burdens or responsibilities on the State Regulatory Authority and does not undermine the requirements of the state and federal statutes that coal operators fully compensate or repair subsidence related damage to protected structures or water supplies. Since section 9–16–91 of ASMCRA does not limit, proscribe, eliminate, amend or otherwise alter performance standards or subsidence remedies established by SMCRA, it meets the requirements of 30 CFR 732.15(a) and (c), and is consistent with or no less stringent than SMCRA.

Response: We agree that Alabama's proposed revisions and additions at section 9–16–91(e) and (f) of ASMCRA do not affect a coal company's obligation to repair or compensate for damages caused by subsidence. Please refer to III. Director's Findings.

(3) Many commenters argue that because SMCRA does not explicitly provide any right to recover punitive damages as compensation for subsidence effects, it implicitly limits a surface owner's right to full compensation or repair for subsidence damage and nothing more. One commenter writes, ''[n]either SMCRA nor the regulations thereunder provide that operators of underground coal mines shall 'repair or compensate' and pay such additional damages as a jury may assess for punishment or otherwise.'' Thus, section 9–16–91(f) merely makes specific what was implied by SMCRA.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). SMCRA provides minimum standards for repair and compensation of subsidence related damage to protected structures and for replacement of protected water supplies. States must, at the very least, adopt these minimum standards. Any remedies available under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those available remedies that exceed those found in SMCRA without violating SMCRA. As discussed in III. Director's Findings, Alabama's program provides these minimum standards.

(4) Many commenters state that Alabama's common law is different from SMCRA because it requires a coal mine operator to get the express permission of the surface owner before subsiding the land. Supporters contend that SMCRA does not require this. One commenter points to a 1997 proposed rule published by OSM (62 FR 4864) as proof that SMCRA and the implementing regulations do not require coal mine operators to obtain the consent of surface owners to subside the land. The existing common law provision, therefore, is inconsistent with SMCRA and the Alabama counterpart. Section 505(a) of SMCRA states that SMCRA supercedes any state law that is inconsistent with its provisions. Therefore, the common law is superceded by SMCRA and Alabama's counterpart. The addition of this section just makes it clear that the common law is superceded.

Response: Please refer to our response to the comment at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.*

(5) One commenter states that a surface owner in Alabama should not be allowed to recover punitive damages for subsidence damage because Congress specifically encourages longwall mining.

Response: SMCRA does not specifically encourage longwall mining, but at section 102(k) ''encourages the full utilization of coal resources through the development and application of underground extraction technologies.'' Further, section 520(e) of SMCRA does not restrict the right that any person (or class of persons) may have under any State statute or common law to seek enforcement of any of the provisions of SMCRA and its implementing regulations or to seek any other relief available under State law. The limitation of additional damages as related to certain types of mining is a matter outside the scope of SMCRA.

(6) Finally, commenters contend that current Alabama common law is more stringent than SMCRA because it allows for the recovery of punitive damages. This is inconsistent with Alabama's surface mining law that states that its rules and regulations cannot be more stringent than the federal surface mining law.

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The stringency of an amendment compared to other State laws is not relevant to this amendment. Therefore, we cannot consider it in our decision making.

b. Opposing Comments. (1) Opponents question the constitutionality of this provision. One commenter states that ''[b]y restricting

punitive damages in the fashion proposed, the landowners'' constitutional rights are violated.'' Another commenter states that this section ''will not withstand constitutional challenges, either under Alabama's constitution or the federal constitution, because it is an unlawful taking of property, favors one class of citizens over another, and violates the landowner's right to a jury trial through its limitations on damages.''

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The constitutionality of an amendment is something that must be addressed by the institutions in the State with the authority to determine such issues.

(2) Several commenters argue that because SMCRA does not explicitly limit a surface owner's right to full compensation or repair for subsidence damage and nothing more, it implicitly allows surface owners to seek punitive damages as compensation for subsidence effects. Section 9–16–91(f) of ASMCRA narrows a surface owner's common law and remedial rights in direct contravention of this implicit congressional intent.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). Section 520(e) of SMCRA does not restrict the right that any person (or class of persons) may have under any State statute or common law to seek enforcement of any of the provisions of SMCRA and its implementing regulations or to seek any other relief under State law. The changes to State law in section 9–16–91 of ASMCRA as enacted by the Alabama legislature and as clarified by us and Alabama do not conflict with the requirements found in SMCRA. Please refer to III. Director's Findings.

(3) Several commenters also point out that SMCRA exists to regulate the mining industry, yet this provision does nothing to add to that regulation. Instead, it provides civil justice reform to allow the industry to violate surface owners' rights with impunity. Opponents contend that civil justice reform does not belong in a regulatory Act. One commenter writes, ''[l]et SMCRA regulate mining industry and let the surface owner's damages be governed by the substantive law of property, contracts, tort and damages.'' Another commenter stated that he was disturbed by the attempt to use SMCRA as a vehicle for tort reform in Alabama.

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). Section 720 of SMCRA provides minimum standards that underground coal operators must adhere to regarding the repair and compensation for subsidence damage to protected structures and replacement of water for subsidence damage to protected water supplies. In part, section 9–16–91(f) of ASMCRA pertains to the remedies for subsidence damage and subsidence damage agreements and does not conflict with SMCRA. We are approving these provisions because they are no less stringent than the corresponding provisions in SMCRA. Please refer to III. Director's Findings D.

(4) Some commenters acknowledge that this provision may not affect the day-to-day operation of ASMC, but believe it will have a great impact on ASMC's ability to control the mining industry because it removes all deterrents on subsidence. One commenter writes, ''The purpose of punitive damages is not to compensate for the injury suffered, but rather to punish the defendant for his conduct and to deter the defendant and others from engaging in the same conduct. If a coal mining company engages in activities that would subject it to punitive damages, then it deserves to be punished just like every other industry operating within Alabama. What will come of landowners rights if the only potential deterrent is removed?'' Another commenter states that this provision allows underground mining companies to intentionally take the domestic water supplies from the landowners and force the landowners into long and costly legal battles with little adverse economic consequences. A third commenter points out that this provision eliminates a mining company's liability for damage to personal property, damage to physical injury, or wrongful death or emotional distress.

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those remedies that exceed those found in SMCRA without violating SMCRA.

(5) Other commenters believe that while the provision will not inhibit the remedial requirements to repair or compensate for damages to structures, it will undermine the purpose of SMCRA—to fully protect the rights of surface landowners. One commenter writes, ''This approach of limiting remedies for actual damage suffered simply does not provide adequate protection for surface property owners.''

Response: Please refer to our response to comment number four (4) of this section.

(6) Some commenters state that this provision is especially unfair to those landowners that have the absolute right to support of their surface in its natural state. One commenter contends that section 9–16–91(f) does not provide adequate protection for those persons whose property has been damaged by underground mining operations and have not waived their rights to the support of their surface interests through appropriate contractual provisions. Another commenter writes, ''statutory remedies provided under a legislative act should not necessarily be the exclusive method used in determining the amount of recoverable damages in cases where the surface owner has not waived his or her right of support and where his property is, in fact, permanently and severely damaged.''

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit

only those remedies that exceed those found in SMCRA without violating SMCRA. In addition, sections 507(b)(9) and 510(b)(6)(C) of SMCRA clearly provide that nothing in SMCRA shall be construed to authorize the regulatory authority to adjudicate property rights or title disputes. Instead, matters concerning these issues are to be determined in accordance with State law. Changes in property rights or title disputes must be addressed by the institutions in the State with responsibilities for resolving such issues. Also, please refer to IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.*

(7) One commenter asserts that actual cost of repair of an existing structure does not always reflect the actual loss of value that the structure may have suffered as a result of undermining. He writes, ''The language of the Act in this provision would apparently lead to the especially bizarre result that no recovery at all would be available in situations where damage is particularly severe.'' Further, the commenter points out that the value of land typically includes not only the current use of the land, but also any potential future use. This provision would not allow these values to be taken into account when determining the loss in value of property as a result of subsidence. The commenter concludes that this provision is ''grossly unfair to the surface landowner and amounts to a serious deprivation of important property rights that have been traditionally and are otherwise presently protected by Alabama law.''

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those remedies that exceed those found in SMCRA without violating SMCRA.

(8) One commenter states that the limitation of punitive damages is not inappropriate as a general manner. However, in cases where fraud or misrepresentation has served as the basis for the permit, the ability of a surface owner to seek and obtain punitive damages should not be limited. The commenter believes that Alabama needs to clarify the language in this section to make it clear that punitive damages are limited only in cases where lawful activities are being undertaken.

Response: We believe that Alabama's amendment makes it clear that the provisions at section 9–16–91(f) only apply in cases where lawful activities are being undertaken. If the operator is found to have engaged in intentional, willful, or wanton conduct that is not in substantial compliance with a permit, the ability to seek additional damages is preserved. Please refer to III. Director's Findings D.1.

V. Director's Decision

Based on the above findings, we are approving the amendments to the Alabama program.

To implement this decision, we are amending the Federal regulations at 30 CFR part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards without undue delay. SMCRA requires consistency of State and Federal standards.

VI. 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 regulation.

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 pursuant to 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 that 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 by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

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 (NEPA) (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. Accordingly, this rule will ensure that existing requirements previously

promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

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: May 16, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

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

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
August 17, 1999	June 8, 2000	ASMCRA sections 9–16–91(e)(1), (e)(3), (e)(4); and (f)

[FR Doc. 00–14359 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–00–001]

RIN–2115–AE47

Drawbridge Operation Regulations; Pine River (Charlevoix), Michigan

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: On March 22, 2000, the Coast Guard published a direct final rule (65 FR 15238, CGD09–00–001) in the **Federal Register**. This direct final rule notified the public of the Coast Guard's intent to revise the operating regulations governing the U.S. Route 31 bridge, mile 0.3 over Pine River in Charlevoix, Michigan, to alleviate vehicular traffic congestion during the peak tourist season while still providing for the reasonable needs of navigation. The Coast Guard has not received any adverse comments or any notice of intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District (obr), at (216) 902–6084.

Dated: May 24, 2000.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 00–14154 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–137]

RIN 2115–AA97

Safety Zone: Fireworks Display, New York Harbor, Ellis Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on New York Harbor. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of New York Harbor.

DATES: This rule is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on June 28, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–137) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway, vessels may still transit through New York Harbor during the event, the zone is only in affect for 1½ hours and vessels can be given

permission to transit the zone except for about 45 minutes during this time. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit through New York Harbor during the event, the zone is only in affect for 1½ hours and vessels can be given permission to transit the zone except for about 45 minutes during this time. Vessel traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Vessels will still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of New York Harbor. This regulation establishes a safety zone in all waters of New York Harbor within a 180-yard radius of the fireworks barge in approximate position 40°41′40.3″N, 074°02′33.5″W (NAD 1983), about 235 yards south of Ellis Island. The safety zone is in effect from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on Wednesday, June 28, 2000. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of New York Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Additionally, vessels will still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through New York Harbor during the event, that vessels may still anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south, that vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 6″ mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–137 to read as follows:

§ 165.T01–137 Safety Zone: Fireworks Display, New York Harbor, Ellis Island.

(a) *Location.* The following area is a safety zone: All waters of New York Harbor within a 180-yard radius of the fireworks barge in approximate position 40°41'40.3'' N 074°02'33.5'' W (NAD 1983), about 235 yards south of Ellis Island.

(b) *Effective period.* This section is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on June 28, 2000. There is no rain date for this event.

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

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

Dated: May 30, 2000.

R.E. Bennis,

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

[FR Doc. 00–14508 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

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: Final rule.

SUMMARY: The Coast Guard is establishing 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: This rule is effective June 8, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–005) and are available for inspection or copying at Waterways Oversight Branch, room 204, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 26, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Coast Guard Activities New York Annual Fireworks Displays in the **Federal Register** (65 FR 24436). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: They are locally supported, annual events with minimal impact on the waterways, the zones are only in affect for 1½ hours and vessels can be given permission to transit the zones except for about 45 minutes during this time, the public was additionally notified of the NPRM via the First Coast Guard District Local Notice to Mariners Number 019, dated May 9, 2000. Additionally, vessel traffic can transit around the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek, vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the 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 annual displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and the display in Kingston, NY has been held in the same location for 10 years.

Background and Purpose

The Coast Guard is establishing 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 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.

The 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 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 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 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 safety zone closes a portion of southern Sandy Hook Bay and the Shrewsbury River Channel and will 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 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 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 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 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 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 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 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 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 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 will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone.

Elizabeth, New Jersey July 4th Fireworks, Arthur Kill

The city of Elizabeth sponsors this annual fireworks display. The 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 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 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 will not be precluded from mooring at or getting underway from any piers in the vicinity of the 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.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This 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 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 annual displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and the display in Kingston, NY has been held in the same location 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 will 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 will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the 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 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 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule will 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 will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit around the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the 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 will 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 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 unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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 rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five 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 amends 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. § 165.161 is revised 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: May 30, 2000.

R.E. Bennis,

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

[FR Doc. 00–14507 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN117–1a, FRL–6708–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving nine negative declarations submitted by the State of Indiana on November 8, 1999, and January 10, 2000. Each of these negative declarations concerns sources located in Lake and Porter Counties, which are classified as a severe nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory and permit files for Lake and Porter Counties and determined there are no sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: This rule is effective on August 7, 2000, unless EPA receives adverse written comments by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the negative declarations are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used we mean EPA.

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I. What Is the Background for This Action?

The Clean Air Act (Act), as amended in 1977, required States to adopt emission controls reflective of reasonably available control technology (RACT) for sources of VOC emissions in ozone nonattainment areas. Subsequently, EPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the State needed to adopt and implement and for which areas. In those areas where the State sought from EPA an extension of the attainment date under section 172(a)(2) of the Act to as late as December 31, 1987, the Act as amended in 1977 required RACT for all CTG sources and for all major VOC non-CTG sources. The 1977 amendments to the Act defined as major any VOC non-CTG source with a potential to emit 100 tons per year or more of VOC emissions. Indiana sought and received such an extension from EPA for Lake and Porter Counties.

Congress amended the Act in 1990. The 1990 amendments to the Act reduced the size definition of major source to 25 tons per year or more of VOC emissions for sources located in severe ozone nonattainment areas. Section 182(b)(2) of the Act, as amended, requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

Section 183 of the amended Act requires EPA to issue CTGs for 13 source categories by November 15, 1993. EPA published a CTG by this date for the following source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, EPA has not completed the CTGs for the remaining source categories. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document.

The EPA created a CTG document as appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183. Appendix E states that if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to

submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

II. What Are Negative Declarations and What Is Their Purpose?

The EPA does not require States to develop plans or regulations to control emissions from sources which are not located in the planning area. In order to determine whether this might be the case, the State may examine its emissions inventory before initiating the planning and regulation development process. If the State finds no subject sources, then the State may prepare and submit to EPA, a negative declaration stating there are no sources in the planning area which would be subject to the required rule, rather than a control plan for sources in a particular category. In addition to reviewing its emissions inventory, Indiana reviewed its permit files for sources with a potential to emit 25 tons or more of VOC annually located in Lake and Porter Counties.

III. What Types of Sources Are Covered by These Negative Declarations?

The State negative declarations addressed two CTG categories: Control of Volatile Organic Compound Emissions from Industrial Wastewater (EPA Document Number: EPA–453/D–93–056) and Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Facilities (EPA Document Number: EPA–453/R–97–004, December 1997). The State's negative declarations also includes two source categories addressed by the Alternative Control Document: [1] Surface Coating of Automotive/ Transportation and Business Machine Plastic Parts (EPA 4531R–94–017, February 1994 including page 4–3a as revised April 4, 1994). The State negative declarations also addressed five non-CTG source categories because the State must control VOC emissions from all sources with a potential to emit 25 tons or more of VOC annually located in Lake and Porter Counties. Indiana searched its inventory and determined that no sources with a potential to emit 25 tons or more of VOC per year were located in Lake and Porter Counties in the following five non-CTG source categories: industrial clean up solvents, offset lithography operations, and SOCMI batch processes, reactors and distillation units.

[1] Alternative Control Documents are prepared by EPA to provide information on emissions, controls, control options and costs which the State can use in developing rules based on RACT.

IV. If New Sources Are Constructed in Lake and Porter Counties, Will the VOC Emissions From These Source Categories Be Uncontrolled?

No, new major sources locating in a nonattainment area are subject to the more stringent emission control requirements of New Source Review under part D of the Clean Air Act.

V. EPA Rulemaking Action

EPA has examined the State's negative declarations regarding the lack of need for regulations controlling emissions from the source categories identified above and located in Lake and Porter Counties. EPA also examined the supporting evidence provided by the State. Based on these examinations, EPA agrees there are currently no major sources in the nine categories for which the State submitted negative declarations located in the Lake and Porter Counties severe ozone nonattainment area. As a result, EPA approves Indiana's negative declarations for these sources.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by July 10, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 7, 2000.

VI. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

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

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000 unless EPA receives adverse written comments by July 10, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (w) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(w) Negative declarations—Aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithography operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units categories. On November 8, 1999, and January 10, 2000, the State of Indiana certified to the satisfaction of the Environmental Protection Agency that no major sources categorized as part of the nine categories listed above and have a potential to emit 25 tons or more of volatile organic compounds annually are located in Lake or Porter Counties in northwest Indiana.

[FR Doc. 00–13841 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[IN112–1a, FRL–6708–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving nine negative declarations submitted by the State of Indiana on November 8, 1999. Each of these negative declarations concerns sources located in Clark and Floyd Counties, which are classified as a moderate nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory and permit files for Clark and Floyd Counties and determined that there are no sources with a potential to emit 100 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic printing, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: This rule is effective on August 7, 2000 unless EPA receives adverse written comments by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the negative declarations are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886-6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used we mean EPA.

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G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. What Is the Background for This Action?

The Clean Air Act (Act), as amended in 1977, required States to adopt emission controls reflective of reasonably available control technology (RACT) for sources of VOC emissions in ozone nonattainment areas. Subsequently, EPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the State needed to adopt and implement and for which areas. In those areas where the State sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, RACT was required for all CTG sources and for all major (100 tons per year or more of VOC emissions under the 1977 Act) non-CTG sources. Indiana sought and received such an extension from EPA for Clark and Floyd Counties.

When Congress amended the Act in 1999, it included section 182(b)(2) which required States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG— *i.e.,* a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

Section 183 of the 1990 Amendments required EPA to issue CTGs for 13 source categories by November 15, 1993. EPA published a CTG by this date for the following source categories: Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, EPA has not completed the CTGs for the remaining source categories. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document.

The EPA created a CTG document as appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183. Appendix E states that if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

II. What Are Negative Declarations and What Is Their Purpose?

The EPA does not require States to develop plans or regulations to control emissions from major sources which are not located in the planning area. In order to determine whether this might be the case, the State may examine its emissions inventory before initiating the planning and development process. If the State finds no subject sources, then it may prepare and submit to EPA, a negative declaration stating there are no sources in the planning area which would be subject to the required rule, rather than a control plan for sources in a particular category. In addition to reviewing its emissions inventory, Indiana reviewed its permit files for sources with a potential to emit 100 tons or more of VOC annually located in Clark and Floyd Counties.

III. What Types of Sources Are Covered by These Negative Declarations?

The State negative declarations addressed two CTG categories: Control of Volatile Organic Compound Emissions from Industrial Wastewater (EPA Document Number: EPA–453/D–93–056) and Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Facilities (EPA Document Number: EPA–453/R–97–004, December, 1997). The State's negative declarations also includes two source categories addressed by the Alternative Control Document [1]: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts (EPA 4531R–94–017, February 1994 including page 4–3a as revised April 4, 1994). The State negative declarations also addressed five non-CTG source categories because the State must control VOC emissions from all sources with a potential to emit 100 tons or more of VOC annually located in Clark and Floyd Counties. Indiana searched its inventory and determined that no sources with a potential to emit 100 tons or more of VOC per year were located in Clark and Floyd Counties in the following five non-CTG source categories: industrial clean up solvents, offset lithography operations, and SOCMI batch processes, reactors and distillation units.

[1] Alternative Control Documents are prepared by EPA to provide information on emissions, controls, control options and costs which the State can use in developing rules based on RACT.

IV. If New Sources Are Constructed in Clark and Floyd Counties, Will the VOC Emissions From These Source Categories Be Uncontrolled?

No, new major sources locating in a nonattainment area are subject to the more stringent emission control requirements of New source Review under part D of the Act.

V. EPA Rulemaking Action

EPA has examined the State's negative declarations regarding the lack of need for regulations controlling emissions from these source categories from sources located in Clark and Floyd Counties. EPA also examined the supporting evidence provided by the State. As a result, EPA approves Indiana's negative declarations for these sources.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by July 10, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 7, 2000.

VI. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

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

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000 unless EPA receives adverse written comments by July 10, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (v) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(v) Negative declarations—Aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithography operations, business plastics, automotive plastics, and synthetic organic chemical

manufacturing industries (SOCMI) batch processes, reactors and distillation units categories. On November 8, 1999, the State of Indiana certified to the satisfaction of the Environmental Protection Agency that no major sources categorized as part of the nine categories listed above and have a potential to emit 100 tons or more of volatile organic compounds annually are located in Clark or Floyd Counties in southeast Indiana, adjacent to Louisville, Kentucky.

[FR Doc. 00–13839 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA241–0238a; FRL–6709–1]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from metal parts coating operations. EPA is approving a local rule, Rule 330, Surface Coating of Metal Parts and Products, that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 7, 2000 without further notice, unless EPA receives adverse comments by July 10, 2000. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812; and,

Santa Barbara County Air Pollution Control District 26, Castilian Drive, Suite B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	330	Surface Coating of Metal Parts and Products	01/20/00	03/28/00

On May 19, 2000, EPA determined that this rule submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We published a limited approval and limited disapproval of Rule 330 and incorporated the rule into the SIP on December 3, 1998. The SBCAPCD adopted this version of Rule 330 on April 21, 1995. SBCAPCD has not submitted to EPA any versions of Rule 330 prior to the January 20, 2000 version we are acting on today.

C. What Is the Purpose of the Rule Revisions?

SBCAPCD's January 20, 2000 amendments to Rule 330 included these significant changes to its 1995 adopted version:

—The 200 gallon per year allowance for non-compliant coating use was lowered to 55 gallons per year (section B.1, Exemptions);

—Daily recordkeeping of non-compliant coating use is required (H.6, Requirements-Recordkeeping); and,

—Test methods for determining capture efficiency have been updated (section I.3–Test Methods).

SBCAPCD adopted these amendments primarily to address the deficiencies described in EPA's December 3, 1998 limited disapproval action. EPA's Technical Support Document (TSD) for this rulemaking has more information about these rule amendments.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 330 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the materials listed below.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and

Products,'' USEPA, June 1978, EPA–450/2–78–015.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. On December 3, 1998, EPA gave a limited approval and limited disapproval of Rule 330 identifying several deficiencies within the rule that required correction. The deficiencies identified within EPA's limited disapproval have been either corrected or addressed adequately by the SBCAPCD's January 20, 2000 amendments to Rule 330.

EPA's approval action will incorporate the revised Rule 330 into the federally approved SIP. Our approval action will stop the sanctions process and Federal Implementation Plan clock, which were started on December 3, 1998 when EPA published its limited disapproval action in the **Federal Register** (see 63 FR 66758.) EPA's TSD provides more information concerning our evaluation.

C. EPA Recommendations to Further Improve the Rule

Our TSD does not describe additional rule revisions recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted Rule 330 because we believe it fulfills all relevant requirements. We do not think anyone will object to this action, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted Rule 330. If we receive adverse comments by July 10, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on August 7, 2000. This final approval will incorporate SBCAPCD Rule 330 into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 23, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(277) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) New and amended regulations for the following APCDs were submitted on March 28, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(*1*) Rule 330, adopted on June 11, 1979 and amended on January 20, 2000.

* * * * *

[FR Doc. 00–14173 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI88–01–7319a; FRL–6706–3]

Approval and Promulgation of State Implementation Plans; Wisconsin; Site-Specific Revision for Uniroyal Engineered Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the volatile organic compound (VOC) control requirements for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this State Implementation Plan (SIP) revision on October 30, 1999 and revised it on February 17, 2000. Our approval of this revision makes federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal.

If we receive adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This ''direct final'' rule will be effective August 7, 2000, unless we receive adverse or critical comments by July 10, 2000. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Kathleen D'Agostino, at (312) 886–1767, before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

A. What Action is EPA Taking?
B. How Does this Action Change Pollution Control Requirements for Uniroyal?
C. Will this Action Adversely Impact Air Quality in the Area?
D. What is EPA's Final Determination?

A. What Action Is EPA Taking?

EPA is approving a revision to Wisconsin's SIP to relax VOC control requirements for Uniroyal.

B. How Does This Action Change Pollution Control Requirements for Uniroyal?

In the early 1980s Wisconsin adopted Reasonably Available Control Technology (RACT) regulations for the entire state. We approved these regulations and incorporated them into Wisconsin's SIP for ozone. Uniroyal manufactures vinyl coated fabrics and, under these rules, is subject to a limit of 3.8 pounds of VOC per gallon of coating, excluding water, for coatings used on vinyl coating lines.

Our approval of alternate control requirements for Uniroyal exempts the company from the 3.8 pounds of VOC per gallon of coating limit for its vinyl coating lines and requires the following:

1. At least 95% of all vinyl yardage requiring topcoats must be coated with waterborne topcoats on a monthly basis *or* if the 95% requirement is not met, an incinerator must control emissions to the level that would have been attained had the 95% requirement been met.

2. No more than 65,630 pounds of VOC may be released into the ambient air per month.

3. No more than 5,435 pounds of VOC may be released into the ambient air per day.

4. Specific records and monitoring data must be kept and compliance testing must be performed.

C. Will This Action Adversely Impact Air Quality in the Area?

Uniroyal is located in Dane County which is designated as attainment for ozone. The county is, and has been monitoring attainment of both the 1-hour and 8-hour ozone standards. Since 1987, Uniroyal has been operating under a State-approved variance which allows emissions equivalent to the emissions allowed under the SIP revision that we are approving with this action. Consequently, our approval of the alternate control requirements for

Uniroyal should not interfere with attainment or continued maintenance of the ozone standard.

D. What Is EPA'S Final Determination?

Based on the rationale set forth above and in EPA's Technical Support Document, we are approving a revision to the VOC control requirements for Uniroyal Engineered Products. Our approval of this revision makes federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal.

We are publishing this action without prior proposal, because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the State variance should adverse written comments be filed.

This action will be effective August 7, 2000 without further notice unless relevant adverse comments are received by July 10, 2000. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective August 7, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

E. Executive Order 12866

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

F. Executive Order 13045

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

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

G. Executive Order 13084

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

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

H. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. 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 will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would

constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

J. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

K. 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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

L. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 12, 2000.

Robert Springer,

Acting Regional Administrator, Region 5.

Accordingly, title 40 of CFR part 52, Subpart YY, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(100) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(100) On October 30, 1998, Wisconsin submitted a source-specific State Implementation Plan revision for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The State supplemented the original submittal with Consent Order Number AM–99–900 on February 17, 2000. This source-specific variance relaxes volatile organic compound reasonably available control technology requirements for Uniroyal.

(i) Incorporation by reference.

(A) Consent Order Number AM–99–900, issued by the Wisconsin Department of Natural Resources to Uniroyal Engineered Products on February 17, 2000.

[FR Doc. 00–14175 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ072–0085; FRL–6601–7]

Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the Tucson Air Planning Area (TAPA) to attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and to approve a maintenance plan that will insure that the area remains in attainment.

EFFECTIVE DATE: This action is effective on July 10, 2000.

ADDRESSES: Copies of the state submittal and other information are available for public inspection at EPA's Region IX office during normal business hours, 75 Hawthorne Street, San Francisco, CA 94105–3901.

The technical support document (TSD) and copies of other documents relevant to this action can be found in the docket for this proposal. The docket can be reviewed or copied during normal business hours at the following locations between 8:00 a.m. and 4:30 p.m. on weekdays. You may need to pay a fee for copying. Copies of the SIP submittal are also available for inspection at the following address: Pima County Department of Environmental Quality, 130 West Congress, Tucson, Arizona 85701, (520) 740–3340.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1159, email: kaplan.eleanor@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1997 Arizona submitted a request to redesignate the CO Tucson Air Planning Area (TAPA) nonattainment area to attainment for the NAAQS and for approval of a maintenance plan. EPA found that the TAPA met all the redesignation requirements specified in section 107(d)(3)(E) of the Clean Air Act (CAA) and also that the TAPA was eligible to use the Limited Maintenance Plan (LMP) option provided for in EPA guidance.[1] EPA therefore proposed approval of the request and the maintenance plan on July 22, 1998 (see 63 FR 39258) and provided for a 30-day public comment period.

For a full discussion of EPA's evaluation of the TAPA redesignation request and the maintenance plan, the reader is referred to the original EPA proposal (63 FR 39258, July 22, 1998) and to the Technical Support Document (TSD) accompanying that proposal notice which may be found in the docket on file at the addresses noted above.

EPA received one set of comments during the 30-day comment period provided under the original proposal. Those comments came from the Arizona Center for Law in the Public Interest (ACLPI) in a letter dated August 21, 1998. To respond to the public comments, EPA requested supplementary information from the Pima Association of Governments (PAG) relating to CO emissions projections for the area for the 10-year maintenance period extending through 2010. EPA received the information in a letter from PAG dated June 18, 1999. EPA is responding to ACLPI's comments in section II below. On December 17, 1999 (see 64 FR 70660) EPA reproposed to approve the TAPA redesignation request in order to provide the public with the opportunity to comment on the additional information provided by PAG and on additional issues that had arisen since the original proposal. EPA received no public comments during the 30-day public comment period provided under the reproposal.

II. Public Comment and EPA Responses

EPA has considered all of the comments received from ACLPI on the original proposal and is providing the following responses.

Comment: ACLPI expressed concern that one of the CAA's requirements for redesignation, namely that the improvement in air quality is due to permanent and enforceable reductions, would not be met by the TAPA following redesignation because several Arizona statutes, including the state's auto emission inspection and maintenance program, the oxygenated fuels program and other control measures defined Tucson as ''Area B'', a carbon monoxide nonattainment area. ACLPI expressed concern that the area, following redesignation, would no longer be subject to these control measures and said that under the circumstances EPA cannot conclude that the emission reductions from these programs are permanent and enforceable.

Response: The Arizona legislature has acted to amend various Arizona Statutes to expand the definition of Area B to include CO maintenance areas. On May 18, 1999 Arizona Governor Hull signed into law House Bill 2189 which amended Arizona statutes 41-796.01, 41–2121, 49–401.01, 49–402, 49–404, 49–454, 49–541 and 49–571 to ensure continued implementation of committed SIP control measures in maintenance areas.

All of these statutory amendments have been submitted as SIP revisions and EPA in this notice is approving those SIP revisions. On the basis of these statutory amendments, EPA believes that this comment has been adequately addressed.

Comment: ACLPI questioned whether the assumption in the LMP option that an area beginning the maintenance period at or below 85% of exceedance levels will continue to meet the standard for another ten years is applicable to the TAPA, given the growth that is projected for the area.

ACLPI also questioned the LMP guidance waiver of the CAA's requirement for a 10 year maintenance demonstration and also the fact that under a LMP an emissions budget may be treated as essentially not constraining for the length of the maintenance period. ACLPI made the following arguments:

- With regard to the LMP's waiver of the maintenance demonstration, the mere fact that air quality and CO emissions are at or below 85% of exceedance levels does not assure that they will not increase to above exceedance levels in less than 10 years.
- The fact that under the LMP there is no emissions budget test for conformity purposes flagrantly violates EPA's own conformity rules which explicitly apply the emission budget test to all maintenance areas. There is no exception for areas that are at or below 85% of exceedance levels and EPA cannot amend or repeal rules with a guidance document.
- There is no factual or scientific basis for presuming that a motor vehicle emissions budget will not be constraining in a limited maintenance area. The potential for emissions growth has nothing to do with existing CO levels, but is driven by factors such as growth in vehicle miles traveled (VMT), increases in vehicle trips and increased congestion. In the Tucson area, VMT is almost doubling every 20 years, and congestion is expected to significantly worsen. Continued application of conformity rules is vital to ensuring that transportation plans, programs and projects, and federal activities, are consistent with maintenance of CO standards.

Response: The additional information provided by PAG included projections extending to 2010 and 2020 for CO mobile source emissions, vehicle miles traveled (VMT) and population growth, as well as information on ambient air CO concentrations for the years 1990 through 1998. That information is contained in Tables 1 and 2 below. The full text of the PAG letter and details on the sources used for these projections are in the TSD accompanying the reproposal notice, which may be found in the docket for this document.

[1] Memorandum entitled ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'', from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina, October 6, 1995.

TABLE 1.—PAG PROJECTIONS FOR CO MOBILE EMISSIONS AND VMT

Year (Population)	CO Mobile Emissions (tpd)	VMT	Population
1990	444.8	15,491,995	666,880
1995	.....	17,915,850	766,172
1999 (2000)	325.8	20,243,419	854,329
2003 (2005)	325.1	22,873,378	943,795
2010	367.2	27,286,950	1,031,623
2020	428.7	32,760,981	1,206,244

TABLE 2.—AMBIENT AIR CONCENTRATIONS—1990–1998

Year	Ambient air concentration
1990	6.5
1991	5.7
1992	5.8
1993	6.0
1994	5.5
1995	5.9
1996	5.1
1997	4.4
1998	4.0

EPA has reviewed the additional information provided by PAG and, based on that data, has come to the following conclusions:

• Although there are projected increases in population and vehicle miles traveled (VMT), the data indicates that CO emissions will drop from 444.8 tons per day in 1990 to 367.2 in 2010, rising again to a projected 428.7 tons per day in 2020 which is still below 1990 levels. In summary, despite the projected growth in population and VMT, CO mobile source emissions in the TAPA will continue to decrease. The decrease in projected CO emissions can be attributed to existing control measures and the impacts of other programs that were not included in the Mobile model used by PAG in preparing these projections including the Pima Travel Reduction, Rideshare and Traffic Signal Coordination programs. In addition it may be anticipated that national mobile source control programs that will take effect in the future will play a role in reducing CO emissions from mobile sources.

• According to data contained in Table 2, the design value for the Tucson area for 1993–1995 was 6.0 or 67% of the NAAQs standard for CO. The design value is the second highest eight-hour concentration observed at any site in the area. The data also indicated that the design value for the years 1996 through 1998 dropped to 5.1 or 57% of CO NAAQS. EPA believes that these design values provide an ample margin of safety and time to take action in the event of a possible violation of the CO NAAQS in the future.

• EPA reviewed the projected CO mobile source emissions, VMT and population values and the corresponding design values for the years 1990 through 1999 and concluded that it would be reasonable to assume that the future relationship of these four elements would be comparable through 2010.

• The control measures contained in the TAPA maintenance plan are currently mandated by federal and state statutes and are permanent and enforceable. They include the Federal Motor Vehicle Control program, the State Inspection and Maintenance program and the State Oxyfuels program. The Arizona legislature has amended the statutes that had defined Tucson as a nonattainment area to ensure continued implementation of SIP control measures following redesignation to attainment. In addition, the Arizona legislature has amended the statutes pertaining to the State's Vehicle Emission and Inspection Program (VEIP) to assure continuation of the program through December 31, 2008. With regard to the VEIP sunset date of 2008, which is two years short of the ten-year maintenance period, in a letter to EPA dated August 23, 1998, the Arizona Department of Environmental Quality (ADEQ) states that Arizona Revised Statutes 41–2955 limits to ten years the existence of a program before it undergoes a sunset review and therefore the VEIP has been extended for the maximum time allowed under this statute, *i.e.*, ten years. The letter supplies a recent history of legislative changes to the VEIP, concluding that ''The VEIP has consistently received support for necessary program updates from the Legislature.'' EPA therefore believes that on the basis of this legislative history, it is reasonable to assume that the program will be extended when it expires in 2008. The full text of the letter from ADEQ is attached to the TSD accompanying the reproposal.

• The maintenance plan for the TAPA contains a pre-violation action level trigger which would set in motion a process designed to forestall a future violation of the CO NAAQS. Under the plan, a pre-violation action level would be reached when two verified 8-hour average concentrations in excess of 85% of the CO NAAQS occurred at any one monitor site in any CO season. When this criterion is reached, it would trigger field studies and technical evaluations and recommendations for implementation of contingency measures.

• With regard to the ACLPI's comments that: (1) The LMP policy flagrantly violates EPA's own conformity rules which explicitly apply the emission budget test to all maintenance areas; and (2) that the rule does not provide an exception for areas that are at or below 85% of exceedance levels, EPA's conformity policy has clearly provided for opportunities for a SIP to demonstrate that no budget is

needed (see Transportation Conformity Rule, 61 FR 36118, July 9, 1996, paragraph B, finalized on August 15, 1997, 62 FR 43780). This section addresses this question and mentions limited maintenance plans specifically. The policy states that areas must meet budgets that the SIP identifies, but if the SIP adequately justifies that no budget is necessary, then no regional emissions test is necessary.

Comment: ACLPI contends that under section 175(A)(a) of the CAA a maintenance plan must ''provide for'' and ''ensure'' maintenance for at least 10 years. ACLPI said that EPA's LMP is based on mere speculation and neither provides for, nor ensures, maintenance for ten years and is therefore contrary to the CAA.

Response: The LMP guidance provides the rationale for the policy. It states that ''EPA believes it is justifiable and appropriate to apply a different set of maintenance plan requirements to nonclassifiable CO nonattainment areas whose monitored air quality is equal to or less than 85% of exceedance levels of the CO NAAQs. The EPA does not believe that the full maintenance plan requirements need be applied to these areas because they have achieved air quality levels well below the standard without the application of control measures required by the Act for moderate and serious nonattainment areas. Also, these areas do not have either a recent history of monitored violations of the CO NAAQS or a long prior history of monitored air quality problems. EPA believes that the continued applicability of prevention of significant deterioration (PSD) requirements, any control measures already in the SIP, and Federal measures (such as the Federal motor vehicle control program) should provide adequate assurance of maintenance for these areas.''

EPA therefore believes that the LMP guidance considered the requirements of 175(A)(a) of the CAA, and interpreted those requirements in a manner consistent with the Act.

Comment: ACLPI expressed concern over the lack of clear commitments to address actual violations of the CO standards. According to ACLPI, the plan notes that state law gives ADEQ the option of reducing fuel volatility levels and raising fuel oxygen content, but there is no clear commitment from the state to take either of these steps if a violation occurs. The plan also lists various potential control measures that might be adopted to address future CO violations, but does not commit to any of them.

ACLPI asked EPA to seek clarification from the state and PAG that they are committed to adopt whatever additional controls are necessary to correct an actual violation, and to implement such controls by the start of the next CO season after the violation occurs. ACLPI claimed that without such clarification the plan will not satisfy the requirements of section 175A(d) to assure that any CO violation will be promptly corrected.

Response: As requested, EPA sought clarification from PAG as to whether they are committed to adopt whatever additional controls are necessary to correct an actual violation of the CO NAAQS, and to implement such controls by the start of the next CO season after the violation occurs. The following is a summary of the points made in the PAG response, dated November 19, 1998. The full text is contained in the TSD accompanying the reproposal notice.

- The TAPA CO LMP was designed to set evaluation triggers at a point where any violation of the CO NAAQS could be anticipated at least 5 years ahead of time. This would give enough time to fully evaluate the risk of violation and the best control measures to address any projected violations of the standard.
- The TAPA CO LMP provides that in the event of an exceedance (which must always precede a violation) the evaluation and implementation process described in the Plan will be triggered. The most likely control measure for immediate response is high oxygen requirement in the oxyfuels program that can be implemented no later than the following CO season.
- The TAPA plan provides that if the PAG finding indicates a probable violation of the CO NAAQS within 5 years, the recommended control measures to fully mitigate the projected violation must be initiated by the start of the next CO season after the violation occurs. EPA believes that the clarification of this issue provided by PAG is an adequate response to the ACLPI comment.

In summary, EPA considered the population growth and CO emissions projections provided by the PAG and the summary of the area's design values over the past few years and believes that the data, in conjunction with the pre-violation action triggers and the contingency measures provided for in the TAPA maintenance plan, provide reasonable assurance that the area will not violate the CO NAAQS during the maintenance period. EPA is therefore taking final action to approve the redesignation of the TAPA to attainment for the CO NAAQS and for approval of the maintenance plan on the grounds that the area meets the requirements for redesignation specified under the Clean Air Act, and that the TAPA is qualified to utilize the LMP option.

III. Summary of Final Actions

In this action EPA is approving the following SIP revisions relating to changes that were made in various Arizona statutes:

Amendments to A.R.S. 41–2083, 41–2122 and 41–2125 relating to the State's oxyfuels program in the Tucson area both as SIP revisions and as control measures in the maintenance plan to be implemented in the event of a probable or actual violation of the CO NAAQS in the TAPA. The SIP revision for these statutory amendments were submitted to EPA as part of the TAPA maintenance plan on October 6, 1997 and were found complete by operation of law on April 6, 1998.

Amendments to A.R.S. 49–401 and 49–406 which expand the authority of State and local certified metropolitan planning organizations to develop plans and to implement and enforce control measures for attainment as well as maintenance areas as required by section 110(a)(2)(E) of the CAA. Previous to those statutory amendments, those statutes referred only to nonattainment areas. These amendments were signed into law on May 29, 1998. They were submitted as a SIP revision on August 20, 1998 and were found complete by operation of law on February 20, 1999.

Amendments to A.R.S. 41–796.01, 41–2121, 49–401.01, 49–402, 49–404, 49–454, 49–541 and 49–571 revised the definition of the TAPA nonattainment area'' to reflect continued application of all pertinent control measures in the TAPA following redesignation to attainment. Prior to these amendments, these statutes referred to the TAPA as Area B, a ''carbon monoxide nonattainment area''. These amendments were signed into law on May 18, 1999. SIP revisions containing these statutory amendments were submitted to EPA on September 1, 1999 and were found to be complete on October 20, 1999.

Amendments to A.R.S. 41–3009.01, 49–541.01, 49–542, 49–545, 49–557, 49–573, 41–803, and 41–401.01 which were signed into law on May 18, 1999 relate to the continued implementation of the State's Vehicle Emissions Inspection Program (VEIP) through December 31, 2008. The SIP revisions containing these statutory amendments were submitted to EPA on September 1, 1999 and were found to be complete on October 20, 1999.

EPA is approving the Emissions Inventory for the base year 1994 contained in the LMP as meeting the requirements of section 172(c)(3) of the CAA.

EPA is approving the TAPA CO maintenance plan because it meets the requirements set forth in section 175A of the CAA and the requirements of the LMP option contained in EPA guidance of October 6, 1995.

EPA is taking final action to remove the Agency's disapprovals (56 FR 5459, February 11, 1991) of the attainment demonstration and contingency measures that were contained in the 1988 Arizona CO SIP revision for Pima County. Those disapprovals were based on the finding of the Ninth Circuit Court of Appeals on March 1, 1990 in *Delaney* vs. *EPA*, 898 F.2d 687, that the Arizona CO plans for Maricopa and Pima Counties did not fully comply with the Clean Air Act as amended in 1977, and with EPA guidance issued pursuant to that law. (See 46 FR 7182, January 21, 1981). In vacating EPA's 1988 approval of the Arizona plans, the court determined that they did not contain sufficient control measures to attain the CO ambient air quality standard as soon as possible. The Court did not say that the measures submitted by the State were unworthy of approval for their effect in strengthening the SIP.

EPA is taking final action to remove the attainment demonstration disapproval because the TAPA has not had an exceedance of the CO NAAQS from 1988 to the present, and, therefore, the original reason for the disapproval, namely that the plan did not contain sufficient control measures to attain the CO ambient air quality standard as soon as possible, is no longer applicable.

EPA is also taking final action to remove the disapproval of the 1988 CO plan contingency measures. That disapproval was based on non-compliance with the EPA guidance of January 21, 1981. (46 FR 7182, January 21, 1981) That guidance has since been superseded by new guidance, specifically the section on the contingency provisions for not-classified CO nonattainment areas contained in the General Preamble (See 57 FR 13535, April 16, 1992). The contingency provisions contained in the TAPA Limited Maintenance Plan are in compliance with the guidance provided both in the General Preamble and in the Limited Maintenance Plan Policy Guidance.

Finally, EPA is approving Arizona's request for the redesignation to attainment of the CO NAAQS for the Tucson Air Planning Area.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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*.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: April 24, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Parts 52 and 81, Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(91), (c)(95), and (c)(96) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(91) The following amendments to the plan were submitted on October 6, 1997 by the Governor's designee.

(A) Arizona Revised Statutes.

(i) Incorporation by reference.

(*1*) Senate Bill 1002, Sections 26, 27 and 28: ARS 41–2083 (amended), 41–2122 (amended), 41–2125 (amended), adopted on July 18, 1996.

* * * * *

(95) The following amendments to the plan were submitted on August 11, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Senate Bill 1427, Section 14: ARS 49–401.01 (amended) and Section 15: 49–406 (amended), approved on May 29, 1998.

* * * * *

(96) The following amendments to the plan were submitted on September 1, 1999 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended), approved by the Governor on May 18, 1999.

(*2*) House Bill 2189, Section 3: ARS 41–796.01 (amended); Section 9: 41–2121 (amended); Section 40: 49–401.01 (amended), Section 41: 49–402 (amended); Section 42: 49–404 (amended): Section 43:49–454 (amended); Section 44: 49–541 (amended); and Section 46: 49–571 (amended), adopted on May 18, 1999

* * * * *

3. Section 52.123 is amended by removing and reserving paragraph (e)(2) and by adding paragraph (i) to read as follows:

§ 52.123 Approval Status.

* * * * *

(i) The Administrator approves the Maintenance Plan for the Tucson Air Planning Area submitted by the Arizona Department of Environmental Quality on October 6, 1997 as meeting the requirements of section 175(A) of the Clean Air Act and the requirements of EPA's Limited Maintenance Plan option. The Administrator approves the Emissions Inventory contained in the Maintenance Plan as meeting the requirements of section 172(c)(3) of the Clean Air Act.

§ 52.124 [Amended]

4. Section 52.124 is amended by removing and reserving paragraph (a)(2).

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.303, the table for Arizona-Carbon Monoxide is amended by revising the entry for ''Tucson Area'' to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Tucson Area:				
Pima County (part)	July 10, 2000	Attainment.		
Township and Ranges as follows: T–11–12S, R12–14E; Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest				
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 00–13978 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[GA–T5–2000–01a; FRL–6711–2]

Clean Air Act Full Approval of Operating Permit Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permit program of the State of Georgia. Georgia's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. EPA granted interim approval to Georgia's operating permit program on November 22, 1995. Georgia revised its program to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on August 7, 2000 without further notice unless EPA receives adverse comments in writing by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the State's submittals and other supporting documentation

relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all States to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as serious, such as the metropolitan Atlanta area in Georgia, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Georgia's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on November 22, 1995 (60 FR 57836). The interim approval notice stipulated three conditions that had to be met in order for Georgia's program to receive full approval. Georgia submitted revisions to its interimly approved operating permit program on March 10, 1997, February 11, 1998, September 30, 1999, November 15, 1999, and January 11, 2000. This document describes the changes that have been made in Georgia's operating permit program.

What Are the Program Changes That EPA Is Approving?

One condition for full approval of Georgia's operating permit program was a rule revision to require that operating permits contain terms and conditions allowing for the trading of emissions changes within the facility. These emissions trades are solely for the purpose of complying with a Federally-enforceable emissions cap in accordance with 40 CFR 70.4(b)(12)(iii). Moreover, the permittee must provide written notification to EPA at least seven (7) days in advance of any change to the permit, and the written notification must state when the change will occur and describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. Georgia took action in December 1997 to include these requirements in Rule 391–3–1–.03(10)(d)1.(ii) and submitted the final State-effective rule changes to EPA on February 11, 1998.

Another condition for full approval of Georgia's operating permit program was a rule revision to ensure that the permit shield provision in 40 CFR 70.6(f) would apply to any changes in emissions resulting from emissions trading within a facility solely for the purpose of complying with a Federally-enforceable emissions cap. The revised Rule 391–3–.03(10)(d)1.(ii) containing this provision was submitted to EPA on February 11, 1998.

The third, and final, condition for full approval of Georgia's operating permit program was correction of the deficient insignificant activities provisions in the State's rules. One deficiency concerned the exemption of insignificant activities from permit requirements. While the State has considerable discretion regarding the degree of monitoring, recordkeeping and reporting required for insignificant activities, these units cannot be categorically exempted from title V permitting requirements. Moreover, Georgia's rules did not make the distinction between activities which could be omitted from permit applications and those that were considered to be insignificant but were still required to be included in the application.

In response to this interim approval issue, the State revised its approach to insignificant activities by adding Rule 391–3–1–.03(10)(g), which identifies specific insignificant activities that must be included in the permit application. Moreover, rule revisions were made to eliminate the exemption from permitting requirements for insignificant activities. The final State-effective rule changes were submitted to EPA on February 11, 1998.

Georgia made additional program changes after the interim approval became effective on December 22, 1995. The State revised its title V permit application form to address the title VI requirements for stratospheric ozone and to incorporate the flexibility described in the EPA's July 10, 1995 guidance memorandum entitle ''White Paper for Streamlined Development of Part 70 Permit Applications'' (White Paper). The revised form was submitted to EPA on March 10, 1997 and is available for review on Georgia's Web site at *www.dnr.state.ga.us/dnr/environ*. The revised form incorporated the following aspects of the White Paper:

(1) The White Paper allowed industry to submit checklists, rather than emission descriptions, for insignificant activities based on size or production rate. As a result, Georgia included several different categories of insignificant activities in checklist format in section 4.10 of the permit application form. Georgia also removed the requirement for detailed information regarding air pollution control devices, since this information is requested in the preconstruction permit application.

(2) The White Paper allowed for group treatment of emissions units subject to the broadly applicable requirements that are often found in State Implementation Plans (SIPs). The State, therefore, created section 4.20 of the application form to group emissions units and

activities that were subject to the following four State rules that are generic SIP requirements: Rule 391–3–1–.02(2)(b) entitled ''Visible Emissions,'' Rule 391–3–1–.02(2)(d) entitled ''Fuel-burning Equipment,'' Rule 391–3–1–.02(2)(e) entitled ''Particulate Emissions from Manufacturing Process,'' and Rule 391–3–1–.02(2)(n) entitled ''Fugitive Dust.''

(3) The White Paper allowed for the generic treatment of short-term activities, so the State developed section 4.40 to address those activities that occur infrequently or for short durations.

(4) The White Paper identified a number of trivial activities that could be excluded from permit applications, so Georgia included a similar list in the instructions for its permit application form.

(5) The White Paper allows industry to provide descriptions, rather than estimates, for emissions not regulated at the source, unless such estimates were needed for other purposes such as calculating permit fees. As a result, the State developed sections 2.10 and 2.20 of its permit application form to only require estimates of facility-wide potential and anticipated actual emissions in tons per year. All significant facility emissions are still required to be listed by pollutant in section 7.10.

(6) The white Paper provided that where an emissions unit is subject to a specific standard, the emissions data could be reported in the units of that standard. Georgia revised its permit application form accordingly.

(7) In order to reduce the size and cost of preparing title V permit applications, the White Paper allowed for the submittal of sample calculations to illustrate the methodology used. As a result, the State revised its permit application form to require the submittal of sample calculations to support the emissions summary information contained in section 7.10

The other programmatic change made by Georgia involves the mechanism for determining the annual title V fee amount. The State's operating permit program received interim approval based on use of the ''presumptive minimum'' described in 40 CFR 70.9(b)(2)(i), but Georgia has been using a mechanism based on 40 CFR 70.9(b)(1) since September 1997. This mechanism involves establishing a fee schedule that results in the collection and retention of revenues sufficient to cover the costs of the operating permit program. To accomplish this, the State develops a biennial budget projection of title V program costs and adjusts the fee amount accordingly. Georgia described its revised mechanism for assessing fees in a letter to EPA dated January 11, 2000. The State submitted a fee program update on September 30, 1999 demonstrating that its operating permit program is adequately funded by operating permit fees.

What Is Involved in This Final Action?

The State of Georgia has fulfilled the conditions of the interim approval granted on November 22, 1995, so EPA is taking final action to fully approve the State's operating permit program. EPA is also taking action to approve other program changes made by the State since the interim approval was granted.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This action will be effective August 7, 2000 unless the Agency receives adverse comments by July 10, 2000.

If EPA receives such comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et *seq.).*

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

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

E. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' 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, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act 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 will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use VCS, SPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that

otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 15, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Georgia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Georgia

(b) The Georgia Department of Natural Resources submitted program revisions on March 10, 1997, February 11, 1998, September 30, 1999, November 15, 1999, and January 11, 2000. The rule revisions contained in the February 11, 1998 submittal adequately addressed the conditions of the interim approval effective on December 22, 1995, and which would expire on June 1, 2000. The State is hereby granted final full approval effective on August 7, 2000.

[FR Doc. 00–14166 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–NASH–T5–2000–01a; FRL–6710–9]

Clean Air Act Final Approval of Operating Permit Program Revisions; Metropolitan Government of Nashville-Davidson County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve revisions to the operating permit program of the Metropolitan Government of Nashville-Davidson County (TN). The County's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. EPA granted full approval to the County's operating permit program on February 14, 1996. The County has revised its program since it received full approval and this action approves those revisions.

DATES: This direct final rule is effective on August 7, 2000 without further notice unless EPA receives adverse comments in writing by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all states to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the states require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as serious, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Nashville-Davidson County made two changes to its approved title V program since EPA granted full approval on February 14, 1996 (see 61 FR 5705). This document describes the changes.

What Are the Program Changes That EPA Is Approving?

Nashville-Davidson County revised its title V permit application form to address the Title VI requirements for protection of the stratospheric ozone layer. The County's application form now contains Form APC V.34 for information regarding air conditioning units that use chlorofluorocarbons, hydrochlorofluorocarbons, or other ozone depleting substances. The new form was submitted to EPA on December 10, 1996 and is available for review on the Internet at *http://healthweb.nashville.org/pollution_downloads.html.*

The other programmatic change made by Nashville-Davidson County involves the mechanism for determining the annual title V fee amount. The County's operating permit program received full approval based on use of the ''presumptive minimum'' described in 40 CFR 70.9(b)(2)(i). But, since the

spring of 1997, the County has been using a mechanism based on 40 CFR 70.9(b)(1) which involves establishing a fee schedule that results in the collection and retention of revenues sufficient to cover the costs of the operating permit program. To accomplish this each year, the County prepares a projection of the title V expenses for the coming year based on the actual title V expenses during the previous year. The anticipated expenses are then compared with the revenue that would be generated based on section 10.56.080, ''Permit and Annual Emission Fees,'' of Chapter 10.56, ''Air Pollution Control,'' of the Metropolitan Code of Laws. If the fee schedule contained in section 10.56.080 would result in a surplus, then the County adopts a lesser fee schedule utilizing the variance procedures in section 10.56.130. The County described this policy in a letter to EPA dated December 6, 1999. The County also submitted a fee program update on August 27, 1999 demonstrating that its part 70 program is adequately funded by operating permit fee revenue.

What Is Involved in This Final Action?

The Metropolitan Government of Nashville-Davidson County made two changes to its approved title V program after it received full approval on February 14, 1996 and EPA is taking action by this notice to approve the changes. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This action will be effective August 7, 2000 unless the Agency receives adverse comments by July 10, 2000.

If EPA receives such comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

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

E. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' 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, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act 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 will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (i) and adding and reserving paragraphs (f), (g), (h) and (j) to the entry for Tennessee to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) The Metropolitan Government of Nashville-Davidson County submitted program revisions on December 10, 1996, August 27, 1999, and December 6, 1999. The County is hereby granted revised approval effective on August 7, 2000.

(j) [Reserved]

* * * * *

[FR Doc. 00–14169 Filed 6–7–00; 8:45 am]

BILLING CODE 6710–09–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261 and 268

[FRL–6711–4]

Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors that appeared in the March 17, 2000 final rule (65 FR 14472) that announced the vacature of regulatory provisions governing the identification of certain organobromine production wastes as listed hazardous wastes under the Resource Conservation and Recovery Act (RCRA). EPA also is correcting a typographical error that appeared in the August 6, 1998 final rule (63 FR 42110) listing four wastes from the petroleum refining industry as hazardous.

This final rule creates no new regulatory requirements. Rather, it corrects errors associated with the March 17, 2000 **Federal Register** document. The rule also corrects a typographical error that appeared in the August 6, 1998 **Federal Register** document.

EFFECTIVE DATE: This rule is effective June 8, 2000.

ADDRESSES: EPA does not seek comment on this document. EPA will keep the official records for today's action in paper form. The official record for the Listing Determination for Organobromine Production Wastes is identified by Docket Number F–98–OBLF–FFFFF. The official record for the Listing Determination for Petroleum Refining Wastes is Docket Number F–98–PRLF–FFFFF. The public may view supporting materials in the RCRA Information Center (RIC), located at EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. Supporting materials are available for viewing in the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, US EPA Ariel Rios (5101), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Patricia Overmeyer of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, US EPA Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. (E-mail address and telephone numbers: *Overmeyer.Patricia @epa.gov,* (703) 605–0708.)

SUPPLEMENTARY INFORMATION: The rule, ''Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities,'' was issued in the **Federal Register** at 63 FR 24596 (May 4, 1998). The rule vacating the listing determination for organobromine production wastes was issued in the **Federal Register** at 65 FR 14472 (March 17, 2000). The rule, ''Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastesa; and CERCLA Hazardous Substance Designation and Reportable Quantities,'' was issued the **Federal Register** at 63 FR 42110 (August 6, 1998). EPA will keep the official records for these actions in paper form. The official records are the paper records maintained at the address in the **ADDRESSES** section.

Contents of this Final Rule

I. Background
II. Amended Regulations
III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures
IV. Administrative Assessments

I. Background

On March 17, 2000 EPA published a final rule announcing the vacature of regulatory provisions governing the identification of certain wastes listed as hazardous. In that final rule, EPA amended its regulations to conform with an order issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in Great Lakes Chemical Corporation v. EPA (No. 98–1312). That court order vacated Agency regulations listing certain organobromine wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). The hazardous waste listing determinations that were vacated by the court and deleted from the regulations in the March 17, 2000 final rule included the wastes listed as K140 and U408. The effect of vacating the hazardous waste listing determination for these wastes was to clarify that these two wastestreams are not subject to the hazardous waste management and treatment standards under RCRA, as well as not subject to emergency notification requirements for releases of hazardous substances to the environment.

On August 6, 1998, EPA amended the regulations for hazardous waste management under RCRA to list as hazardous four wastes generated by the petroleum refining industry. The effect of the final rule was to subject the four wastes to stringent management and treatment standards under RCRA and to emergency notification requirements for releases of hazardous substances to the environment. As part of this final regulation, the Agency also amended the existing listing description for hazardous waste code F037 in 40 CFR 261.31. The intent of the amendment was to clarify that residuals generated from processing or recycling oil-bearing hazardous secondary materials (which are excluded from the definition of solid waste due to the newly promulgated exclusion at 40 CFR 261.4(a)(12)(i)) that are not returned to refinery operations and would otherwise meet a listing under subpart D of 40 CFR part 261, were to be designated as F037 listed wastes when disposed of or intended for disposal. However, the amending language included in the August 6, 1998 FR document included a typographical error that made the intent of the amendment unclear.

II. Amended Regulations

In the March 17, 2000 final rule vacating the hazardous waste listings for K140 and U408, EPA inadvertently removed and reserved paragraph (f) of 40 CFR 148.18. The Agency should have removed and reserved paragraph (h) of 40 CFR 148.18. Paragraph (h) of 40 CFR 148.18 is the provision prohibiting the underground injection of K140 and U408. Today, EPA is correcting this error by reinstating paragraph (f) and removing and reserving paragraph (h) of 40 CFR 148.18.

In addition, in the March 17, 2000 final rule, EPA neglected to delete the reference to U408 in appendix VII of 40 CFR part 268. Today, EPA is deleting the reference to U408 in appendix VII to 40 CFR part 268.

In the August 6, 1998 final rule, a typographical error appeared in the amended listing description for hazardous waste code F037. Today, EPA is revising the listing description for hazardous waste code F037 in 40 CFR 261.31(a) to reflect the Agency's original intent of the amendment, as described in the preamble to the August 6, 1998 final rule.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule (5 U.S.C. 553(b)). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary (5 U.S.C. 553(b)(3)(B)).

EPA has determined that providing prior notice and opportunity for comment on today's notice that corrects regulations amending the RCRA hazardous waste management requirements to comply with the court decision vacating the hazardous waste listing determinations for waste codes K140 and U408, is not necessary. The regulations are no longer legally in effect by order of the federal court of appeals. Thus, amending the hazardous waste regulations has no legal impact and only states the current legal status of the rules.

For the same reasons stated above, EPA believes there is good cause for making the amending regulations immediately effective. (See 5 U.S.C. 553(d))

IV. Administrative Assessments

Today's amendments to the RCRA hazardous waste management regulations only correct errors in **Federal Register** documents issued on March 17, 2000 and August 6, 1998. These corrections have no regulatory impact, and do not impose annual costs of $100 million or more. Therefore, this action is not a ''significant'' regulatory action, as defined by Executive Order 12866, and is not subject to review by the Office of Management and Budget. In addition, the amending regulations promulgated today will have no effect on small entities. This is evidenced by the fact that today's rule only corrects errors in the CFR. There is no impact on public or private entities, or on state, local, and tribal governments. Because the rule will not have a ''significant'' economic impact on small entities, a regulatory flexibility analysis is not required. Also, this final rule is not subject to the Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 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. Today's rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3510 *et seq.*).

Today's action will have no impact upon state, local, and tribal governments, or on the private sector. The amending regulations promulgated today reflect current law, there will be no legal impact on public or private entities. Therefore, today's rule is not subject to the provisions of sections 202, 204 or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

For the same reasons stated above, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

Today's final rule will have no effect upon minority and/or low-income populations. Therefore, today's rule is not subject to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.''

List of Subjects

40 CFR Part 148

Environmental Protection Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 268

Environmental protection, Hazardous materials, Land disposal restrictions, Reporting and recordkeeping requirements, Treatment standards, Waste management.

Dated: May 30, 2000.

Timothy R. Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by removing and reserving paragraph (h) and adding paragraph (f), to read as follows:

§ 148.18 Waste specific prohibitions-newly listed and identified wastes.

* * * * *

(f) On January 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous waste number K088 is prohibited from underground injection.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: Sec. 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. In § 261.31(a), the table is amended by revising the entry for F037, to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * * *	
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oil cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)
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PART 268—LAND DISPOSAL RESTRICTIONS

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Appendix VII to Part 268 [Amended]

6. In appendix VII to part 268 Table 1 is amended by removing the entry for U048.

[FR Doc. 00–14321 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301004; FRL–6558–4]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on stone fruit (Crop Group 12). 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 stone fruit. This regulation establishes maximum permissible levels for residues of imidacloprid on these food commodities. The tolerances will expire and are revoked on December 31, 2001.

DATES: This regulation is effective June 8, 2000. Objections and requests for hearings, identified by docket control number OPP–301004, must be received by EPA on or before August 7, 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 VII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301004 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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–301004. 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, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for the combined residues of the insecticide imidacloprid, in or on stone fruit at 1.0 part per million (ppm) and the processed commodity prunes at 3.5 ppm. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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 FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

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. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Imidacloprid on Stone Fruit and FFDCA Tolerances

There are two situations that have arisen, resulting in the present emergency condition. First, currently there are no reliable insecticides to control the green peach aphid (GPA) on peaches and nectarines because of insecticide resistance. Second, aphids are a vector for Plum Pox Virus (PPV), a disease that damages the fruits of sensitive cultivars of stone fruits. The mechanism by which aphids transmit PPV is called non- persistent transmission. Once an aphid probes into infected plant tissue and acquires the virus, the virus can only remain infectious and be transmitted for a short period of time (minutes). Each aphid must feed directly on an infected plant, acquire sufficient virus, and then fly immediately to the next plant in order to effect a transmission.

PPV was discovered for the first time in the United States in 18 stone fruit orchards in Adams County, Pennsylvania in the fall of 1999. Indications are that PPV has been in Pennsylvania for several years, and it is possible that undetected infections of PPV exist in peach and nectarine orchards in New Jersey, New York, and West Virginia. EPA has authorized under FIFRA section 18 the use of imidacloprid on stone fruit for control of aphids in New Jersey, New York, Pennsylvania and West Virginia. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on stone fruit. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on each emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are 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 stone fruit after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on stone fruit or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New Jersey, New York, Pennsylvania, and West Virginia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under ''FOR FURTHER INFORMATION CONTACT.''

IV. Aggregate Risk Assessment and Determination of Safety

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).

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 imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on stone fruit at 1.0 ppm and prunes 3.5 ppm. EPA's assessment

of the dietary exposures and risks associated with establishing these tolerances 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 imidacloprid are discussed in this unit.

B. Toxicological Endpoint

Only acute and chronic dietary endpoints were defined. The 10x FQPA factor was reduced to 3x for acute and chronic exposure, and applies to all population subgroups.

1. *Acute toxicity*. The acute reference dose (RfD) is 0.42 milligram/kilogram body weight/day (mg/kg bwt/day) based on a lowest observed adverse effect level (LOAEL) of 42 mg/kg bwt/day based on decreased motor activity in female rats. An additional 3x FQPA factor was incorporated for all population subgroups to account for neurotoxicity, structure-activity concerns and lack of a no observed adverse effect level (NOAEL). The acute population adjusted dose (aPAD), which is the reference dose (RfD/3) was calculated to be 0.14 mg/kg bwt/day. Acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is required for all population subgroups.

2. *Short- and intermediate-term toxicity*. Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity; however, because imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

3. *Chronic toxicity*. EPA has established the RfD for imidacloprid at 0.057 milligrams/kilograms/day (mg/kg/day). This RfD is based on increased number of thyroid lesions at the LOAEL of 16.9/24.9 mg/kg bwt/day (males and females, respectively). An additional 3x FQPA factor was used for all population subgroups. The chronic population adjusted dose (cPAD), which is the RfD/3, was calculated to be 0.019 mg/kg bwt/day. Acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is required for all population subgroups.

4. *Carcinogenicity*. Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances, some time-limited, are currently established (40 CFR 180.472) for the combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid 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. In conducting the acute dietary (food) risk assessment, EPA used the Theoretical Maximum Residue Contribution (TMRC) which assumes tolerance level residues and 100% crop-treated (Tier 1). The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 95th percentile) and percentage of aPAD utilized ranged from 23% for the U.S. population to 45% for children 1–6 years old.

ii. *Chronic exposure and risk*. In conducting the chronic dietary (food only) risk assessment, EPA used: Tolerance level residues for imidacloprid and percent crop- treated (PCT) information for some of these crops.

The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentages of cPAD consumed for the general population and subgroups of interest ranged from 11% for nursing infants <1 year old to 51% for children 1–6 years old.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group.

Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulation is taken into account through EPA's computer-based model for evaluating the exposure of

significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *From drinking water*. There is no established Maximum Contaminant Level for residues of imidacloprid in drinking water. No health advisory levels for imidacloprid in drinking water have been established.

Imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, the Agency is requiring the submission of the results of two prospective ground water monitoring studies. Results from these studies are not yet available.

i. *Acute exposure and risk*. Estimated concentrations of imidacloprid in surface and ground water used for the acute exposure analysis were 4.1 and 1.1 micrograms per liter (µg/L) (parts per billion (ppb)), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs active ingredient/acre/year (ai/acre/year).

For purposes of risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 4.1 µg/L) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the acute endpoint. The DWLOCs ranged from 800 µg/L for children 1–6 years old to 3,900 µg/L for the U.S. population. These figures are well above the drinking water estimate concentration (DWEC) of 4.1 µg/L.

ii. *Chronic exposure and risk*. Estimated concentrations of imidacloprid in surface and ground water for chronic exposure analysis were 0.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs ai/acre/year.

For purposes of chronic risk assessment, the estimated maximum concentration for imidacloprid in ground waters (which is 1.1 µg/L) should be used for comparison to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. The DWLOCs ranged from 90 µg/L for children 1–6 years old to 490 µg/L for the U.S. population. These figures are well above the DWEC of 1.1 µg/L.

3. *From non-dietary exposure*. Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns) tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs.

i. *Acute exposure and risk*. Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

ii. *Chronic exposure and risk*. Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

iii. *Short- and intermediate-term exposure and risk*. Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses. Thus, a residential short-term risk assessment via the oral route is required. See Unit IV.E.4. for a full discussion of this exposure and risk.

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 imidacloprid 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, imidacloprid 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 imidacloprid has a common mechanism of toxicity with other substances. For more 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*. EPA has determined that the acute exposure to imidacloprid from food will utilize 23% of the aPAD (95th percentile) for the most highly exposed population subgroup (U.S. population—all seasons). Despite the potential for exposure to imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the aPAD. The DWLOC calculated for the U.S. population was 3,900 µg/L, which is well above the DWEC of 4.1 µg/L.

2. *Chronic risk*. In conducting the chronic dietary (food only) risk assessment, EPA used: Tolerance level residues for imidacloprid, and PCT information for some of these crops. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentage of cPAD consumed for the U.S. population was 24%. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD 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 imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the cPAD. The DWLOC calculated for the U.S. population was well above the DWEC of 1.1 µg/L.

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.

Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid, as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. A discussion of short- and intermediate- term oral exposure and

risk for children 1–6 can be found in Unit IV.E.4.

4. *Aggregate cancer risk for U.S. population*. Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

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 imidacloprid 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 imidacloprid, 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 during 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 MOE and 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 with Sprague- Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus = 7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day lowest dose tested (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

iii. *Reproductive toxicity study*. In a 2–generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Agency determined that the review be revised to indicate the parental/systemic/reproductive NOAEL and LOAEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

iv. *Prenatal and postnatal sensitivity*. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs.

v. *Conclusion*. There is a need for a developmental neurotoxicity study for assessment of potential alterations of functional development. However, the Agency has determined that this data gap does not preclude the establishment/continuance of tolerances. The 10x safety factor to account for enhanced sensitivity of infants and children (as required by FQPA) was reduced to 3x and the factor applies to all population subgroups.

2. *Acute risk*. Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food for the most highly exposed population subgroup (children 1–6 years old) will utilize 45% of the aPAD. It was determined that an acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for children 1–6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (4.1 µg/L) compared to the DWEC of 800 µg/L.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 51% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD for children 1–6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (1.1 µg/L) compared to the DWEC of 90 µg/L.

4. *Short- and intermediate-term risk*. As noted earlier in this document, dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral

endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

The margin of exposure for chronic dietary exposure (food only) and residential exposure (hand-to-mouth from turf, garden, and pet uses) for children ages 1–6 was calculated to be 300. The safe level for imidacloprid is 300.

Potential short-term exposure from drinking water is at a level below the Agency's level of concern with the DWLOC (2 µg/L) being greater than the DWEC of 1.1 µg/L.

The Agency, concludes the short-term aggregate risk to the highest exposed population subgroup (children 1–6 years old) from home garden, turf, and pet uses of imidacloprid does not exceed EPA's level of concern.

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 imidacloprid residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of imidacloprid residues in plants and in animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6- chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

Crop field trials on peaches have been submitted, and the highest residues of imidacloprid were found to be 0.77 ppm. For the purposes of this section 18, the Agency will translate the peach residue data to all stone fruit and tolerances will be set at 1.0 ppm.

The only processed commodity associated with stone fruit is prunes, as plums can be processed into prunes. Since no processing study was submitted, a default factor of 3.4 was used, and therefore, the tolerance on prunes will be set at 3.5 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits for imidacloprid on sweet corn. Thus, harmonization is not an issue for these time-limited tolerances.

E. Rotational Crop Restrictions

The rotational crop restrictions follow the original section 3 labels. In addition, there is little concern over rotational crops for this section 18 as stone fruit are rarely rotated to other crops.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on stone fruit at 1.0 ppm and prunes at 3.5 ppm.

VII. 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–301004 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 August 7, 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, 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, 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, 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 VII.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 the docket control number OPP–301004, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 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).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances 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 tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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).

IX. 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: May 25, 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.

2. In §180.472, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.** * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	*	*
Prunes	3.5	12/31/01
* * *	*	*
Stone fruit, crop group 12	1.0	12/31/01
* * *	*	*

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[FR Doc. 00–14422 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1147; MM Docket No. 99–321; RM–9733]

Radio Broadcasting Services; Grand Isle and Empire, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of KBIL, LLC (formerly Blue Dolphin Communications, Inc.), the Commission substitutes Channel 283C2 for Channel 283A at Grand Isle, Louisiana, reallots Channel 283C2 to Empire, Louisiana, as that community's first local aural transmission service, and modifies the authorization for Station KBIL, as requested. *See* 64 FR 213, November 4, 1999. Coordinates used for Channel 283C2 at Empire are 29–29–07 NL and 89–46–39 WL.

DATES: Effective July 10, 2000.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–321, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Empire, Channel 283C2.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Grand Isle, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14381 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1146; MM Docket No. 99–246; RM–9593; RM–9770]

Radio Broadcasting Services; Winslow and Mayer, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Desert West Air Ranchers Corporation, the Commission reallots Channel 236C from Winslow to Mayer, Arizona (RM–9770), as that community's first local aural transmission service, in lieu of previously proposed Camp Verde, Arizona (RM–9593), and modifies the license for Station KFMR(FM) to specify Mayer as its community of license. *See* 64 FR 37926, July 14, 1999. Coordinates used for Channel 236C at Mayer, Arizona, are 34–25–00 NL and 112–00–30 WL. With this action, this docketed proceeding is terminated.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–246, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Mayer, Channel 236C.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Winslow, Channel 236C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14379 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1159; MM Docket No. 98–151; RM–9320, RM–9653]

Radio Broadcasting Services; Douglas and Guernsey, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 223C1 to Douglas, Wyoming, as the community's second FM service, and third local aural service, and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 265A to Douglas as a third local FM fourth local aural service, and Channel 281A at Guernsey, Wyoming, as the community's first local aural service. *See* 63 FR 44601 (August 20, 1998). Channel can be allotted to Douglas in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 27.8 kilometers (17.3 miles) at coordinates 42–20–19 and 105–05–05. Channel 265A can be allotted at Douglas without the imposition of a site restriction, at coordinates 42–45–18 and 105–24–18 and Channel 281A can be allotted at Guernsey without the imposition of a site restriction, at coordinates 42–16–00 and 104–44–42. Filing windows for Channels 223C1 and 265A at Douglas and 281A at Guernsey will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–151, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channels 223C1 and 265A at Douglas, and Guernsey, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14377 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 00–120]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted new methods to select among competing applications to construct noncommercial educational (NCE) broadcast stations or to make changes in existing facilities of such stations. The Commission will use a point system to select among mutually exclusive applicants on reserved channels, to streamline the current selection process and make it faster and simpler for applicants and for the Commission. The Commission will use existing auction procedures to select among mutually exclusive applications on non-reserved (''commercial'') channels, even if one or more of the applicants proposes to operate noncommercially. To facilitate the transition to new ''filing window'' procedures, the Commission implemented a freeze on the filing of new applications for reserved channel noncommercial educational broadcast stations.

DATES: Effective August 7, 2000, except for §§ 73.202, 73.3527, and 73.3572 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these sections. The filing freeze became effective April 21, 2000 (*See* FCC News Releases, April 14, 2000 at www.fcc.gov).

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, http://www.fcc.gov.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12th Street, S.W., Washington, D.C. 20554 (202) 418–2780, Internet address:ibleiwei@fcc.gov (inquiries about this proceeding other than information collection) or Edward C. Springer, OMB Desk Officer, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, Internet address: *edward.springer@omb.eop.gov* (inquiries about information collection).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted April 4, 2000, and released April 21, 2000. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The text can be obtained over the internet by going to the FCC web site, www.fcc.gov, and following the link entitled ''FCC Adopts Comparative Standards for Noncommercial Educational Broadcast Stations, 4/27/00, under the ''headlines'' section.

Synopsis of Order

1. The Commission issued a *Notice of Proposed Rule Making* in this proceeding in 1995 [60 FR 15275 March 23, 1995] proposing to change the process used to select noncommercial educational applicants, because the existing process was cumbersome and no longer making meaningful distinctions among applicants. Subsequently, Congress addressed related issues in the Balanced Budget Act of 1997, and the Commission issued a *Further Notice of Proposed Rule Making* [63 FR 58358 October 30, 1998], seeking additional comments. After considering the comments received, the Commission now adopts new simpler filing procedures and selection methods for applications seeking to construct new noncommercial educational (NCE) FM, FM translator, and television stations and to make major changes to such existing stations.

2. Applications for new and major changes to NCE stations will be filed only within ''filing windows'' to be announced by the Commission. The Commission will study applications filed during the window for mutual exclusivity. This replaces a system in which applications were accepted at any time, and ''cut-off'' lists were issued to invite competing applications.

3. If mutually applications are received within a filing window, and for existing mutually exclusive applications that have already been ''cut off,'' the Commission will first determine as a threshold issue, whether any application should be granted or dismissed on the basis of fair distribution of service pursuant to 47 U.S.C. 307(b) (FM stations proposing service to different communities) or on the basis of translator fill-in service as compared to non-fill-in service. If mutually exclusive applicants remain after these threshold issues, the Commission will proceed to a point system.

4. Points will be awarded as follows: (a) 3 points to an established local entity (a government applying for a station within its area of jurisdiction or any applicant that for at least the two years prior to application has had one of the following within 25 miles of the reference coordinates for the community of license: its headquarters, its campus, or the primary residences of 75% of its board members); (b) 1 to 2 points to the applicant with the best technical proposal (covering the largest area and population) depending on comparison to the next best technical proposal; and either (c) 2 points to applicants with local diversity of ownership (no overlap of attributable station principal community contours); or (d) 2 points to an applicant that does not claim local diversity of ownership points, if it is a state-wide network serving 50 accredited full-time elementary/

secondary schools or 5 accredited full-time college/university campuses. Points are determined by the applicant's qualifications at the time of application, provided that the applicant must still qualify for those points at the time of point analysis. In determining points, the interests of attributable parties such as parent organizations, officers, board members, and parties with significant financial influence that also will supply substantial programming to the station will be considered.

5. To break ties, the Commission will select the applicant with the fewest authorizations (existing stations and construction permits). If that standard fails to break the tie, the Commission will select the applicant with the fewest pending applications. If these tie breakers do not result in selection of a prevailing applicant, the Commission will implement mandatory time sharing for full service applicants. For FM translator applicants only, the final tie breaker will select the first applicant to file, similar to existing translator-only rules. The Commission will permit settlements at any time under current settlement rules, which limit reimbursement to an applicant's reasonable and prudent expenses.

6. The new procedures will apply to applications already on file and applications filed in the future. The Commission will issue a Public Notice in the future providing existing applicants with information about how to supplement their applications to claim the points for which they qualify. Existing applicants may file settlements at any time.

7. Until a successful applicant selected through a point system has completed four years of on-air operations, it will be permitted to assign or transfer control of the station's license only to a party eligible to receive the same number of points, and for consideration not to exceed reasonable and prudent expenses application and construction expenses.

8. The Commission will not use the point system for channels that are available commercially (non-reserved channels), even if one or more noncommercial organizations apply for the channel. Such applications will be resolved by auction. In reaching this conclusion, the Commission conducted an in-depth analysis of conflicting directives in the enabling statute, and Commission policies concerning allocation and use of the reserved and non-reserved channels.

Final Regulatory Flexibility Analysis (FRFA)

Summary

As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rulemaking for the docket in this proceeding. The Commission sought written public comments on the proposals set forth in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order (''Order'') conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996).

Need for and Objectives of Action

The Commission previously determined that traditional hearings, the method used to select among competing applicants for new noncommercial educational broadcast construction permits, were time consuming and burdensome, and that the criteria used in those hearings were vague and difficult to apply. This Order amends the Commission's rules to establish a simpler, clearer, and more streamlined process for selecting among competing noncommercial educational applicants. Specifically, it (1) establishes a point system, a type of simplified paper hearing on channels reserved for NCE use; (2) clarifies that auctions will apply on non-reserved broadcast channels; and (3) provides additional circumstances in which an NCE entity can have a non-reserved channel allocated as reserved.

Significant Issues Raised by Public Comments in Response to the Initial Analysis

No comments were received specifically in response to the IRFA in MM Docket No. 95–31. However, one commenter, in expressing support for the use of lotteries, an option not selected, stated that it thought lotteries would have a positive effect on small businesses.

Description and Estimate of the Number of Small Entities Involved

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. S 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.[1] We received no comment in response to either IRFA on how to define radio and television broadcast ''small businesses.'' Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

The rules adopted in this Order will apply to television and radio stations licensed to operate on channels reserved as ''noncommercial educational.'' With respect to television stations, the Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Television stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are other establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

For 1992 the total number of television stations that produced less than $10.0 million in revenue was 1,155 of the 1,509 television stations then operating, both commercial and

[1] While we believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to these rules and to consider furher the issue of the number of small entities that are radio and television broadcasters or small media entities in the future. See Report and Order in MM Docket No. 93–48 (Children's Television Programming), 11 FCC Rcd 10660, 10737–38 (1996), citing 5 U.S.C. S 601(3).

noncommercial, or 77 percent. As of July 31, 1999, of the 1,599 total television stations, 370 are noncommercial educational. Thus, we estimate that the proposed rules will potentially affect 285 (77 percent of 370) noncommercial educational television stations that are small businesses. These existing stations would only be affected if they file an application for major modification of their existing facilities, and if another applicant files a mutually exclusive application. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. On the other hand they may understate the number of small entities, because we believe that a larger percentage of noncommercial educational stations are small businesses than the percentage applicable to the television industry as a whole. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1997, minorities owned and controlled 38 (3.2%) of 1,193 commercial television stations in the United States. Comparable figures are not available for noncommercial stations. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States. The proposal would also affect pending and future mutually exclusive applications for noncommercial television stations. As of August 1999, there are currently 67 pending applications for 22 channels reserved for noncommercial educational television usage.

The rule changes would also affect noncommercial educational radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Radio stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are entities which primarily are engaged in radio broadcasting and which produce radio program materials. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of July 31, 1999, official Commission records indicate that 12,582 radio stations are currently operating. Of the current radio station total, 2,055 stations are noncommercial educational. Thus, we estimate that 1,923 (96%) of these noncommercial educational stations are small businesses, possibly more because we believe that a greater percentage of noncommercial educational stations are small businesses than of the radio industry overall. These existing stations would only be affected by the proposal if they choose to file applications for major modification of facilities and if their applications are mutually exclusive with the application of another noncommercial entity. Applicants for new NCE radio stations would also potentially be affected. As of August 1999 there were 371 pending mutually exclusive groups of 1,102 applications, for new noncommercial FM radio stations. We also note that this proposal will affect future applications. With respect to minority ownership of radio stations, no information is available for noncommercial stations, but it is available for commercial stations. In 1997, minorities owned 284 (2.8%) of 10,282 commercial radio stations.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The measures adopted in the Order are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Use of a point system will eliminate the expense of preparing for and appearing at lengthy traditional hearings. Applicants should also receive decisions faster, because the Commission will make numerical calculations instead of preparing detailed hearing decisions. These savings should more than offset the time that would be required for applicants to gather and submit documentation supporting the points claimed. No additional professional services are required by applicants filing under these revised rules. Further, the cost of compliance will not vary between large and small entities.

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

This Order sets forth the Commission's new streamlined procedures for selecting among competing noncommercial educational applicants. All significant alternatives presented in the comments were considered. Small entities participating in auctions for non-reserved channels may be eligible for a new entrant auction credit. Small entities may be eligible for points in the point system based on diversity of ownership, established local entity, and in a tie breaker for number of existing authorizations and applications.

Report to Congress

The Commission will send a copy of the Reexamination of the Comparative Standards for Noncommercial Educational Applicants, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Further, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Regulatory Text

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202 is amended by revising paragraph (a)(1) to read as follows:

§ 73.202 Table of Allotments.

(a) * * *

(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast

stations. The rules governing the use of those channels are contained in part 73, subpart C of this chapter. An entity that would be eligible to operate a noncommercial educational broadcast station can, in conjunction with an initial petition for rulemaking filed pursuant to part 1, subpart C of this chapter, request that a nonreserved FM channel (channels 221 through 300) be allotted as reserved only for noncommercial educational broadcasting by demonstrating the following:

(i) No reserved channel can be used without causing prohibited interference to TV channel 6 stations or foreign broadcast stations; or

(ii) The applicant is technically precluded from using the reserved band by existing stations or previously filed applications and the proposed station would provide a first or second noncommercial educational radio service to 2,000 or more people who constitute 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour.

* * * * *

§ 73.502 [Removed and reserved]

3. Section 73.502 is removed and reserved.

4. Section 73.503 is amended by adding a new paragraph (e) to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(e) Mutually exclusive applications for noncommercial educational radio stations operating on reserved channels will be resolved pursuant to the point system in subpart K.

* * * * *

5. Section 73.513 is amended by designating the undesignated text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

* * * * *

(b) When a noncommercial educational applicant is among mutually exclusive applications for an unreserved FM channel, the mutually exclusive applications will be considered pursuant to Subpart I—Competitive Bidding Procedures and not Subpart K—Application and Selection Procedures On Reserved Noncommercial Educational Channels.

6. Section 73.621 is amended by adding a new paragraph (h) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(h) Mutually exclusive applications for noncommercial educational TV stations operating on reserved channels shall be resolved pursuant to the point system in subpart K.

7. Section 73.622 is amended by adding two new sentences immediately preceeding the last sentence of paragraph (a) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * * Rules governing noncommercial educational TV stations are contained in § 73.621. Where there is only one technically available channel available in a community, an entity that would be eligible to operate a noncommercial educational broadcast station may, prior to application, initiate a rulemaking proceeding requesting that an unoccupied or new channel in the community be changed or added as reserved only for noncommercial educational broadcasting upon demonstrating that the noncommercial educational proponent would provide a first or second noncommercial educational TV service to 2,000 or more people who constitute 10% of the population within the proposed allocation's noise limited contour.

* * *

* * * * *

8. Section 73.1150 is amended by adding a new paragraph (d) to read as follows:

§ 73.1150 Transferring a station.

* * * * *

(d) Authorizations awarded pursuant to the noncommercial educational point system in subpart K are subject to the holding period in § 73.7005. Applications for an assignment or transfer filed prior to the end of the holding period must demonstrate the factors enumerated therein.

9. Section 73.3522 is amended by revising paragraph (b) to read as follows:

§ 73.3522 Amendment of applications.

* * * * *

(b) *Reserved Channel FM and reserved noncommercial educational television stations.* Applications may be amended after Public Notice announcing a period for filing amendments. Amendments, when applicable, are subject to the provisions of §§ 73.3514, 73.3525, 73.3572, 73.3573, 73.3580, and § 1.65 of this chapter. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. Amendments will be accepted as described below and otherwise will only be considered upon a showing of good cause for late filing or pursuant to § 1.65 of this chapter or § 73.3514:

(1) A § 73.7002 Selectee. A Public Notice will announce that the application of a § 73.7002 Selectee (selected based on fair distribution) has been found acceptable for filing. If any Selectee's application is determined unacceptable the application will be returned and the Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must not alter the § 73.7002 preference.

(2) A § 73.7003 Tentative Selectee. A Public Notice will announce that the application of a § 73.7003 Tentative Selectee (selected through a point system) has been found acceptable for filing. If any Tentative Selectee's application is determined unacceptable the application will be returned and the Tentative Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must claim the same number of qualitative points as originally claimed, or more points than claimed by the applicant with the next highest point total.

(3) A Public Notice will identify all other reserved channel applications, such as non-mutually exclusive applications and the sole remaining application after a settlement among mutually exclusive applications. If any such application is determined unacceptable the application will be returned and the applicant will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor.

10. Section 73.3527 is amended by revising the first sentence of paragraph (e)(2) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(2) *Applications and related materials.* A copy of any application tendered for filing with the FCC, together with all related material, including supporting documentation of any points claimed in the application

pursuant to § 73.7003, and copies of FCC decisions pertaining thereto. * * *
* * * * *

11. Section 73.3555 is amended by revising paragraph (f) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(f) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section are relevant to evaluation of mutually exclusive noncommercial educational FM and TV applicants pursuant to subpart K of this part.

* * * * *

12. Section 73.3572 is amended by revising paragraph (d) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(d)(1) The FCC will specify by Public Notice, a period for filing applications for new television stations on reserved noncommercial educational channels or for major modifications in the facilities of an authorized station on reserved channels. TV reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or ''window.'' Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. Mutually exclusive applications for reserved channel television stations will be resolved using the point system in subpart K of this part.

(2) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

* * * * *

13. Section 73.3573 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed. In the case of mutually exclusive applications for reserved channels, the procedures in subpart K of this part will be followed. In the case of mutually exclusive applications for unreserved channels, the procedures in subpart I of this part will be followed.

(e) *Processing reserved channel FM broadcast station applications.* (1) Applications for minor modifications for reserved channel FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of the first acceptable application will be grouped, according to filing date, behind the lead application in the queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent conflicting applicants only reserves a place in the queue. The right of an applicant in a queue ripens only upon a final determination that the lead applicant is unacceptable and that the queue member is reached and found acceptable. The queue will remain behind the lead applicant until the construction permit is finally granted, at which time the queue dissolves.

(2) The FCC will specify by Public Notice a period for filing reserved channel FM applications for a new station or for major modifications in the facilities of an authorized station. FM reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or ''window.'' Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(3) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

(4) Timely filed applications for new facilities or for major modifications for reserved FM channels will be processed pursuant to the procedures set forth in subpart K of this part (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications selected pursuant to the fair distribution procedures set forth in § 73.7002; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is determined unacceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522.

* * * * *

14. Section 73.3584 is amended by adding a new first and second sentence to paragraph (a) immediately preceding ''Except'' to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following rules will govern. * * *

* * * * *

15. Section 73.3593 is revised to read as follows:

§ 73.3593 Designation for hearing.

If the FCC is unable, in the case of any application for an instrument of authorization, to make the findings specified in § 73.3591(a), it will formally designate the application for hearing on the grounds or reasons then obtaining

and will forthwith notify the applicant and all known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. If, however, the issue to be resolved is limited to the mutual exclusivity of applications for initial authorizations or for major changes to existing stations, that mutual exclusivity shall be resolved pursuant to competitive bidding procedures identified in subpart I (unreserved channels) or point system procedures identified in subpart K (reserved channels).

16. Add subpart K to part 73 to read as follows:

Subpart K—Application and Selection Procedures on Reserved Noncommercial Educational Channels

Sec.

73.7000 Definition of terms (as used in subpart K only).
73.7001 Services subject to evaluation by point system.
73.7002 Fair distribution of service on reserved band FM channels.
73.7003 Point system selection procedures.
73.7004 Petitions to deny tentative selectee(s).
73.7005 Holding period.

§ 73.7000 Definition of terms (as used in subpart K only).

Attributable interest. An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555. Also an interest of an entity providing more than 33 percent of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market.

Established local applicant. An applicant that has, for at least the two years (24 months) immediately preceding application, met the definition of local applicant.

Local applicant. An applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates for the community to be served.

Nonreserved (Unreserved) channels. Channels which are not reserved exclusively for noncommercial educational use, and for which commercial entities could thus be eligible to operate full power stations. Such channels appear without an asterisk designation in the FM Table of Allotments (§ 73.202) and TV Table of Allotments (§ 73.606). In the event of a request to allocate a nonreserved channel as reserved pursuant to §§ 73.202(a) or 73.606(a), the channel remains classified as nonreserved until release of a Commission decision granting such request.

On-air operations. Broadcast of program material to the public pursuant to Commission authority, generally beginning with program test authority, for periods of time that meet any required minimum operating schedule, *e.g.* § 73.561(a).

Population. The number of people calculated using the most recent census block data provided by the United States Census Bureau.

Reserved channels. Channels reserved exclusively for noncommercial educational use, whether by the portion of the spectrum in which they are located (*i.e.* FM channels 200 to 220) or by a case-by-case Commission allotment decision (channels that appear with an asterisk designation in the FM Table of Allotments (§ 73.202) or TV Table of Allotments (§ 73.606)).

§ 73.7001 Services subject to evaluation by point system.

(a) A point system will be used to evaluate mutually exclusive applications for new radio, television, and FM translator facilities, and for major changes to existing facilities, on reserved channels.

(b) Mutually exclusive applications for nonreserved broadcast channels are not subject to a point system, even if one or more of the applicants would be eligible to and intends to operate in a noncommercial educational manner. Mutually exclusive applications for nonreserved broadcast channels will be resolved by the competitive bidding procedures in subpart I of this part regardless of the noncommercial or commercial nature of the applicants.

§ 73.7002 Fair distribution of service on reserved band FM channels.

(a) If timely filed applications for full service stations on reserved FM channels are determined to be mutually exclusive, and will serve different communities, the Commission will first determine, as a threshold issue, whether grant of a particular application would substantially further the fair distribution of service goals enunciated in section 307(b) of the Communications Act, 47 U.S.C. 307(b).

(b) An applicant for a full service FM radio station that will provide the first or second noncommercial educational (NCE) aural signal to at least 10% of the population within the 60 dBu (1mV/m) service contours of a noncommercial educational FM station substantially furthers fair service goals and will be considered superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of new service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. Otherwise, the mutually exclusive applications will proceed to examination under a point system.

(c) For a period of four years of on-air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed and shall not downgrade service to the area on which the preference was based.

§ 73.7003 Point system selection procedures.

(a) If timely filed applications for reserved FM channels or reserved TV channels are determined to be mutually exclusive, applications will be processed and assessed points to determine the tentative selectee for the particular channels. The tentative selectee will be the applicant with the highest point total under the procedure set forth in this section, and will be awarded the requested permit if the Commission determines that an award will serve the public interest, convenience, and necessity.

(b) Based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed:

(1) *Established local applicant.* Three points for local applicants as defined in § 73.7000 who have been local continuously for no fewer than the two years (24 months) immediately prior to application, if the applicant's own governing documents (*e.g.* by-laws, constitution, or their equivalent) require that such localism be maintained.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests as defined in § 73.7000, in any other broadcast station or authorized construction permit

(comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station, if the applicant's own governing documents (*e.g.* by-laws, constitution, or their equivalent) require that such diversity be maintained. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § 73.685(a) for TV.

(3) *State-wide network.* Two points for an applicant that does not qualify for the credit for local diversity of ownership, if it is:

(i) An entity, public or private, with authority over a minimum of 50 accredited full-time elementary and/or secondary schools within a single state, encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to the schools in furtherance of the school curriculum and the proposed station will increase the number of schools it will regularly serve; or

(ii) An accredited public or private institution of higher learning with a minimum of five full time campuses within a single state encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to campuses in furtherance of their curriculum and the proposed station will increase the number of campuses it will regularly serve; or

(iii) An organization, public or private, with or without direct authority over schools, that will regularly provide programming for and in coordination with an entity described in paragraph (b)(3) (i) or (ii) of this section for use in the school curriculum.

(iv) No entity may claim both the diversity credit and the state-wide network credit in any particular application.

(4) *Technical Parameters.* One point to the applicant covering the largest geographic area and population with its relevant contour (60 dBu for FM and Grade B for TV), provided that the applicant covers both a ten percent greater area and a ten percent greater population than the applicant with the next best technical proposal. The top applicant will receive two points instead of one point if its technical proposal covers both a 25 percent greater area and 25 percent greater population than the next best technical proposal.)

(c) If the best qualified (highest scoring) two or more applicants have the same point accumulation, the tentative selectee will be determined by a tie-breaker mechanism as follows:

(1) Each applicant's number of attributable existing authorizations (licenses and construction permits, commercial and noncommercial) in the same service (radio or television) nationally, as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(2) If a tie remains after the tie breaker in paragraph (c)(1) of this section, the tentative selectee will be the remaining applicant with the fewest pending new and major change applications in the same service at the time of filing;

(3) If a tie remains after the tie breaker in paragraph (c)(2) of this section, each of the remaining applicants will be identified as a tentative selectee, with the time divided equally among them.

(d) Settlements. At any time during this process, the applicants may advise the Commission that they are negotiating or have reached settlement, and the Commission will withhold further comparative processing for a reasonable period upon such notification. Settlement may include an agreement to share time on the channel voluntarily or other arrangement in compliance with Commission rules. Parties to a settlement shall comply with § 73.3525, limiting any monetary payment to the applicant's reasonable and prudent expenses.

§ 73.7004 Petitions to deny tentative selectee(s).

(a) For mutually exclusive applicants subject to the selection procedures in subpart K of this part, Petitions to Deny will be accepted only against the tentative selectee(s).

(b) Within thirty (30) days following the issuance of a public notice announcing the tentative selection of an applicant through fair distribution (§ 73.7002) or point system (§ 73.7003) procedures, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be 10 days from the filing date for petitions to deny, and the time for filing replies shall be 5 days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, the application will be granted. If the Commission determines that the points originally claimed were higher than permitted, but that there is no substantial and material question of fact of applicant qualifications, it will compare the revised point tally of the tentative selectee to the other mutually exclusive applicants and, either grant the original application or announce a new tentative selectee, as appropriate. If an applicant is found unqualified, the application shall be denied, and the applicant(s) with the next highest point tally named as the new tentative selectee.

§ 73.7005 Holding period.

(a) *Assignments/Transfers.* NCE stations awarded by use of the point system in § 73.7003 shall be subject to a holding period. From the grant of the construction permit and continuing until the facility has achieved four years of on-air operations, an applicant proposing to assign or transfer the construction permit/license to another party will be required to demonstrate the following two factors: that the proposed buyer would qualify for the same number of or greater points as the assignor or transferor originally received; and that consideration received and/or promised does not exceed the assignor's or transferor's legitimate and prudent expenses. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (*e.g.* expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, *etc.*). Costs incurred in operating the station are not recoverable (*e.g.* rent, salaries, utilities, music licensing fees, *etc.*). Any successive applicants proposing to assign or transfer the construction permit/license prior to the end of the aforementioned holding period will be required to make the same demonstrations.

(b) *Technical.* In accordance with the provisions of § 73.7002, an NCE applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed, and can not downgrade service to the area on which the preference is based for a period of four years of on-air operations. (c) The holding period in this section does not

apply to construction permits that are awarded on a non-comparative basis, such as those awarded to non-mutually exclusive applicants or through settlement.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

17. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, and 554.

18. Section 74.1233 is amended by adding paragraphs (b)(3) and (b)(4); revising paragraph (c)(1); removing paragraph (e)(4) and revising paragraphs (e)(3) introductory text, (e)(3), (i), (e)(3)(ii), and (e)(3)(iii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(b) * * *

(3) Applications for reserved band FM translator stations will be processed using filing window procedures. The FCC will specify by Public Notice, a period for filing reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(4) Timely filed applications for new facilities or for major modifications for reserved band FM Translators will be processed pursuant to the procedures set forth in subpart K of Part 73 (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003 of this chapter; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.7004 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is found not to be acceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522 of this chapter.

(c) * * *

(1) There is not pending a mutually exclusive application.

* * * * *

(e) * * *

(3) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will apply the same point system identified for full service reserved band FM stations in § 73.7003(b) of this chapter. In the event of a tie, the FCC will consider:

(i) Each applicant's number of existing FM translator authorizations (licenses and construction permits) of the same type (fill-in or non fill-in as defined in paragraphs (e)(1) and (e)(2) of this section) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(ii) If a tie remains, after the tie breaker in paragraph (c)(3)(i) of this section, the remaining applicant with the fewest pending new and major change applications for FM translators of the same type (fill-in or non fill-in) will be chosen as tentative selectee;

(iii) Where the procedures in paragraphs (e)(1), (e)(2) and (e)(3)(i) and (e)(3)(ii) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

[FR Doc. 00–14439 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; lifting of stay.

SUMMARY: This document announces that the Commission's voluntarily-imposed stay of the cable horizontal ownership rules was lifted on May 19, 2000 and that the cable horizontal ownership rules became effective on May 19, 2000.

DATES: The stay of 47 CFR 76.503(a) through (f) was lifted May 19, 2000. Parties not in compliance with the horizontal ownership rules on this date must come into compliance on or before November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Synopsis of Action

1. On its own motion, the Commission reconsidered the conditions under which it would lift the voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec 1, 1999).

2. Subsequently, the Commission ordered that its horizontal ownership rules be stayed until the U.S. Court of Appeals for the D.C Circuit issued a decision upholding the constitutionality of section 613(f)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 533(f)(1)(A). The Commission also ordered that parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issued such decision must come into compliance within 180 days of the court decision. This order was published in the **Federal Register** (65 FR 12135, March 8, 2000).

3. On May 19, 2000, the U.S. Court of Appeals for the D.C. Circuit issued its decision, upholding the constitutionality of section 613(f)(1)(A) of the Act, as amended 47 U.S.C. 533(f)(1)(A).

Federal Communications Commission.

William H. Johnson,

Deputy Bureau Chief, Cable Services Bureau.

[FR Doc. 00–14538 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–U

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1604, 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing a final regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit

plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project. This regulation also makes other miscellaneous changes to the Federal Employees Health Benefits Acquisition Regulations.

DATES: The effective date of this regulation is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001. He can also be reached at (202) 606–0004 or by electronic mail (E-mail) at: *mwkaszyn@opm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the National Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans offered under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration project areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The government contribution for demonstration enrollees will be paid by DoD and cannot exceed the maximum percentage or dollar amount that the government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and at the same level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, premium rates and costs as compared to those for regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it is necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends chapter 16 of title 48, Code of Federal Regulations (CFR) to enumerate these differences.

When developing premium rates for demonstration project community-rated carriers, OPM will not use similarly sized subscriber group (SSSG) rating methodologies to determine the reasonableness of the carrier's demonstration project premium rates. We are not using SSSG's because we have learned from our consultations with community-rated carriers that there are no similar employer sponsored groups with which to compare. Instead we are benchmarking premiums against adjusted community rates if available, Medigap offerings, or other similar products to determine reasonableness. We believe that these data will result in competitively developed premium rates.

We have determined the most cost effective and administratively efficient way for the federal government to track expenditures is to allow experience-rated carriers participating in the demonstration project to draw funds from their existing FEHB Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

All carriers must account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This percentage will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

Because of the way premiums are collected from enrollees and annuitants and the way the government distributes them to carriers, there will be a period between the effective date of demonstration project enrollees' coverage and the first deposit of premium into experience-rated carriers' LOC accounts. DoD enrollments will become effective on January 1, 2000, and the first demonstration project premiums will be withheld from annuities on February 1, 2000. The enrollees' and government's share of the premiums are due to OPM from DoD on the first day of each month thereafter through the conclusion of the demonstration project. However, since enrollees will be entitled to coverage for at least a month before the first premium payment, there won't be an opportunity for carriers to build a sufficient cash flow to cover the costs of the demonstration project group during this period. We are addressing this problem by allowing experience-rated carriers to draw on their existing LOC accounts in the same manner as for regular FEHB claims.

Since this is a start-up program with no specific experience, we determined that experience-rated and community-rated carrier risk must be mitigated in order to keep premiums as low as possible. Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM. Experience-rated carriers will be required to perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. If a community-rated carrier wants to make a claim on the Employees Health Benefits Fund, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following

the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

We also have made other miscellaneous changes to chapter 16 of title 48, CFR.

On July 6, 1999, OPM published an interim regulation in the **Federal Register** (64 FR 36271). OPM subsequently received comments from three organizations—one trade association representing FEHB fee-for-service/PPO plans, one fee-for-service/PPO health benefit carrier, and one employee union. One organization that commented on the proposed rule stated that OPM's proposed formula for allocating indirect administrative costs to the demonstration project is overly prescriptive and conflicts with Section 31.203 of the Federal Acquisition Regulations. The commenter indicates that the FAR allows contractors to allocate indirect administrative expenses using any sound method in accordance with generally accepted accounting principles. This entitles carriers to select among various methods of allocation. While it would seem reasonable to allow carriers to select among various methods for allocating administrative expenses to the demonstration project, OPM is required by the authorizing legislation, Public Law 105–261, to perform an analysis of the demonstration project's rates and costs. In order to perform this analysis, OPM must set a standard for comparison. Consequently, OPM is requiring that only one method be used to determine allocable indirect costs so that these costs can be credibly compared among carriers. We will continue to use claims as the basis for allocation of indirect administrative costs associated with the demonstration project.

One commenter believes that in order to fulfill its obligation to DoD retirees, the Department of Defense should pay DoD retirees' entire premium and reimburse them fully for any out-of-pocket charges they incur during the demonstration project. OPM and DoD do not have the legislative authority to fully pay the premiums and out-of-pocket costs for DoD beneficiaries and their family members. The National Defense Authorization Act for 1999 requires that the government contribution toward DoD beneficiaries be no more than the maximum the government contributes toward the premiums of regular federal employees. The commenter also believes that sufficient utilization and claims experience exists on the DoD demonstration project group for OPM to set premium rates based on the experience of the group without having to base the rates on those of similarly sized subscriber groups. While utilization and claims data does exist on the demonstration project group, not all of the carriers in the FEHB Program are experience-rated, so not all of them rely solely on this information to set rates. A community-rated carrier under the regular FEHB Program is required to use the same rating methodology to develop its FEHB Program rates as it does for other groups of a similar size. The regulation eliminates the requirement that a carrier must use the same methodology as it uses for similar sized employers so that the carrier can develop its rates using Medigap or other Medicare supplemental rating methodologies.

One commenter questions how separate accounting for benefits and administrative costs will be accomplished and verified in the absence of requiring application of the government's Cost Accounting Standards. The commenter believes that to uphold the integrity of the FEHB Program and to gain a true assessment of the success or failure of the demonstration project, OPM should require the application of relevant Cost Accounting Standards to charges made by FEHB participating carriers. OPM cannot require carriers to account for operations using the Cost Accounting Standards because the National Defense Authorization Act, 2000 exempts FEHB carriers from the standards for fiscal year 2000.

The commenter believes that it is inappropriate to use regular FEHB reserves to pay any costs in excess of premiums for the DoD group since a portion of the funds that comprise the Administrative Reserve are deducted from regular FEHB enrollee premiums. The commenter asserts that regular FEHB enrollees should not subsidize the DoD group. The National Defense Authorization Act for 1999 authorizes OPM to use the Employees Health Benefits Fund, which includes the FEHB Administrative Reserve, to pay costs the office incurs for activities associated with implementing the demonstration project. OPM believes that availability of the Administrative Reserve to mitigate risk is essential to maintain reasonable premiums given the short duration of the demonstration project, and the potential that a carrier could enroll a small number of enrollees. OPM believes that use of the Administrative Reserve is the most reliable and desirable manner in which to effectuate the intentions of Congress with regard to the demonstration project.

One commenter asserts that use of the Administrative Reserve to offset carrier losses, and requirements for carriers to pay surpluses to the Administrative Reserve, violates the FEHB Act and the demonstration project legislation. OPM believes that it has the legal authority to use the Administrative Reserve to mitigate carrier losses incurred as a result of the demonstration project. Therefore, OPM is retaining this aspect of the regulation in its final form.

The demonstration project constitutes a mandate to study the feasibility of providing coverage modeled after the FEHB Program to Medicare and other eligible military retirees and their families. This study will result in two reports to Congress that will influence the decision of Congress as to whether to expand the demonstration project to the entire population of eligible military retirees on a permanent basis.

The demonstration project is not a program of insurance in the same sense that the FEHB Program is a program of insurance. Although the carriers participating in the study are FEHB Program insurance carriers, and although the enrollees participating will be covered for their health insurance needs, the project is, in principle and in operation, a study rather than a continuing insurance program. Indeed, the statutory limitations imposed upon the project—limitations on number of enrollees and the duration of the project—are antithetical to a continuing program of insurance, but are appropriate to a study. OPM's mitigation of risk of losses during the study is analogous to self-insuring for purposes of mitigating risk, and allows the demonstration project to simulate normal conditions to overcome the artificial constraints of an uncertain number of enrollees and the short duration of the project.

OPM recognizes that the unknown participation rate and the short-term nature of the project generate an upward pressure on the premium rates for demonstration project enrollees. This is because in a typical, sustainable program of insurance, the risk pool is sufficiently large so that insurance risk is spread with some confidence across the pool while maintaining appropriate premium rates. In contrast, under the demonstration project, some plans may attract only a small number of beneficiaries, creating a small risk pool.

In addition, the indefinite duration of a typical, ongoing program allows a carrier to anticipate the experience of the risk pool and provides the opportunity to recoup unexpected losses over the long term by making appropriate adjustments to future premium rates based upon past experience with the insured group. However, where the period over which a carrier is expected to cover the risk pool is limited, there is a substantial likelihood that there will be insufficient opportunity to offset losses in subsequent years. Thus, OPM recognizes that the risk inherent in covering the demonstration project population requires mitigation if the project is to succeed.

FEHB Program carriers can expect to attract a small demonstration project enrollment, may not have reserves sufficient to cover claims in excess of premium income, and may have reinsurance arrangements that preclude the use of their FEHB Program reserves to pay demonstration project claims. Although other strategies for implementing the demonstration project are available, OPM has determined that the strategy set forth in these regulations is the most appropriate for all FEHB Program carriers.

We believe that the commenter has made a valid point with respect to the portion of the interim regulation that required carriers to return surplus premium to the Administrative Reserve upon completion of the demonstration project. OPM initially required the return of any surplus to the Administrative Reserve (1) as the corresponding alternative to the Administrative Reserve bearing the mitigation of loss; and (2) for equitable purposes, to enable all carriers in the FEHB Program to ultimately enjoy any gains as well as bear any losses. OPM reasoned that this alternative was preferable to allowing a windfall resulting from higher than required premiums to go to any one carrier. However, as an alternative approach, OPM agrees that it is appropriate to treat the surplus as any other surplus reserve that a carrier maintains upon termination of its participation in the FEHB Program. Therefore, OPM is changing the final regulation to require demonstration project surpluses to be distributed to the Contingency Reserves of all carriers continuing in the FEHB Program in the year after the demonstration project ends, in proportion to the subscription charges paid and accrued for the carrier for the last year of the demonstration project.

A commenter indicated its view that OPM failed to follow required notice and comment procedures by failing to provide an opportunity for comment on the interim regulations. As we stated in the preamble to the interim regulations, carriers needed the information that was contained in the interim regulations in order to have sufficient time to develop reserve accounts and premiums for enrollments to be effective for contract year 2000. OPM has now followed all of the required procedures in adopting these final regulations. The final regulations are being issued after taking into consideration the carrier's comments together with other comments, in order for appropriate preparations to be made for contract year 2001. This commenter also indicated that because OPM does not advance any rationale for waiving notice and comment on 48 CFR 1652.216–71, Accounting and Allowable Cost, the rule making should be rendered invalid. OPM has simply rewritten this section of the FEHBAR in plain language, and has made no substantive changes to the regulation. The Administrative Procedures Act waives the advance notice and comment requirement when a change is not substantive. The commenter states that the date of the Audit Guide currently in effect is July 24, 1998, and that this date should be stated in the regulation. We did not list the specific date of the Audit Guide in the regulation because we want to be able to use the most recent version of the Audit Guide in effect at any given time. The commenter indicates that the regulation makes an erroneous statement that the Audit Guide should be used to resolve all audit findings, while the commenter believes that corrective action plans should apply only to audits of IPAs and should not be extended to OPM audit findings. We have revised the regulation accordingly. The commenter indicated that the word ''actual'' needs to be deleted from the phrase '' actual, reasonable, allowable, and allocable'' because the FAR makes certain imputed costs, such as facilities capital cost of money, allowable. The Armed Services Board of Contract Appeals has ruled that the cost of capital is an actual cost. Therefore, no changes were made to the regulation based on this comment. The commenter also stated that OPM had included a new requirement in paragraph (b)(1)(i) of 1652.216–71 by asking the carrier to justify that costs chargeable to the contract are reasonable and necessary. While we have reworded the paragraph in plain language, the requirement is not new. Carriers have always been required to show proper justification that costs are actual, necessary, and reasonable. The previous language in paragraph (b)(1)(i) stated that ''The allowable costs chargeable to the contract for a contract period shall be the actual, necessary, and reasonable amounts incurred with proper justification and accounting support * * *.'' We are simply clarifying the requirement by stating it in the active voice. The carrier correctly notes that this requirement differs from a related FAR requirement.

Because we became aware during the rate negotiation process that some participating carriers did not understand that the risk mitigation provisions applied to all carriers, the regulation was clarified to indicate that community-rated carrier risk will be mitigated using the Employees Health Benefits Fund Administrative Reserve.

Section 7701(c) of title 31, United States Code, requires each contractor doing business with a government agency to furnish its Taxpayer Identification Number (TIN) to that agency [see FAR 4.902]. Accordingly, we have added a new clause FEHBAR 1652.204–73, Taxpayer Identification Number, to FEHBAR Subpart 1652.2 and the FEHBP Clause Matrix at Subpart 1652.3. We have also made reference changes and updated the Matrix to conform to changes in the Federal Acquisition Regulation (FAR) since the Matrix was last revised.

In addition to the above definitions, in 1652.216–70(b), we have clarified that the term ''State'' as used in 5 U.S.C. 8909(f) includes a U.S. territory or possession.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Parts 1604, 1615, 1632, and 1652

Government employees, Government procurement, Health insurance.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending chapter 16 of title 48, CFR as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATIONS

1. The authority citation for 48 CFR Parts 1604, 1615, 1632, and 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1604—ADMINISTRATIVE MATTERS

2. Subpart 1604.9 consisting of § 1604.970 is added to read as follows:

Subpart 1604.9—Taxpayer Identification Number

1604.970 Taxpayer Identification Number.

Insert the clause at section 1652.204–73 in all FEHBP contracts.

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.8—Price Negotiation

3. In section 1615.802 paragraph (e) is revised to read as follows:

1615.802 Policy.

* * * * *

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

4. In section 1632.170 paragraph (c) is revised to read as follows:

1632.170 Recurring premium payments to carriers.

* * * * *

(c) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108)*

(1) Carriers will create and maintain separate risk pools for demonstration project experience and regular FEHB experience for the purpose of establishing separate premium rates.

(2) OPM will create and maintain a demonstration project Contingency Reserve separate from the regular FEHB Contingency Reserve for each carrier participating in the demonstration project.

(3) Carriers will account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(4) The same percentage used to determine indirect cost allocation will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

(5) Experience-rated carriers participating in the demonstration project will draw funds from their Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

(6) Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM.

(7) Experience-rated carriers will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(8) Community-rated carriers may, at their discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If a community-rated carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse carrier costs significantly in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(9) Should the program be extended beyond the 3 year demonstration project period, OPM will regulate to address any necessary changes to these provisions.

PART 1652—CONTRACT CLAUSES

Subpart 1652.2—Texts of FEHBP Clauses

5. Section 1652.204–73 is added to read as follows:

1652.204–73 Taxpayer Identification Number.

As prescribed in 1604.970, insert the following clause.

Taxpayer Identification Number (Jan 2000)

(a) *Definitions.*

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Carrier is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN:_____

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;
☐ Corporate entity (not tax-exempt);
☐ Corporate entity (tax-exempt);
☐ Other _____.

(f) Common parent.

☐ Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
☐ Name and TIN of common parent:

Name _____
TIN_____

(End of Clause)

6. Section 1652.215–70 is amended by removing ''(JAN 1998)'' from the clause heading and adding in its place ''(JAN 2000)'' and by revising a new paragraph (d) to read as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(d) *Exception for the 3-Year DoD Demonstration Project* (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

7. Section 1652.216–70 is amended by removing ''(JAN 1998)'' from the clause heading and adding in its place ''(JAN 2000)'' and by revising a new paragraph (c) to read as follows:

1652.2161–70 Accounting and price adjustment.

* * * * *

(c) Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

8. Section 1652.216–71 is amended by revising the clause to read as follows:

1652.216–71 Accounting and allowable cost.

* * * * *

ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216–71) (JAN 2000)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions.

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the FEHBP Experienced-Rated Carrier and Service Organization Audit Guide (Guide). The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit prescribed by the Guide or a Government audit, OPM may require the Carrier adjust its annual accounting statements (i) by amounts found not to constitute actual, allowable, allocable and reasonable costs; or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans to resolve audit findings identified in audits that were performed in accordance with the Guide. The corrective action plans will be prepared in accordance with and as defined by the Guide.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) on request, document and make available accounting support for the cost to justify that the cost is actual, reasonable and necessary; and

(ii) determine the cost in accordance with: (A) the terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual, allowable, allocable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* While compliance with the checks presented letter of credit methodology will minimize funds on hand, the Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs that are attributable to the investment of funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term ''mandatory statutory reserve'' is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* (1) When the term ''premium taxes'' is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

applicable to a broad range of business activity.

(2) For purposes of this paragraph (B), OPM has determined that the term ''State'' as used in 5 U.S.C. 8909(f) includes, but is not limited to, a territory or possession of the United States.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual and fiscal year accounting statements in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer:
(Type or Print)

_____

Name of Chief Financial Officer:

_____

Signature of Chief Executive Officer:

_____

Signature of Chief Financial Officer:

_____

Date Signed: _____

Date Signed: _____

Underwriter: _____

Name and Title of Responsible Corporate Official:
(Type or Print:)

_____

Signature of Responsible Corporate Official:

_____

Date Signed: _____

(End of Certificate)

(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.

(End of Clause)

9. Section 1652.232–70 is amended by removing ''(JAN 1998)'' from the clause heading and adding in its place ''(JAN 2000),'' and adding a new paragraph (f) to read as follows:

1652.232–70 Payments—community-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier may, at its discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If the Carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse the Carrier's costs significantly in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

10. Section 1652.232–71 is amended by revising paragraph (f) to read as follows:

1652.232–71 Payments—experience-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. OPM will reimburse the Carrier's costs in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

Subpart 1652.3—FEHBP Clause Matrix

11. In section 1652.370, the FEHB Program Clause Matrix, is revised to read as follows:

1652.370 Use of matrix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.202–1	FAR 2.201	Definitions	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti–Kickback Procedures	M	T	T
FAR 52.203–12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603–7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204–70	1604.705	Contractors Records Retention	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.204–72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims.	M	T	T
1652.204–73	1604.970	Taxpayer Identification Number	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–2	FAR 15.209(b)	Audit & Records—Negotiation	M	T	T
FAR 52.215–10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215–12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215–15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215–16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	
FAR 52.215–17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215–18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	M	T	
1652.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.7001	Accounting and Price Adjustment	M	T	T
1652.216–71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222–4	FAR 22.305	Contract Work Hours and Safety Standards Act-Overtime Compensation.	M	T	T
FAR 52.222–21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222–26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222–29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505	Drug–Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M	T	T
FAR 52.227–2	FAR 27.202–2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes	M		T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
1652.229–70	FEHBAR 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–6	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232–33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration.	M	T	T
1652.232–70	1632.171	Payments—Community-Rated Contracts	A		T
1652.232–71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232–72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims	M	T	T
FAR 52.233–1	FAR 33.215	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
1652.243–70	1643.205–70	Changes—Negotiated Benefits Contracts	M	T	T
FAR 52.244–5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244–6	FAR 44.403	Subcontracts for Commercial Items and commercial components.	M	T	

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.244–70	1644.270	Subcontracts	M	T	
1652.245–70	1645.303–70	Government Property (Negotiated Benefits Contracts).	M	T	T
FAR 52.246–25	FAR 6.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246–70	1646.301	FEHB Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval	M	T	T
1652.249–71	1649.101–71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts.	M	T	T
1652.249–72	1649.101–72	FEHBP Termination for Default—Negotiated Benefits Contracts.	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[FR Doc. 00–13851 Filed 6–7–00; 8:45 am]

BILLING CODE 6325–01–P

Proposed Rules

Federal Register
Vol. 65, No. 111
Thursday, June 8, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Learjet Model 35, 35A, 36, and 36A series airplanes. This proposal would require revision of the Airplane Flight Manual (AFM) to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. This action is intended to prevent incapacitation of the flightcrew due to lack of oxygen and consequent loss of control of the airplane due to absence of AFM procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated.

DATES: Comments must be received by July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–127–AD'' in the subject line and need not be submitted in triplicate.

Information regarding this docket may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ben Sorensen, Flight Test Pilot, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under part 135 of the Federal Aviation Regulations (14 CFR 135) departed Orlando International Airport enroute to Dallas, Texas. Air traffic control lost communication with the airplane near Gainsville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 series airplane were apparently frosted over and prevented the chase airplane flightcrews from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes do not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is

activated. Additional review has found that the AFM's of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFM's do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks when the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising Emergency Procedures Section of the AFM to provide the flightcrew with appropriate and timely actions in response to activation of the cabin altitude warning horn.

Cost Impact

There are approximately 739 Learjet Model 35, 35A, 36, and 36A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 500 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket 2000–NM–127–AD.

Applicability: Model 35, 35A, 36, and 36A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew and consequent loss of control of the airplane due to delays in donning oxygen masks in response to the activation of the cabin altitude warning horn; accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Emergency Procedure Section of the FAA-Approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

''CABIN ALTITUDE WARNING HORN ACTIVATES (EMERGENCY DESCENT)

1. Oxygen Masks—Don. Select 100% oxygen.
2. Thrust Levers—IDLE.
3. Autopilot—Disengage.
4. SPOILER switch—EXT.
5. Landing gear switch—DN below MMO VLE as appropriate for altitude. Keep sideslip angles to a minimum (ball centered) when extending gear.
6. Descend at MMO or VLE as appropriate, but NOT below minimum safe altitude.
7. PASS OXY Valve—NORM.
8. PASS MASK Valve—MAN.

WARNING: If pressurization loss is due to structural failure, limit speeds and maneuvering loads as much as possible in descent.

NOTE:

Descent from 45,000 feet to 15,000 feet requires approximately 2 minutes 45 seconds.

Hats and ''ear-muff'' type headsets must be removed prior to donning crew oxygen masks.

Communication between crewmembers can be accomplished by using the INPH function of the AUDIO CONTROL PANEL and adjusting the MASTER VOL.

Communication with passengers can be accomplished by using PASS SPKR function of the AUDIO CONTROL panel and adjusting the PASS SPKR VOL level.

The HORN SILENCE switch will mute the cabin altitude warning horn for 60 seconds.

If Time and Conditions Permit:

9. Transponder—Emergency 7700.
10. Pilot and Copilot OXY—MIC switches—ON.
11. Notify controlling agency.
12. Check condition of passengers and provide assistance if conditions permit.''

Alternative Methods of Compliance

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

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

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14438 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–146]

RIN 2115–AA97

Security Zone: Dignitary Arrival/ Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This action establishes two permanent exclusion areas that are active from shortly before the dignitaries' arrival at the United Nations General Assembly meetings until shortly after their departure.

DATES: Comments and related material must reach the Coast Guard on or before July 24, 2000.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–006), 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 M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

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 (CGD01–00–006), 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 45 days. This time period is adequate to allow local input because the locations have been used for United Nations General Assembly Security Zones in previous years. The shortened comment period will still 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

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 12 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. Due to the sensitive nature of these visits, a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed location and size of the zones. The proposed regulation establishes two permanent security zones that could be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. 3056.

These security zones have been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within these proposed security zones would be prohibited unless authorized by the Coast Guard Captain of the Port, New York. The activation of a particular security zone will be announced via facsimile and marine information broadcasts.

Discussion of Proposed Rule

The two proposed security zones are as follows (all nautical positions are based on North American Datum of 1983):

The first proposed security zone at United Nations Headquarters includes all waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″W. The proposed security zone prevents vessels from transiting a portion of the East River. Marine traffic will still be able to transit through the eastern 100 yards of the western channel of the East River. Additionally, vessels may transit through the eastern channel of the East River during this security zone. This zone is generally enacted from 8 a.m. until 7 p.m. during the United Nations General Assembly meetings. Generally, these meetings take place from Monday through Saturday for two consecutive weeks. Normally this occurs between the final two weeks of September and the first two weeks of October.

This proposal is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime

industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The second proposed security zone at United Nations Headquarters includes all waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge. Marine traffic will not be able to transit through this portion of the East River because the proposed zone extends bank to bank, and there are no alternate routes available in the river to go around the zone. This proposed zone extends bank to bank while the President of the United States addresses, or is in attendance at, the United Nations General Assembly. Generally, this zone will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address or while the President is in attendance. This address has been held during the final week of September for the past two years. However, due to the late notification of the daily security requirements from the Secret Service, there was insufficient time to follow notice and comment rulemaking to give the public the opportunity to comment on the proposed location and size of the zones. The Coast Guard expects this zone to be activated for only 2.5 hours during the morning and 3 hours during the afternoon.

This proposal is necessary to protect the Port of New York/New Jersey, the President of the United States, and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during visits by the President of the United States and dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The actual dates that these security zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each security zone by all appropriate means to provide the widest publicity among the affected segments of the public. Marine information broadcasts will normally be made for these security zones beginning 24 to 48 hours before the zone is enacted. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent security zone in this rulemaking will normally be made less than seven days before the zone is actually activated.

The two new security zones are being proposed to ensure the Coast Guard can provide the U.S. Secret Service with the services they require to protect the Port of New York/New Jersey and visiting dignitaries in a timely manner. This proposal will also give the marine community the opportunity to comment on the proposed zones location and size.

This proposed rule revises 33 CFR 165.164 by renaming the section heading to ''Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' and adding two new East River locations to the listed zones.

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 fact that we anticipate these security zones will be activated on an average of 12 times per year, and the minimal time that vessels will be restricted from the zones. Marine traffic will still be able to transit through the eastern 100 yards of the western channel and recreational traffic will also be able to transit through the eastern channel of the East River while the first, smaller security zone at the United Nations Headquarters is enacted. We anticipate that the second security zone at the United Nations Headquarters, shutting down the East River in the vicinity of the United Nations Headquarters, will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address. This zone that shuts down the East River will normally only be in effect for 2.5 hours during the morning and 3 hours during the afternoon. Extensive advance notifications will be made to the maritime community via facsimile and marine information broadcasts. These security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary.

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 the Port of New York/New Jersey during the times these zones are activated.

These security zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit through the eastern 100 yards of the western channel of the East River during the smaller security zone that is enacted when the President of the United States is not addressing the Assembly. Recreational traffic could also transit through the eastern channel of the East River during this same security zone. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by facsimile and marine information broadcasts.

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

M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

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 would establish two security 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. In § 165.164, revise the section heading and paragraphs (a)(4) and (a)(5), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 165.164 Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) * * *

(4) *Location.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″ N, 073°58′10.5″ W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″ W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″ W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″ W. All nautical positions are based on North American Datum of 1983.

(5) *Location.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge. All nautical positions are based on North American Datum of 1983.

(6) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(7) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

* * * * *

Dated: May 30, 2000.

R.E. Bennis,

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

[FR Doc. 00–14506 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Chapter II

Negotiated Rulemaking Advisory Committee; Fixed Anchors in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Negotiated rulemaking; public meetings.

SUMMARY: The Secretary of Agriculture has established a negotiated rulemaking committee to develop recommendations for a proposed rule for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. This committee, called the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee, is made up of individuals representing a cross section of interests with a definable stake in the outcome of the proposed rule. The Committee has been established in accordance with the provisions of the Federal Advisory Committee Act and will be engaged in the process of negotiated rulemaking pursuant to the provisions of the Negotiated Rulemaking Act.

DATES: The first two meetings of the advisory committee will be held in Golden, Colorado on June 27–28 and July 19–20. The meetings are scheduled from 10 a.m. to 5:30 p.m. on the first day and from 8:30 a.m. to 3:00 p.m. on the second day of each session.

ADDRESSES: The advisory committee meetings will be held at the Rocky Mountain Regional Office, Forest Service, 740 Simms Street, Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Recreation, Heritage, and Wilderness Resources, (202) 205–0956.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1999, the Secretary of Agriculture published in the **Federal Register** a notice of intent (64 FR 58368) to establish a negotiated rulemaking advisory committee to assist in the development of a proposed rule regarding the placement, use, and removal of fixed anchors in congressionally designated wilderness areas administered by the Forest Service. The Secretary received over 1,300 responses on the notice of intent. All of the comments are available for public inspection at the Forest Service's national office in Washington, DC. Arrangements to view the comments

may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Secretary has determined to proceed with resolving the issue on the placement, use and removal of fixed anchors in the wilderness areas on National Forest System lands through the negotiated rulemaking process pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* An advisory committee has been established which consists of an agency representative and other parties representing a broad cross section of the interests significantly affected by the rulemaking. Through a series of meetings, the members of the advisory committee are expected to negotiate in good faith to reach a consensus on recommendations for a proposed rule.

The Committee's meetings will serve as a forum in which the committee members can discuss issues involved in regulating the use of fixed anchors for recreational climbing purposes in wilderness areas administered by the Forest Service. This process is expected to enable the agency to develop and promulgate effective regulations governing the use of these devices within wilderness areas on National Forest System lands.

The meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, and may file written statements with the Committee.

Consistent with FACA requirements, the facilitator must prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee must be placed in the rulemaking docket, which is available for public inspection through the contact person named in this notice.

Committee Membership

The members of the committee, and their affiliation, if any, are listed as follows: Lloyd Athearn, American Alpine Club, Golden, CO; Kathleen Beamer, Recreation Equipment Incorporated, Seattle, WA; Frank Buono, retired National Park Service Assistant Superintendent, Prineville, OR; David Custer, recreational rock climber, Cambridge, MA; Sam Davidson, The Access Fund, Salinas, CA; Larry Gadt, Forest Service, Washington, DC; Brian Huse, National Parks and Conservation Association, Oakland, CA; Stefan Jackson, National Outdoor Leadership School, Bridgton, ME; Myrna Johnson, Outdoor Recreation Coalition of America, Boulder, CO; Jon Krakauer, author/mountain climber, Boulder, CO; Craig Mackey, Outward Bound, Golden, CO; John McCarthy, Idaho Conservation League, Boise, ID; William Maher Jr., recreational climber, Alexandria, VA; Patrick Mullaney, The Mountaineers, Seattle, WA; Douglas Medville, National Speological Society, VA; George Nickas, Wilderness Watch, Missoula, MT; Phil Powers, The American Mountain Guide Association, Lander, Wy; Kevin Proescholdt, Friends of the Boundary Waters Wilderness, Minneapolis, MN; Scott Silver, Wild Wilderness, Bend, OR; Jay Watson, The Wilderness Society, San Francisco, CA; Jeff Widen, The Sierra Club, Durango, CO; Rick Wilcox, Mountain Rescue Service, Eaton, NH; and Steve Wolper, recreational rock climber, Ketchum, ID.

Dated: May 31, 2000.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

[FR Doc. 00–14309 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN117–1b; FRL–6708–1]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999, and January 10, 2000. Each of these negative declarations concerns sources located in Lake and Porter Counties which are classified as a severe nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Lake and Porter Counties and determined that there are no unregulated sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: Written comments must be received on or before July 10, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used we mean EPA.

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I. What Action Is EPA Taking Today?

EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999, and January 10, 2000. Each of these negative declarations concerns a category of sources located in Lake and Porter Counties which are classified as a severe nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Lake and Porter Counties and determined that there are no unregulated sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–13842 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN112–1b; FRL–6708–4]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999. Each of these negative declarations concerns sources located in Clark and Floyd Counties which are classified as a moderate nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Clark and Floyd Counties and determined that there are no unregulated sources with a potential to emit 100 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic printing, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: Written comments must be received on or before July 10, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us'' or ''our'' are used we mean EPA.

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I. What Action Is EPA Taking Today?

EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999. Each of these negative declarations concerns a category of sources located in Clark and Floyd Counties which are classified as a moderate nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Clark and Floyd Counties and determined that there are no unregulated sources with a potential to emit 100 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic printing, business plastics, automotive plastics and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

II. Where Can I Find More Information About This Proposal and The Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–13840 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA241–0238b; FRL–6709–2]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from metal parts coating operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 10, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812; and, Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: This proposal concerns SBCAPCD Rule 330, Surface Coating of Metal Parts and Products. In the Rules and Regulations section of this **Federal Register**, EPA is approving this local rule in a direct final action without prior proposal because we believe this SIP revisions is not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 23, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–14174 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI88–01–7319b; FRL–6706–4]

Approval and Promulgation of State Implementation Plans; Wisconsin; Site-Specific Revision for Uniroyal Engineered Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site specific revision to the volatile organic compound (VOC) control requirements for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this State Implementation Plan (SIP) revision on October 30, 1999 and revised it on February 17, 2000. Our approval of this revision would make federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, we will withdraw the direct final rule and we will address all public comments received in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: We must receive written comments on this proposed action by July 10, 2000.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

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

Dated: May 12, 2000.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 00–14176 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[GA–T5–2000–01b; FRL–6711–1]

Clean Air Act Proposed Full Approval of Operating Permit Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes full approval of the operating permit program of the State of Georgia. In the final rules section of this **Federal Register**, EPA is approving the State's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 10, 2000.

ADDRESSES: Address comments to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the State's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: May 15, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–14167 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–NASH–T5–2000–01b; FRL–6710–8]

Clean Air Act Proposed Approval of Operating Permit Program Revisions; Metropolitan Government of Nashville-Davidson County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes approval of revisions to the operating permit program of the Metropolitan Government of Nashville-Davidson County (TN). In the final rules section of this **Federal Register**, EPA is approving the County's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 10, 2000.

ADDRESSES: Address comments to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–14170 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1144; MM Docket No. 98–218; RM–9388]

Radio Broadcasting Services; Peterstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This *Report and Order* grants a pleading seeking dismissal of a petition for rule making. The rule making petition had requested the allotment of Channel 244A at Peterstown, West Virginia and was mutually exclusive with an application (File No. BMPH–9811161F) of Equus Communications Inc. (''Equus''), licensee of Station WREL–FM, Buena Vista, Virginia. With the dismissal of the rule making petition, the proceeding was terminated and Equus's application was returned to the Audio Services Division, Mass Media Bureau, for further action.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–218, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14380 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1154, MM Docket No. 00–94, RM–9883]

Radio Broadcasting Services; Almont, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Morton County Radio seeking the allotment of Channel 294A to Almont, ND, as the community's first local aural service. Petitioner is requested to provide information showing that Almont is a community for allotment purposes. Channel 294A can be allotted to Almont without the imposition of a site restriction, at coordinates 46–43–30 NL; 101–30–07 WL. Canadian concurrence in the allotment is required because Almont is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before July 17, 2000, and reply comments on or before August 1, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randy Parker, 25415 Glenn Loch, The Woodlands, TX 77380 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–94, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14378 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1155, MM Docket No. 00–93, RM–9881]

Radio Broadcasting Services; Lynn Haven, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Beacon House Communications, requesting the allotment of Channel 282A at Lynn Haven, Florida, as the community's first local FM broadcast service. The coordinates for Channel 282A at Lynn Haven are 30–11–20 NL and 85–42–20 WL. There is a site restriction 8.3 kilometers (5.2 miles) southwest of the community.

DATES: Comments must be filed on or before July 17, 2000, and reply comments on or before August 1, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC. 20016–4120.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–93, adopted May 17, 2000 and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14376 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 111
Thursday, June 8, 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

Submission for OMB Review; Comment Request

June 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1951–A, Account Servicing Policies.

OMB Control Number: 0575–0075.

Summary of Collection: The Rural Housing Service (RHS) provides supervised credit in the form of Single Family Housing, Multi-Family Housing, and Community Facility loans and grants. Regulation 7 CFR 1951–A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

Need and Use of the Information: Information collection is submitted by Agency borrowers to the local Agency office servicing the county in which their operation is located and is used by agency servicing officials. The collection of information is required only when needed on an individual case basis.

Description of Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28.

Rural Utilities Service

Title: 7 CFR 1780, Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0572–NEW.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations for the development of drinking water and wastewater, and solid waste disposal facilities in rural areas of up to 10,000 residents. These regulations were also used to administer the Community Facilities programs, whose functions the Rural Housing Service also had assumed from Farmers Home Administration (FmHA) and Rural Development Administration (RDA). RUS amended the regulations to establish separate regulations for the Water and Waste Disposal programs. RUS also replaced references to FmHA and RDA with references to RUS and its officials.

Need and Use of the Information: RUS state and field offices will collect information from applicants, borrowers, and consultants to determine eligibility and project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 5,800.

Frequency of Responses: Recordkeeping; reporting: On occasion; Weekly; Annually.

Total Burden Hours: 134,240.

Animal and Plant Health Inspection Service

Title: Federal Plant Pest and Noxious Weeds Regulations.

OMB Control Number: 0579–0054.

Summary of Collection: The Plan Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. Section 150bb of the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and Section 4(a) of the Federal Noxious Weed Act (7 U.S.C. 2801–2813) provide that no plant pest or noxious weed can be moved from a foreign country into or through the United States, or interstate, unless the movement is authorized under a permit issued by the Secretary of Agriculture and the movement is carried out in accordance with the conditions the Secretary may prescribe to prevent the dissemination of plant pests or noxious weeds into the United States. APHIS will collect information using forms PPQ 525A, 526, 526–1, and 519.

Need and Use of the Information: APHIS will collect information to evaluate the risk associated with the proposed movement of plant pest, noxious weeds, and soil. APHIS will also collect information to monitor operations at facility to ensure permit conditions are being met. The information is used to determine whether a permit can be issued, and

also to develop risk-mitigating conditions for the proposed movement. If the information were not collected, APHIS' ability to protect the United States from a plant pest or noxious weed incursion would be significantly compromised.

Description of Respondents: Business or other for-profit; individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 40,312.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 38,133.

Animal and Plant Health Inspection Service

Title: Conifer Solid Wood Packing Material to China, Export Certification.

OMB Control Number: 0579–0147.

Summary of Collection: The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant diseases or insect pest from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS provides export certification services to assure other countries that the plants and plant products (as well as associated packing materials) they are receiving from the United States are free of prohibited (or regulated) plant diseases and insect pest. Effective January 1, 2000, the government of China requires goods from the United States to be accompanied by either a statement from the exporter that the shipment does not contain any softwood (conifer) packing materials, or by an APHIS-issued certificate certifying that the conifer packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 degrees Celsius for 30 minutes. APHIS will collect information using form PPQ 553.

Need and Use of the Information: APHIS will collect the names and address of the exporter and the consignee and a description of the consignment. APHIS will also collect information certifying that heat treatment has been performed, as well as the actual certification. The information is needed to assure China that conifer packing materials from the United States do not harbor insect pests such as the pine wood nematode. If the information is not collected this would cause China to refuse any shipments from the United States that contained conifer packing materials.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 6,500.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 2,808.

Agricultural Marketing Service

Title: Marketing Order No. 917 for Peaches Grown in California.

OMB Control Number: 0581–0080.

Summary of Collection: Marketing Order No. 917 (7 CFR 917), regulates the handling of peaches grown in California and emanates from enabling legislation (The Agricultural Marketing Agreement (AMS) Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). This legislation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Order authorizes the issuance of grade, size, and maturity regulations; inspection requirements; and marketing and production research, including paid advertising. Regulatory provisions apply to peaches shipped within and out of the area of production to any market, except those specifically exempted by the Order. There is no State order in effect at this time. The Order also has authority for production and marketing research and development projects. Data will be collected using AMS forms FV–75, FV–76, FM–91, FV–92, FV–93, and FV–103.

Need and Use of the Information: The committee powers, as set forth in the Order, are: (1) to administer the provisions of the Order in accordance with its terms; (2) to receive, investigate, and report to the Secretary complaints of violations of the Order; (3) to make and adopt rules and regulations to effectuate the Order; and (4) to recommend amendments to the Order.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 2,287.

Frequency of Responses: Recordkeeping; reporting; on occasion, Monthly.

Total Burden Hours: 1,411.

Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation for Construction Defects.

OMB Control Number: 0575–0082.

Summary of Collection: This regulation provides instruction to all Rural Housing Service (RHS) personnel to enable them to implement a procedure to accept and process complaints from borrowers/owners against builders and dealers/contractors, to resolve the complaint informally and when the complaint involves structural defects which cannot be resolved by cooperation of the builder or dealer/contractor, authorizes expenditure to resolve the defect with grant funds. Resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan. Information is collected using RD Form 1924–4.

Need and Use of the Information: The information is collected from Agency borrowers and the local Agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. RHS has reviewed the program's need for the collection of information versus the burden placed on the public.

Description of Respondents: Business or for-profit.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,350.

Office of Procurement and Property Management

Title: Maximum Workweek—Construction Schedule.

OMB Control Number: 0505–0011.

Summary of Collection: In order to obtain goods or services such as construction services, United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who solicit bids or offers for work from businesses in the private sector. When USDA contracts from construction services, both the contracting officer and the contractor need to establish a schedule for the work. The contractor needs to ensure that his weekly work schedule will not conflict with the time during which USDA may allow him access to the work side. The contracting officer needs to know when the contractor will be working in order to schedule on-site conferences, to perform quality assurance inspections, and to perform compliance checks required to enforce the Davis Bacon Act (40 U.S.C. 276a–276a–7). Such compliance checks are specifically required by the Federal

Acquisition Regulations (FAR) to conduct employee interviews, to check the type of work being performed, to verify the number and pay classification of workers at the site, and to verify that posters informing workers of their rights are displayed at the site (FAR 22.406–7(b)). Contracting officers put the Maximum Workweek—Construction Schedule clause in solicitations and contracts for construction when the contractor's access to the work site may be restricted to certain times of the day or week.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine when government inspectors or representatives will be needed at the site, and to schedule contractor access to the work site. The information is not collected unless the contracting officer anticipates problems with contractor access or scheduling government inspections. If the information were not collected, contracting offices would be unable to allocate contract administration resources efficiently.

Description of Respondents: Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Office of Procurement and Property Management

Title: Instructions for the Preparation of Technical and Business Proposals.

OMB Control Number: 0505–0013

Summary of Collection:

In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who use various methods to award contracts for good or services. One method, prescribed by part 15 of the Federal Acquisition Regulation (FAR) is contracting by negotiation. In contracting by negotiation, contracting officers issue solicitations to request offers for required products or services from businesses in the private sector. Together with the solicitation document, the offeror's cost proposal and its technical and business proposals constitute the offer submitted to the contracting office for evaluation and acceptance. The technical proposal, together with the offeror's pricing, is needed to select the offeror who will be awarded a contract. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) prescribes the provision titled *Instructions for the Preparation of Technical and Business Proposals* (48 CFR 452.215–71) help an offeror preparing a proposal to address the factors on which it will be evaluated.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to evaluate and determine the feasibility of the offeror's management, technical approach, and offered cost/price to provide the services and/or supplies required if awarded a contract. If the information were not collected OPPM would be unable to obtain goods and services required for its daily operations.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 3,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 112,000.

Office of Procurement and Property Management

Title: Brand Name or Equal Provision and Clause.

OMB Control Number: 0505–0014.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) and the (48 CFR 411.171), provision (48 CFR 452.211–70), and a clause (48 452.211–71) permits the use of ''brand name or equal'' purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the ''equal'' item being offered and to indicate how that item meets the salient characteristics stated in the purchase description. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine from the descriptive information furnished whether the offered ''equal'' item meet the salient characteristics of the Government's requirements. If information were not collected, PPM would spend more time developing purchase descriptions and offerors would spend more time reading and interpreting the purchase descriptions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 45,170.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,517.

Office of Procurement and Property Management

Title: Procurement: Key Personnel Clause.

OMB Control Number: 0505–0015.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who issue solicitations to request offers (proposals) for required products or services from businesses in the private sector. When USDA wishes to acquire research and development services (R&D), Information Technology (IT) design or support services, or advisory and assistance services, it must consider the capabilities of the personnel who the contractor assigns to the job. The contributions of certain contractor employees may be critical to the success of the work. Such employees are designated as ''Key personnel.'' The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) (48 CFR 437.110) and 48 CFR 452.237–74) prescribes the Key Personnel clause to collect information about key contractor personnel. The contracting officer uses the Key Personnel clause to require the contractor to inform USDA if a key person will no longer be available to perform work on the contract. Contractors whose contracts include the key personnel clause are required to notify the contracting officer about proposed substitutions for key personnel identified in the contract.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine whether the departure of a key person from the contractor's staff could jeopardize contract performance, and to determine what accommodations or remedies may be taken. If the OPPM could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

Office of Procurement and Property Management

Title: Progress Reporting Clause.

OMB Control Number: 0505–0016.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who request bids or offers for work from businesses in the private sector using solicitations. In order to administer contracts for research and development services (R&D), or for advisory and assistance services (AAS), contracting officers need information about contractor progress in performing the contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) (48 CFR 437.270(a)) and (48 CFR 452.237–76) prescribe the Progress Reporting Clause to collect information about contractor progress. Contracting officers include the Progress Reporting Clause in R&D and AAS contracts to obtain information from the contractors about their performance.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to compare actual progress and expenditures to anticipated performance and contractor representations on which the award was based. The information alerts the agency of technical problems; to the need for additional staff resources or finding; and to the probability of timely completion within the contract cost or price. If the contracting officers could not obtain progress report information, they would have to physically monitor the contractor's operation on a day to day basis throughout the performance period.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Repondents: 200.

Frequency of Responses: Reporting: Quarterly; monthly.

Total Burden Hours: 3,600.

Rural Housing Service

Title: 7 CFR 1940–G, Enviromental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies, prior to the approval of proposed actions, to consider the potential environmental impacts of these actions. Consequently, for the Agencies to comply with NEPA, it is necessary that they have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out at the site; any air, liquid and solid wastes produced by these activities, etc.). The agency will collect environmental data using form RD 1940–20.

Need and Use of the Information: The agency will collect information on the proposed project site and the activities to be conducted there. This will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons.

Description of Respondents: Farms; individuals or households; Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,050.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,320.

Barbara Lacour,

Departmental Clearance Officer.

[FR Doc. 00–14412 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–01–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 16, 2000, 8 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 12, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Police Practices and Civil Rights in New York City Report
VI. Future Agenda Items
9 a.m. Briefing on National Police Practices and Civil Rights

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–14597 Filed 6–6–00; 12:38 am]

BILLING CODE 6335–00–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815, A–533–807, C–533–806]

Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notices of continuation of antidumping duty orders: Sulfanilic acid from People's Republic of China and India; and countervailing duty order, sulfanilic acid from India.

SUMMARY: On February 8, 2000 and on April 6, 2000 (as amended, with respect to the countervailing duty order), the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on sulfanilic acid from the People's Republic of China (''PRC'') and India, and the countervailing duty order on sulfanilic acid from India, would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (65 FR 6156, 65 FR 6171 (as amended, 65 FR18070), respectively). On May 26, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of these antidumping and countervailing duty orders on sulfanilic acid would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 34232). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1999, the Department initiated, and the Commission

instituted, sunset reviews (64 FR 53320 and 64 FR 53412, respectively) of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked.[1] In addition, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies and notified the Commission of the net countervailable subsidies likely to prevail were the order revoked.[2]

On May 26, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sulfanilic Acid from China and India,* 65 FR 34232 (May 26, 2000) and USITC Publication 3301, Investigations Nos. 701–TA–318 (Review), and 731–TA–538 and 561 (Review) (May 2000)).

Scope of the Orders

The products covered by these orders are all grades of sulfanilic acid from the PRC and India, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.42.22 and 2921. 42.24.20.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders are dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India. The Department will instruct the Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than May 2005.

Dated: June 2, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14499 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Sulfanilic Acid From India and The People's Republic of China, 65 FR 6156 (February 8, 2000).

[2] See Final Results of Expedited Sunset Review: Sulfanilic Acid From India, 65 FR 6171 (February 8, 2000), as amended, Notice of Correction to Final Results of Expedited Sunset Review: Sulfanilic Acid From India, 65 FR 18070 (April 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Glycine from the People's Republic of China.

SUMMARY: On February 3, 2000, the Department of Commerce (''the Department'') published the notice of initiation of sunset review of the antidumping duty order on glycine from the People's Republic of China (''PRC'') (65 FR 5308), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On February 3, 2000, the Department published the notice of initiation of sunset review of the antidumping duty order on glycine from the PRC (64 FR 67247). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an

expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

Scope of Review

The product covered by this order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, re-absorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff schedule of the United States (''HTSUS''). The scope of this order includes glycine of all purity levels. In a separate scope ruling, the Department determined that D(-)Phenylglycine Ethyl Dane Salt is outside the scope of the order.[1]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 2, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporter	Margin (percent)
PRC-wide	155.59

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: June 2, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14500 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Notice of Final Results of Antidumping Duty New Shipper Review: Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On November 30, 1999, the Department of Commerce (''the Department'') published the preliminary results of new shipper review of the antidumping duty order on oil country tubular goods (''OCTG'') from Canada. This review covers one manufacturer/exporter, Atlas Tube, Inc. (''Atlas''), and the period June 1, 1998 through November 30, 1998.

We received comments by petitioners, Lone Star Steel Company and Maverick Tube Corporation, (collectively ''the petitioners''), and rebuttal comments from Atlas. Based on our analysis of comments received and corrections from verification, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below, in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1998).

Background

On November 30, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on OCTG from Canada (64 FR 66886). The review covers one manufacturer/exporter. The period of review (''POR'') is June 1, 1998 through November 30, 1998. We invited parties to comment on our preliminary results of review. None of the interested parties requested a public hearing; therefore, none was held. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (''API'') specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded.

[1] See Notice of Scope Rulings, 62 FR 62288 (November 21, 1997).

Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Atlas. We used standard verification procedures, including: On-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated March 8, 2000, the public versions of which are on file in the Central Records Unit, Room B–099 of the Main Commerce building (B–099).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this new shipper review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Holly A. Kuga, Acting Deputy Assistant Secretary, Important Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 1, 2000, which is hereby adopted by this notice. A list of the issues parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties will find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099. In addition a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading ''Applicable Country.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of Review

The Department, at verification, found certain errors in the reported values for inland freight in the home market and U.S. sales databases. The Department adjusted for these errors in these final results of new shipper review. *See Sales Verification Report*, dated March 8, 2000; *see also Final Calculation Memorandum*, dated June 1, 2000. No other changes were made to our margin calculation program.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period June 1, 1998, through November 30, 1998:

Manufacturer/exporter	Margin (percent)
Atlas Tube, Inc	0.88

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate. With respect to both export price and constructed export price sales, we divided total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, in a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.65 percent. This rate is the ''All-Others'' rate established in the less than fair value investigation.

These deposit requirements shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with sections 751(a)(2) and 771(i) of the Act.

Dated: June 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments and Responses

1. Cost of Production and Constructed Value
   A. Product Specific Costs
2. Date of Sale
   A. Contract Date vs. Invoice Date
3. Home Market Sales and Export Price
   A. Billing Adjustments

[FR Doc. 00–14501 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, Atlas Tube, Inc. (''Atlas''), the Department of Commerce (the ''Department'') is conducting an administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Canada. This review covers one manufacturer/exporter, Atlas, and the period December 1, 1998 through May 31, 1999. The period of review specified by the Department's opportunity to request administrative review was June 1, 1998 through May 31, 1999. However, due to the fact that the Department is conducting a concurrent new shipper review of the same manufacturer/exporter for the period June 1, 1998 through November 30, 1998, this administrative review only covers the remainder of the period, December 1, 1998 through May 31, 1999. *See Notice of Initiation of Administrative Review* 64 FR 47167 (August 30, 1999).

We have preliminarily determined the dumping margin for Atlas to be 4.41 percent during the period December 1, 1998 through May 31, 1999. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3936 or (202) 482–5253 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on OCTG from Canada on June 16, 1986 (51 FR 21782) and an amended order on August 19, 1986 (51 FR 29579). On June 9, 1999, the Department published an Opportunity to Request Review (64 FR 30,962). On June 30, 1999, Atlas Tube Inc., requested the Department initiate an administrative review pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(2). We initiated this administrative review on August 30, 1999, (64 FR 47167) for the period December 1, 1998 through May 31, 1999.

The Department issued its questionnaire on September 1, 1999, and received Atlas' response to Section A on September 20, 1999, Sections B and C on November 5, 1999, and supplemental responses on January 31, 2000. After an analysis of Atlas' Section A, B, and C responses, and upon receipt of an allegation of below-cost sales from petitioners, Lone Star Steel Company and Maverick Tube Corporation, the Department initiated on January 6, 2000, an investigation to determine whether Atlas made sales below the cost of production (''COP''). Respondent submitted its Section D response on January 31, 2000, and supplemental Section D response on February 10, 2000.

The Department is conducting this administrative review in accordance with section 751(a)(1) of the Act. Concurrent with the instant administrative review, the Department is also conducting a new shipper review of Atlas under section 751(a)(2)(B) of the Act. Pursuant to respondent's request, due to the fact that the new shipper review covers shipments through November 30, 1999, the administrative review of Atlas (which would normally cover the period June 1, 1998 through May 31, 1999) is limited to the examination of shipments during the period December 1, 1998 through May 31, 1999. *See* 19 CFR 351.214(j).

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (''API'') specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Atlas. We used standard verification procedures including; on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated March 8, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

United States Price

Atlas reported all United States sales of subject merchandise, as export price (''EP'') transactions sold to unaffiliated U.S. customers prior to importation.

We calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold in the exporting country to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise warranted, based on the facts of record. We based EP on the delivered price to unaffiliated purchasers in the United States. We adjusted the starting price by the amount Atlas reported for billing adjustments and made deductions from the starting price for discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, U.S. inland freight, and U.S. brokerage and handling charges.

Normal Value

After testing: (1) Home market viability and (2) whether home market sales were at below-cost prices, we calculated normal value (''NV'') as

noted in the ''Price-to-Price Comparisons'' section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Atlas' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Atlas' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Atlas.

2. Cost of Production Analysis

On November 24, 1999, petitioners filed an allegation that Atlas made home market sales at prices that were below the COP. Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Atlas had sold OCTG in the home market at prices less than the COP. As a result, pursuant to section 773(b) of the Act, we initiated a COP investigation on January 6, 2000, with respect to Atlas to determine whether sales were made at prices below the COP.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Atlas' cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to be made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In the instant case, we compared Atlas' home market prices to weighted-average COPs for the POR, and determined that such sales were below cost and were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded such below-cost sales.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than the U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Atlas reported one customer category and one channel of distribution (*i.e.*, sales to unaffiliated distributors) for its home market sales. For its EP sales, Atlas also reported one customer category and one channel of distribution (*i.e.*, direct sales to unaffiliated distributors). Atlas claimed in its response that its EP sales were made at the same LOT as home market sales to unaffiliated distributors. For this reason, Atlas has not asked for a LOT adjustment to NV for comparison to its EP sales.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Atlas' sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. Atlas reported that its selling functions for home market sales are arranging for freight, warehousing, and warranty service; however, we noted that Atlas did not report any warehouse or warranty expenses for home market sales during the POR. After reviewing the record evidence, we agree with Atlas that its home market sales comprise a single LOT.

In analyzing Atlas' selling activities for its EP sales, we noted that the sales generally involved the same selling functions associated with the home market LOT described above. Atlas reported that these selling activities included arranging for freight, warehousing, and warranty services; however, we noted that Atlas did not report any warehouse or warranty expenses for U.S. market sales during the POR. Based upon the record evidence, we have determined that there is one LOT for all EP sales and that it is the same LOT as in the home market. Therefore, because we find the U.S. sales and home market sales are at the same LOT, we determine that a LOT adjustment under section 773(a)(7)(A) is not warranted.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers. The NV price was reported on a Goods and Services Tax-exclusive basis. We adjusted the starting price by the amount Atlas reported for billing adjustments. We made deductions from the starting price for rebates, inland freight, and inland freight insurance. We made adjustments for differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made further adjustments, under section 773(a)(6)(C)(iii) of the Act, for differences in circumstances of sale for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a 4.41 percent dumping margin exists for Atlas for the period December 1, 1998, through May 31, 1999.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. There was only one importer during the POR for merchandise sold by Atlas. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Atlas reported entered value by subtracting discounts, freight, and brokerage and handling costs from the its reported U.S. price. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 16.65 percent, the ''all-others'' rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1).

Dated: June 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14502 Filed 6–7–00; 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.97–3A003.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to The Association for the Administration of Rice Quotas, Inc. (''AARQ'') on June 1, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4223).

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.

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 (1998).

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 a 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. 97–00003, was issued to The Association for the Administration of Rice Quotas, Inc. (''AARQ'') on January 21, 1998 (63 FR 4223, January 28, 1998) and lastly amended on September 25, 1998 (63 FR 53013, October 2, 1998).

AARQ's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): ADM Latin, Inc., Decatur, Illinois, and ADM Rice, Inc., Tarrytown, New York (subsidiaries of Archer Daniels Midland Company); AFE (USA), Inc., Houston, Texas; California Commodity Traders, LLC, Sacramento, California; California Pacific Rice Milling, Ltd., Arbuckle, California; Family & Sons, Inc., Miami, Florida; Far West Rice, Inc., Durham, California; Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division and Glencore Ltd.'s subsidiary, LaGrain International Inc., Baton Rouge, Louisiana; Incomar Texas, Ltd. and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas; International Grain Brokerage, LLC, Yuba City, California; JFC International Inc., San Francisco, California (a subsidiary of Kikkoman Corp.); Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.);

Mermentau Rice, Inc., Mermentau, Louisiana; Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)); PS International, Ltd., Durham, North Carolina; Texana Rice, Inc., Houston, Texas; Wehah Farm, Inc., dba Lundberg Family Farms, Richvale, California;

2. Delete the following companies as ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Broussard Rice Mill, Inc.; Cargill, Inc., for the activities of its division, Cargill Rice Milling; Cargill Rice, Inc.; and Gulf Rice Arkansas, Inc.;

3. Change the listings of the current Members as follows: ''AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas'' should be amended to read ''AC HUMKO Corp., Cordova, Tennessee;'' ''Busch Agricultural Resources, Inc., St. Louis, Missouri'' and ''Pacific International Rice Mills, Inc., Woodland, California'' should be amended to read ''Busch Agricultural Resources, Inc., St. Louis, Missouri, and its subsidiary, Pacific International Rice Mills, Inc., Woodland, California;'' ''Continental Grain Company, New York, New York'' should be amended to read ''ContiGroup Companies, Inc., New York, New York;'' ''Gulf Rice Milling, Inc.'' and ''Gulf Pacific Rice Co., Inc.'' should be amended to read ''Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas;'' and ''The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co.'' should be amended to read ''The Connell Company, Westfield, New Jersey.''; and

4. Include as export markets for the purpose of distributing tariff-rate quota auction proceeds the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

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, NW, Washington, DC 20230.

Dated: June 1, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–14382 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board; Announcement of New Members

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of new members for the performance review board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, Room 4803, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This notice announces the appointment by the Acting Under Secretary for International Trade, Robert LaRussa, of the Performance Review Board (PRB). This is a revised list of new members and the reappointment of previous board members as listed in the September 3, 1998, **Federal Register** 63 FR 47000. The appointments are for a period of 2 years. The purpose of the International Trade Administration's Performance Review Board (PRB) is to review and make recommendations to the appointing authority on performance management issues such as appraisals, and bonuses, ES-level Increases and Presidential Rank Awards for members of the Senior Executive Service (SES). The members are:

Eleanor Roberts Lewis, Chief Counsel for International Trade.	Non-ITA career.
Stephen Jacobs, Deputy Assistant Secretary for Agreements Compliance, Market Access & Compliance.	Career.
Elizabeth Sears, Deputy Assistant Secretary for Domestic Operations, U.S. & Foreign Commercial Service.	Non-career
Barbara Tillman, Senior Director, Import Administration.	Career.
Jonathan C. Menes, Director, Office of Trade and Economic Analysis, Trade Development.	Career.
Tong S. Chung, Acting Deputy Assistant Secretary for Service Industries and Finance, Trade Development.	Non-Career.
Linda Moye Cheatham, Chief Financial Officer and Director of Administration.	Career.
LaVerne H. Hawkins, Office of Human Resources Management, 202–482–2537.	Executive Secretary.

Dated: June 2, 2000.

James T. King, Jr.,

Human Resources Manager, ITA.

[FR Doc. 00–14384 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000322079–0079–01]

RIN 0640–ZA06

Solicitation of Applications for the Minority Business Capital Access Policy Institute

AGENCY: Minority Business Development Agency, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations seeking to establish a Minority Business Capital Access Policy Institute. All information required for submission of a grant application by eligible applicants is contained in this announcement.

The MBDA provides business development services to minority entrepreneurs through different types of programs. Each program is designed to focus on the unique business problems of a specific market. MBDA's programs form a national business delivery network that addresses the needs of minority entrepreneurs throughout the United States. Currently, there is very limited information on the minority business community, especially with respect to capital demand and usage. To support the development of minority businesses and encourage informed decision-making by both the public and private sectors, it is critical to collect and analyze quantitative information on the capital needs of these businesses. MBDA will therefore provide seed funding for the planning, development and establishment of the Minority Business Capital Access Policy Institute (''MBCAPI'' or ''Institute''), a research and advocacy institute focused on

issues of capital access for minority businesses. For profit and non-profit organizations, state or local government entities, American Indian Tribes, colleges and universities are eligible to operate the MBCAPI.

DATES: Completed applications for the MBCAPI program must be: (1) Postmarked by the USPS by July 10, 2000; or (2) received by MBDA at the address below no later than 5 p.m. Eastern Daylight Time on July 10, 2000. Applications postmarked later than the closing date or received after the closing date will not be considered. The anticipated time for processing of applications is 90 days.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Financial Access, Room 5600, Minority Business Development Agency, U.S. Department of Commerce, 14th & Constitution Avenues, NW, Washington, DC 20230.

If the application is hand-delivered by the applicant or its representative, it must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW, between Pennsylvania and Constitution Avenues. Unsigned applications and those that do not include required forms will be considered non-responsive and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For further information, contact Jason Everett of the Office of Financial Access, at (202) 482–1940.

Pre-Application Conference: A pre-application conference will be held for the MBCAPI program. Please contact Jason Everett of the Office of Financial Access, at (202) 482–1940, for the date, time and location. Please be aware that proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11625 and 15 U.S.C. 1512.

(Catalogue of Federal Domestic Assistance (CFDA): 11.802)

Program Description

MBDA promotes and encourages business opportunities for minority business enterprises. Although minority businesses are growing at approximately twice the rate of majority businesses, both in terms of the number of companies and revenues, minority businesses, according to the most recent Bureau of the Census data, currently account for only 6% of U.S. businesses, while representing nearly 25% of the U.S. population. Lack of access to capital is a leading cause of the low participation rate of minorities in the U.S. marketplace.

MBDA has determined that the lack of quantitative information regarding, and analysis of, the financing needs of minority businesses, strongly contributes to systemic difficulties in increasing the capital available to minority businesses. By providing seed capital for this project, MBDA will institute an effort to focus resources on issues of capital access for minority businesses. MBDA anticipates that the Institute will collect, analyze and disseminate information on the capital needs of minority businesses, review and assess new strategies and instruments for increasing financial access for minority businesses, and promote the importance of increased capital flows to minority business enterprises within the financial, general business and public sectors.

Although research and advocacy materials developed by the MBCAPI may be available to the general public, the Institute's primary objectives are: (1) To research and educate financial institutions and the capital markets about the needs of and opportunities presented by minority businesses; and (2) to serve as a source of data and expertise for minority businesses. The successful applicant will be required to design and establish the Institute during the twelve-month grant period; however, other than as set forth in this **Federal Register** notice, the grantee will not be required to provide other research and advocacy services during the grant period.

MBDA will provide funding for a twelve-month period for the development and implementation of the MBCAPI; however, after the initial grant, MBDA does not intend to fund the MBCAPI on an ongoing basis. As a result, a significant portion of MBDA's evaluation process will involve an assessment of the applicant's ability to develop sufficient resources to sustain the Institute on a continuing basis. However, it is not the intent of MBDA to have applicants use Federal funds from the award to solicit financial resources for the continued operation of the MBCAPI after the twelve-month award ends. Applicants should be aware that under applicable cost principles (OMB Circulars A–122, A–121 and A–87), the costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under this award.

However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless may be treated as direct costs for purposes of determining indirect costs rates and be allocated their share of the organization's indirect costs if they represent activities which: (1) Include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

Work Requirements

Task 1

Formation and establishment of the MBCAPI, including, by the end of the ninth month after the award start date, a strategic plan (''Strategic Plan'' or ''Plan'') describing the MBCAPI's strategy and methodology for becoming financially self-sustaining. The Strategic Plan must include an estimated budget and business plan for the first 12 months of operation after MBDA funding ends.

Work on the project must have commenced within 30 days after the start date of the award. By the end of the ninth month subsequent to the start date of the award, the grantee will submit to MBDA the Strategic Plan describing the approach the MBCAPI will use to become financially self-sustaining after the award period. In the Plan, the grantee must discuss strategies for funding MBCAPI's ongoing operations (*i.e.,* whether the MBCAPI will be a membership organization, where membership dues will finance ongoing operations or whether other forms of fundraising will be required) and identify likely sources of public and private support sufficient to fund the MBCAPI's needs for the first year of operation.

In particular, the Strategic Plan must discuss strategies for mobilizing the financial, investment and business communities, including the minority business community and minority business advocacy organizations, to obtain the necessary financial resources to continue the MBCAPI for the first twelve months after MBDA funding ends. The Strategic Plan also must include an estimated budget and business plan. The MBCAPI must be operational by the end of the award period and should be located in an office facility.

Task 2

Conduct needs assessment of the minority business community.

This assessment shall address the capital needs of the MBE community. The assessment should include a description of the existing sources and structures for financing minority businesses, particularly lending sources

and evaluate the need for increased use of equity and mezzanine financing.

Task 3

Conduct financial institutions needs assessment.

This assessment shall include a review of the information, market research and other quantitative data that financial institutions need in order to serve the minority business community to a greater extent. This should include the information that financial institutions believe is currently unavailable, such as up-to-date demographic data on the MBE community, and the type of market research that would be likely to increase their marketing to and investment in the MBE community.

Task 4

Develop a statement of policy focus and research strategy.

Based on the foregoing assessments of minority businesses and financial institutions, the successful applicant must develop a statement of policy focus and research strategy to be used during its first two operational years. This statement must describe, in detail, the most critical issues for the minority business community and the strategies that the MBCAPI will use to address these issues. This should include an outline of the research that will be required and a description of the methodology that will be used to accomplish this work.

Task 5

Develop a work plan (''MBCAPI Work Plan'') that will demonstrate how the MBCAPI, once operational, will complete the following:

• Creation of a clearinghouse for information related to capital access for minority businesses. This would include reports, studies and academic work on investment in minority businesses and emerging domestic markets. The Institute also will develop and implement a strategy to disseminate this information to a number of constituencies, including but not limited to organizations focused on minority capital access; minority business groups; the Minority Business Roundtable; the general financial and investment community; and economic and policy think tanks. Methods of dissemination could include a newsletter, electronic newsletters, e-mail, the press and other media.

• Development of research strategies and new instruments that can be utilized to increase capital access for minority businesses. The strategies include, but are not limited to, the creation of a secondary market for minority and small business loans; identification of new sources of equity, mezzanine and quasi-equity capital; and the development of new equity and debt products and instruments.

• Collection of information on the equity needs of minority businesses, including estimates of the equity needs of minority businesses, current available sources, industries in which such equity investments are concentrated, etc. The MBCAPI also will assess the difficulties of minority businesses in obtaining equity capital, including lack of access to venture capital networks and other equity investors.

• Creation and maintenance of a database of loans made to minority-owned businesses. The data to be gathered includes information on loans made by commercial banks, finance companies, community development lenders, Small Business Investment Companies and other lending institutions. This information would include asset size of each lender, average loan size and duration, borrower target groups, loan default and loan loss rates and other data generally used by rating agencies in assessing a securitization transaction. The data collected would also include general information about minority businesses, including but not limited to the primary industries where such businesses are concentrated, average gross revenues, primary sources of capital, average amount of bank or other financing, sources of equity financing, geographic location of businesses, numbers of employees, etc.

• Assessment of the impact of minority financial services companies on providing capital to minority businesses and recommend ways to improve the provision of capital by such companies.

• Implementation of an education strategy that includes an annual conference geared towards mainstream financial service companies and focused on the benefits of investing in minority businesses.

• Monitoring and evaluation of federal and state programs that significantly impact or target increased capital for minority businesses.

• Recommendation of minimum standards for loan documentation and servicing for community development lenders for purposes of promoting uniformity in evaluating new loans and performing due diligence.

Use of Program Income: Applicants are advised that any program income generated by the proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to MBDA, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity or earned as a result of the award.

Performance Measures: In accordance with 15 CFR parts 14 and 24, the successful applicant must manage and monitor functions and activities supported by the financial award. Grantees will be required to use program performance measures in quarterly reports and to provide an end-of-the-year assessment of the accomplishments of the project using these measures. Applicants must include a detailed plan in their proposals which provides a timeline of proposed activities and milestones to implement each of the tasks set forth above.

Funding Availability: MBDA anticipates that approximately $350,000 will be available in FY 2000 for Federal assistance under this program. If MBDA receives sufficient funding for FY 2001, an additional $75,000 may be available to the grantee to enhance the project. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other Agency priorities.

Matching Requirements: Cost sharing of at least 15% is required. Additional cost sharing is encouraged. Cost sharing may be in the form of cash, third party in-kind contributions, non-cash applicant contributions or combinations thereof. The share may also be contributed by local, state, and private sector organizations or joint ventures between these organizations.

Type of Funding Instrument: A financial assistance award in the form of a grant will be used to fund this program.

Eligibility Criteria: State or local government entities, American Indian Tribes, colleges, universities, for-profit and non-profit organizations are eligible to operate the MBCAPI.

Award Period: The award period shall be for approximately twelve calendar months from the award start date. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific grant or to obligate all or any part of available funds.

Indirect Costs: The total dollar amount of the indirect costs proposed in

an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Application Forms and Package: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; 424B, Assurances—Non-Construction Programs, (Rev 4–97); SF–LLL (1996), Disclosure of Lobbying Activities; and Department of Commerce Forms CD–346; CD–511; and CD–512 shall be used in applying for financial assistance. Standard Forms 424, 424A, 424B and LLL may be downloaded at *www.whitehouse.gov/omb/grants/index* and Department of Commerce Forms CD–346, CD–511 and CD–512 may be downloaded at www.doc.gov/forms.

Evaluation Criteria

Proposals will be evaluated based on the following criteria:

I. Applicant Capability (45%)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- Experience in and knowledge of issues related to capital access for minority businesses and innovative programs designed to increase such capital (10%);
- Resources and professional relationships within the financial and investment community (10%);
- Capacity to develop the resources to make the MBCAPI self-sustaining (10%);
- Experience and expertise in advocating on behalf of minority businesses, including education and advocacy resources (10%); and
- Assessment of the qualifications, experience and proposed roles of staff who will operate the MBCAPI (5%).

To assist MBDA in its evaluation process, the following types of information should be included in the proposal:

1. A brief Business Service History of the applicant firm or firms in addressing issues of capital access for minority businesses. This should address the organization's ability to perform work of the nature and level described in the work requirements of this **Federal Register** notice. If the applicant organization has an ISO 9000 Quality Assurance certification, then it should be expressed here. Knowledge possessed by individual staff members outside of the organization should not be provided here (see below).

2. A brief Subject Area Overview should demonstrate the applicant's knowledge and understanding of the subject of minority capital access. This should include knowledge of: (a) Minority business demographics; (b) the impediments within the capital markets to increased financing for minority businesses; (c) financial institutions, including non-depository lenders, and non-traditional financing sources such as community development funds; (d) the venture capital community and other sources of equity capital; and (e) economic development issues and the risks to the economy of limited growth within the minority business sector. The applicant also should demonstrate its background in education and advocacy.

3. A brief Business Relationships Overview which synopsizes the applicant's professional relationships which can be utilized to address issues of capital access. Particular emphasis should be placed on those relationships and/or partnerships within: (a) The financial and investment community and (b) the minority business development community that indicate applicant's ability to understand and address the concerns of the different ethnic groups (including African Americans, Native Americans, Puerto Ricans, Spanish speaking Americans, Eskimos, Aleuts, Asian Indians, Asian Pacific Americans and Hasidic Jews) served by MBDA. Information included in this overview should reflect business relationships of both the applicant firm(s) as an organization and those of individual proposed staff. This part should also include references (with telephone numbers) and letters of *support*, and should also answer the following questions:

- Is the applicant firm(s) or proposed MBCAPI staff known in the financial, investment, business and minority business development communities?
- Does the applicant enjoy solid working relationships in the financial investment, business and minority business development communities that verify its service quality and recommend it?

4. A Minority Business Summary that discusses the applicant's knowledge of the unique problems facing a cross-section of minority entrepreneurs in obtaining capital.

5. A Discussion of the Capabilities of Proposed Staff includes staff knowledge acquired both within the applicant firm and in previous work settings, and should specifically address knowledge in performing work of the nature and level described in the MBCAPI work requirements. The identification of key personnel, such as an executive director or program manager, to direct the MBCAPI on a day-to-day basis is important. Any change in the executive director or program manager requires grants officer approval.

6. Overview of the MBCAPI Staff Structure includes an organizational chart, which provides a distinct delegation of authority and which identifies all positions, with position descriptions and qualifications (both in-house and consultant subcontractors, if any) for the MBCAPI. This overview should be directly tied into the work requirements for the MBCAPI.

II. Techniques and Methodologies (40%)

The applicant will be evaluated according to the following sub-criteria:

- Applicant's specific plan on how to carry out each of the five MBCAPI work requirements, including proposed activities and milestones (timeline). For example, with regard to Task 1, in addition to discussing the development of the Strategic Plan, the applicant should describe how it intends to establish a detailed organizational and functional framework for the management of the MBCAPI, with a schedule of proposed activities and milestones for doing so. The evaluation of each task will be worth 5%.
- Applicant must provide a detailed discussion relating its plan for carrying out each of the five MBCAPI work requirements to the particular resources and business capabilities of its organization, including staff and networks, thus indicating how its organization will research, analyze and disseminate information on the capital needs of the minority business community. The evaluation of this sub-criteria will be worth 15%.

III. Proposed Budget and Supporting Budget Narrative (15%)

The applicant's proposal will be evaluated on the following sub-criteria:

- Reasonableness, allowability and allocability of costs (10%).
- Proposed cost sharing of 15% is required. The non-Federal share must be adequately documented (5%).
- Cost sharing which exceeds 15% will be awarded bonus points on the following scale: 16–20% 1 point; 21–25% 2 points; 26–30% 3 points; 31–35% 4 points; and over 36% 5 points.

An application must receive an average of at least a 70% of the total points available for all three evaluation criteria in order for the application to be considered for funding.

Selection Procedures: Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The independent review panel, consisting of at least three individuals, two of whom are reviewers who are not employees of MBDA, will review all applications based on the criteria above. The independent review panel will evaluate and rank the proposals. The Director of MBDA makes the final recommendations to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

(1) The evaluations and rankings of the independent review panel;

(2) The extent to which the applicant demonstrates ongoing partnerships and relationships with organizations that have expertise and knowledge regarding the unique business development issues faced by the range of ethnic groups supported by MBDA; and

(3) The availability of funding.

The amount of funds awarded to the grantee, the scope of programmatic activities, and clarifications and/or correction of errors will be determined and/or conducted in pre-award negotiations between the applicant, the Grants Officer, and the MBDA Program Officer.

Other Requirements

(1) Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(2) Paperwork Reduction Act

This notice involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

(3) Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(4) Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(5) Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(6) No Obligation for Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

(7) Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the Department of Commerce are made.

(8) Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(9) Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

i. *Non-procurement, Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

iii. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(10) Lower Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

(11) False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(12) Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(13) Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Courtland Cox,

Director, Minority Business Development Agency.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 00–14503 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–21–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Chicago Board of Trade: Corn, Corn Yield Insurance (Six Contracts), Oats, Rough Rice, Soybeans, Soybean Meal, Soybean Oil, Wheat, Kilo Gold, 100 Ounce Gold, 1000 Ounce Silver, and 5000 Ounce Silver Futures Contracts, Increasing the Contracts, Maximum Daily Price Fluctuation Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has submitted proposed amendments which would increase the maximum daily price fluctuation limits for the Exchange's corn, corn yield insurance (six contracts), oats, rough rice, soybeans, soybean meal, soybean oil, wheat, kilo gold, 100 ounce silver, and 5000 ounce silver futures contracts. The CBT's proposals are described below. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on July 10, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before June 23, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBOT's maximum daily price fluctuation limits.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: Currently, the CBOT's rules specify maximum daily price fluctuation limits for the subject contracts that are applicable to trading until the second business day prior to the first business day of the expiring delivery month. No daily price limits are applicable to trading during the expiring contract month. The contracts' existing terms also provide for expansion of the maximum daily price fluctuation limits under specified circumstances. The existing terms of the option contracts based on the subject futures contracts specify that daily fluctuations in option premiums are subject to the same limits as are specified for the underlying futures contract.

The CBOT is proposing to increase the maximum daily price fluctuation limits for the subject contracts as shown below:

Contract	Proposed limit	Existing limit
Corn	$.20 per bushel	$.12 per bushel.
Corn Yield Insurance (Iowa, Illinois, Indiana, Nebraska, Ohio and U.S.).	22.5 bushels per harvested acre	15 bushels per harvested acre.
Kilo gold	$75.00 per ounce	$50.00 per ounce.
100 Ounce Gold	$75.00 per ounce	$50.00 per ounce.
Oats	$.20 per bushel	$.10 per bushel.
Rough Rice	$.50 per hundredweight	$.30 per hundredweight.
1000 Ounce Silver	$1.50 per ounce	$1.00 per ounce.
5000 Ounce Silver	$1.50 per ounce	$1.00 per ounce.
Soybeans	$.50 per bushel	$.30 per bushel.
Soybean Meal	$20.00 per ton	$10.00 per ton.
Soybean Oil	$.020 per pound	$.010 per pound.
Wheat	$.30 per bushel	$.20 per bushel.

The proposed amendments also would delete the contracts' existing provisions that provide for expansion of the maximum daily price fluctuation limits under specified circumstances. Since the option contracts specify that maximum daily premium fluctuation limits are subject to the same price limits specified for the underlying futures contracts, the proposed amendments also will increase the limits on daily premium fluctuations for such option contracts. Under the proposed amendments, trading in all contract months listed for particular futures or option contract would cease for the rest of the trading session when the prices for one or more contract months go to the revised limits. The Exchange intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months.

In support of the proposed amendments, the Exchange said that:

The CBOT/Eurex Alliance electronic trading system does not have the ability to implement daily price limits electronically. Therefore, Electronic Trading System (ETS) staff would be required to halt trading manually when prices reached specified limits. If one futures contract month for a commodity goes to a limit, this event would trigger a manual shutdown of all futures contract months and the market would remain shut down for the remainder of the trading session. Likewise, if one option contract months and strike price goes to a limit, trading in all option contract months and strike prices would be terminated for the remainder of the session. Increasing the limits would reduce the number of occurrences of manual trading halts.

Price limits were established because of a perceived need for a ''cooling off period'' for futures when a major news release or event causes prices to move substantially.

However, price limits, by their very nature, prevent futures markets from discovering the market price at times when market participants would most like to have that price information (i.e. after a major news release or other event). Widening daily price limits will allow the agricultural and metals futures markets to better reflect cash price movements and will provide greater access for market users during periods of uncertainty.

The CBOT also said that:

The proposed increases in price limits will increase the probability that the futures markets will continue to trade and provide a price discovery function following a major news release or unexpected event. This in turn will provide the marketplace with a benchmark price from which to base cash prices and production, marketing and buying decisions.

The Commission is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such material should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commmodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 2, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–14383 Filed 6–07–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35.).

Title, Associated Form, and OMB Number: Department of Defense Medical Examination Review Board (DoDMERB) Medical Information Collection Forms; DD Forms 2351, 2369, 2370, 2372, 2374, 2375, 2378, 2379, 2380, 2381, 2382, 2883, 2480, 2489, 2492, 2632; OMB Number 0704–0396.

Type of Request: Extension.

Number of Respondents: 19,000.

Responses Per Respondent: 1.

Annual Responses: 19,000.

Average Burden Per Response: 1 hour (average).

Annual Burden Hours: 19,000.

Needs and Uses: This collection of information is necessary to determine the medical qualification of applicants to the five Service academies, the four-year Reserve Officer Training Corps (ROTC) College Scholarship Program, Uniformed Services University of Health Sciences, and the Army, Navy, and Air Force Scholarship Programs. The collection of medical history of each applicant is to determine if applicants meet medical standards outlined in Department of Defense Directive 6130.3, Physical Standards for Appointment, Enlistment and Induction, dated May 2, 1994. Respondents are individuals who are interested in applying to attend one of the five Service academies, the four-year ROTC Scholarship Program, Uniformed Services University of the Health Sciences, or Army, Navy, and Air Force Scholarship Programs. The forms are processed through medical reviewers representing their respective services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the medical examination. It is essential that individuals have a medical qualification determination to ensure compliance with the physical standards established for each military service program.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14416 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Third Party Collection program (Record of Other Health Insurance; DD Form 2569; OMB Number 0704–0323.

Type of Request: Revision.

Number of Respondents: 293,401.

Responses Per Respondent: 1.

Annual Responses: 293,401.

Average Burden Per Response: 2.5 minutes.

Annual Burden Hours: 12,030.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and decreased Service members having health insurance. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure. Reimbursement will be used to enhance healthcare delivery in the Medical Treatment Facility (MTF). Information will also be used by the Military Health Services System and CHAMPUS Fiscal intermediaries to determine eligibility for care, deductibles, and copayments and by Health Affairs for program planning and management.

Affected Public: Individuals or Households.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 24, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14417 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–40 with attached transmittal and policy justification.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAY 2000
In reply refer to:
I-00/005567

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-40, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $62 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 60 million
Other	$ 2 million
TOTAL	$ 62 million

(iii) **Description of Articles or Services Offered: Two hundred forty-one thousand M107 high explosive 155mm projectiles and publications**

(iv) **Military Department: Army (YVG)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(vii) **Date Report Delivered to Congress: 26 MAY 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Israel - 155mm Projectiles

The Government of Israel has requested a possible sale of 241,000 M107 high explosive 155mm projectiles and publications. The estimated cost is $62 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed purchase of the projectiles is required to maintain projected sustainment rates and reserve levels. Israel, which already has projectiles in its inventory, will have no difficulty absorbing these additional projectiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be American Ordnance of Middletown, Iowa. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–14419 Filed 6–7–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079]

Submission for OMB Review; Comment Request Entitled Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs. A request for public comments was published at 65 FR 17489, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Office of Federal Acquisition Policy, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.
Responses Per Respondent: 1.
Total Responses: 3,000.
Average Burden Per Response: 6 hours.
Total Burden Hours: 18,000.
Obtaining Copies of Proposals: Requester may obtain a copy the of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: June 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14443 Filed 6–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Submission for OMB Review; Comment Request Entitled Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost Accounting Standards Administration. A request for public comments was published at 65 FR 17490, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 200.85.
Total Burden Hours: 293,643.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: June 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14444 Filed 6–7–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session from 8 am until 6 pm, 19 June 2000 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14415 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Interim Range Rule Risk Methodology (IR3M), Supporting DOD's Range Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: The DoD is making available the Interim Range Rule Risk Methodology (IR3M). DoD has developed this guidance document to provide a consistent methodology to assess and manage risks posed by military munitions, unexploded ordnance, and other constituents. In developing this methodology, DOD consulted with U.S. Environmental Protection Agency and various federal, state, tribal, and public interest group stakeholders. The IR3M assists decisionmakers in the selection of appropriate response actions on closed, transferred, and transferring military ranges covered under DoD's rule regarding Closed, Transferred, and Transferring Ranges Containing Military Munitions (also known as DoD Range Rule) to be codified at 32 CFR 178. The IR3M guidance document is available on the World Wide Web at: http://www.acq.osd.mil/ens/.

ADDRESSES: Copies of the IR3M may also be requested from, and comments may be submitted to: Interim R3M Comments (MSR–3–3), c/o Science Applications International Corporation, 11251 Roger Bacon Drive, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: R3M Hotline at (888) 541–1081, e-mail: r3m@aec.apgea.army.mil, or telephone Scott Hill at (410) 436–7085.

SUPPLEMENTARY INFORMATION: The DoD proposed the DoD Range Rule to identify a process for evaluating responses to risks from military munitions, unexploded ordnance, and associated materials on closed, transferred, and transferring (CTT) military ranges (62 FR 50795, September 26, 1997). The DoD Range Rule requires that response actions fully consider explosives safety hazards, are protective of human health and the environment, and address risks based upon reasonably anticipated future land use. The DoD Range Rule contains a process that is not inconsistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It is tailored to the special risks posed by military munitions at the ranges that are no longer used or needed by the military for future training.

In the Proposed DoD Range Rule, DOD proposed to develop, in consultation with U.S. Environmental Protection Agency (EPA) and other stakeholders, a risk assessment model/protocol to address risks from military munitions, unexploded ordnance (UXO), and other constituents. DOD proposed to incorporate, to the maximum extent possible, the EPA's procedures to assess acute and chronic risks posed by releases at sites regulated under CERCLA and the Resource Conservation and Recovery Act (RCRA). The process described in this Interim Range Rule Risk Methodology (IR3M), is intended to satisfy, in part, the need for tools, models, and protocols to support decisionmaking under the DoD Range Rule.

In developing the IR3M, DOD established a Partnering Initiative to solicit input from a wide range of interested stakeholders. The Partnering Initiative includes representatives from DOD, EPA, federal land managers, state regulatory authorities, American Indian tribal governments, and several other organizations. The IR3M supports the process set forth in the DoD Range Rule and meets the following goals for the process, as established by the Partnering Initiative:

- ☐ Protect human health and the environment
- ☐ Minimize explosive safety risks to all personnel, including response personnel
- ☐ Emphasize risk reduction
- ☐ Identify threats from unexploded ordnance (UXO), explosives, and other constituents
- ☐ Focus on informed risk management decision-making, adequately supported with appropriate data
- ☐ Incorporate the National Contingency Plan's (NCP) nine criteria for evaluating response alternatives and consider reasonably anticipated future land uses
- ☐ Promote Federal and State regulator, tribal, and other stakeholders' involvement in order to achieve the greatest possible level of mutual understanding
- ☐ Consider the limitations of existing technology and promote the development and application of new technologies
- ☐ Complete response when the site-specific response objectives identified within the risk-based decision document have been attained
- ☐ During the recurring review phase of a response action, reevaluate response actions to determine if the risk assumptions were appropriate and whether conditions remain protective. Evaluate any finding of technical impracticality against new technology to determine if risk reduction can be attained, and/or performance can be maintained at significantly reduced costs
- ☐ Continue to respond appropriately to safety and environmental contamination problems discovered following administrative close-out
- ☐ Define risk attributed to military munitions as a function of exposure, detonation, and potential consequences of detonation, although the risk may not always be quantifiable
- ☐ Ensure process continuously improved upon by drawing upon lessons learned in related environmental programs

To achieve these goals, the Partnering Initiative split the R3M development into two parts—an Interim R3M and a Final R3M. The Interim R3M focuses on risk reduction and is aimed at the assessment and development of response actions at the ranges subject to the DoD Range Rule. The Interim R3M

identifies a process, tools, models, and protocols that decisionmakers may use to manage, assess, and communicate risks associated with military munitions, UXO, and other constituents at closed, transferred, and transferring ranges. This process resembles the risk-based decisionmaking process under CERCLA and the National Contingency Plan (NCP).

The Final R3M will refine the procedures in the Interim R3M and will contain the additional elements necessary to complete the range response process. Specifically, the Final R3M will address Recurring Reviews and Administrative Close-out, two of the response phases spelled out in the DoD Range Rule, which are not fully developed in the Interim R3M.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14418 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Education Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Education Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. The public is not receiving a 15 day notice of the meeting because of delays in finalizing meeting logistics.

DATES AND TIMES: Friday, June 16, from 9 a.m.–5 p.m.

ADDRESSES: U.S. Department of Education, 400 Maryland Ave., SW, FOB–6, Rm. 5E100, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Santiago, Deputy Director, at 202–401–1411 (telephone), 202–401–8377 (fax), deborah__santiago@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland Ave., SW, room 5E110; Washington, DC 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

At this June meeting, the Commission will discuss current and future activities. Specifically, the Commission will focus on ways to institutionalize its work, including ongoing efforts to bring more awareness about federal programs and activities that are assisting Latinos.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Deborah Santiago, at (202) 401–1411, by no later than June 10. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., SW, Room 5E110, Washington, DC 20202 from 9 a.m. to 5 p.m. (est).

Dated: June 1, 2000.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 00–14423 Filed 6–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–350–000]

Bangor Gas Company; Notice of Application

June 2, 2000.

Take notice that on May 2, 2000, Bangor Gas Company (Bangor), c/o Sempra Energy, 555 West Fifth Street, Suite 1400, Los Angeles, CA 90013–1011, filed in Docket No. CP00–350–000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.224 of the Commission's Regulations. Bangor requested a finding that it is exempt from Commission jurisdiction pursuant to the ''Hinshaw exemption'', and requested a blanket certificate of public convenience and necessity for authorization to transport natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the Natural Gas Policy Act. Bangor also requested approval of rates for the services as set forth more fully in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Bangor is a local distribution company which currently is constructing facilities to be used for the transportation and sale of natural gas in the State of Maine. The Maine Public Utilities Commission (''MPUC'') regulates the rates (including rates for retail gas transportation), services, and facilities of Bangor in the Maine service areas to be served by Bangor immediately following construction of its natural gas pipeline and related facilities. Bangor expects to commence natural gas service in the City of Bangor, Maine, area by July 1, 2000.

Bangor will interconnect with the interstate pipeline facilities of Maritimes and Northeast Pipeline, L.L.C. (Maritimes Pipeline) within the State of Maine at a point in Veasie, Maine, near the City of Bangor and will transport gas from this point to distribute the gas to customer service lines in the Bangor area. Bangor states that all of the gas delivered by Bangor to its customers is expected to be obtained through the interconnection with Maritimes Pipeline and all of the gas so obtained will be consumed within the State of Maine.

Any person desiring to be heard or to make any protest with reference to said application should on or before, June 22, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission

by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Bangor to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14401 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2570–000]

Blandin Paper Company; Notice of Cancellation

June 2, 2000.

Take notice that on May 22, 2000, Blandin Paper Company (Blandin) filed a Notice of Cancellation of Blandin Rate Schedule No. 1.

Any person desiring to protest such filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 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. 00–14402 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 144
Substitute Fifth Revised Sheet No. 145
Substitute Third Revised Sheet No. 147

Columbia Gulf states on March 31, 2000, it filed tariff sheets in Docket No. RP00–238 to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia Gulf revised General Terms and Conditions (GTC) Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia Gulf, to reflect these changes. On April 26, 2000, the Commission accepted the filed tariff sheets to be effective May 1, 2000, subject to Columbia Gulf making certain revisions within 30 days. The instant filing is being made to comply with the April 26 Order.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state 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. 00–14394 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–303–000]

Eastern Shore Natural Gas Company; Notice of Proposed Chances in FERC Gas Tariff

June 2, 2000.

Take notice that on May 31, 2000, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to Section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, ''Fuel Retention Adjustment'', specifies that, with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage (FRP) for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations (GRO) which consists of (a) gas used for compressor fuel and (b) gas otherwised used, lost or unaccounted for, in its operations. Eastern Shore's FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .1%, which is a decrease of .2% from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to 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, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14391 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–369–000]

Natural Gas Pipeline Company of America; Application for Permission and Approval To Abandon Interests in Offshore Lateral, Tap and Meter Facilities and Request for Nonjurisdictional Determination

June 2, 2000.

Take notice that on May 25, 2000, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations to abandon interests in offshore lateral, tap and meter facilities and a request for nonjurisdictional determination, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding this application should be directed to James J. McElligott, Senior Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3525.

Specifically Natural requests:

(1) Permission and approval to abandon, by sale to Green Canyon Pipe Line Company, L.L.C. (''Green Canyon''), a nonjurisdictional gathering company, interests in an aggregate of 110.31 miles of various diameter offshore laterals including related tap and meter facilities and appurtenances in the East Cameron (''EC''), West Cameron (''WC''), Eugene Island (''EI''), South Marsh Island (''SMI'') and Vermilion (''VR'') Areas, offshore Louisiana and in the High Island (''HI'') Area, offshore Texas. Specifically, Natural seeks to abandon its interests in lateral facilities connecting gas supply in EC 38A, WC 116A, WC 118 (meter only), WC 165A, WC 225 A and B (meters only) and WC 229A (meter only), EI 57A/D, EI 72 Well #1, EI 133A, EI 305B, EI 331B, EI 341A, EI 361A, HI A–317A, HI A–327/12, HI A–327/16, HI A–472A, HI A–474A, HI A–489B, HI A–499C, HI A–511A, HI A–568A/B/D/F, HI A–573B, SMI 142A, SMI 236A, SMI 288A, VR 262A, VR 369A and VR 386B. Natural will also sell to Green Canyon facilities interests in an aggregate of 70.96 miles of previously abandoned and retired in place lateral facilities, which specifically had connected gas supply in EC 34B, EC 58, WC 28A, WC 436A, EI 321A, EI 345A, HI 68A, HI A–298A, HI A–342B, HI A–343A, HI A–414A, SMI 9CCA and SMI 143B; and

(2) A determination in the Commission's order in the present docket that following abandonment here, and upon transfer to Green Canyon, the subject facilities interests to be abandoned here and those in the previously abandoned/retired in place laterals to be sold will become part of Green Canyon's system and will be nonjurisdictional and not subject to NGA regulation by the Commission.

Natural states that its interests in the subject facilities were originally constructed as a means of receiving gas purchased from various suppliers for Natural's system supply to support Natural's merchant function. Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer has a need for the facilities interests to be abandoned in the present application.

Natural states that it proposes to abandon and transfer these facilities interests, as well as Natural's interests in thirteen (13) previously abandoned and retired in place laterals, to Green Canyon for $1,308,210.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14392 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–299–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 24, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of July 1, 2000:

Seventeenth Revised Sheet Number 156
Sixteenth Revised Sheet No. 157

Northern Border proposes to decrease the Maximum Rate for 4.095 cents per 100 Dekatherm-Miles to 4.038 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Cerdit from 2.808 cents per 100 Dekatherm-Miles to 1.625 cents per 100 Dekatherm-Miles. The Maximum Rate reflects Northern Border's rate case at Docket no. RP99–322–000, which was suspended by the Commission in its order dated June 30, 1999 that became effective December 1, 1999. Thus, a portion of this Maximum Rate will be billed subject to refund. The revised Maximum Rate and Minimum Revenue Credit are being in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of the filing have been served to all of

Northern Border's contracted shippers and interested state regulatory 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, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14398 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–371–000]

Northern Natural Gas Company; Notice of Application

June 2, 2000.

Take notice that on May 30, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP00–371–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to abandon and replace certain pipeline facilities located in Iowa, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Northern states that during a hot spot survey conducted in April 1999, it discovered a leak on a portion of its A-Line located under a road in Cass County, Iowa. Northern indicates that, to immediately repair the leak, it replaced approximately 199 feet of its 24-inch line with 6-inch pipe without requesting authorization under the proper regulations. Northern states instead that it listed the replacement project in its annual blanket report as a like-for-like replacement.

Northern indicates that a total of approximately 45 feet of pipe was removed from either end of the 24-inch pipe to facilitate installation of the new pipe, and that approximately 199 feet of 6-inch pipe was placed through the 24-inch line and tied into the existing 24-inch A-Line. It is asserted that the 6-inch line will have sufficient capacity to meet current maximum contract obligations. It is further asserted that the proposed abandonment and replacement will not result in any loss of service to Northern's existing customers. The cost of the proposed replacement is estimated at $84,237.

Any questions regarding the application should be directed to Keith L. Petersen, Director, Certificates and Reporting, at (402) 398–7421, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14393 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–301–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 30, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to be effective June 30, 2000.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect tariff changes necessitated by the acquisition of Sea Robin by Trunkline Gas Company. Specifically, the modifications include: (1) Updating the General Terms and Conditions and the Form of Service Agreements for address and telephone number changes, as well as formatting the address area for consistency; (2) updating the marketing affiliate information in the General Terms and Conditions Section 18; (3) replacing references to Birmingham, Alabama time with Central Clock time; (4) reflecting that the laws of the State of Texas will govern the validity and interpretation of the srvice agreements; and (5) reflecting the system map image on Sheet No. 6.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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. 00–14389 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–300–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 24, 2000, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of June 23, 2000.

Tennessee is requesting authority: (1) To choose to record and maintain reserve prices, if established, for validation purposes as opposed to disclosing such reserve price as part of the open season and (2) to allow prearranged deals with the customer with the pre-arranged transaction will have a right of to match any higher bid. In addition, Tennessee is adding language to clarify how the NPV will be calculated for bids that include a customer's option to terminate its contract early or reduce capacity separate from the primary term. Tennessee is also adding tariff language that allows for a *pro rata* distribution of capacity prior to the use of first-in-time as a tiebreaker or for when aggregated bids have the highest NPV.

Finally, in addition to other minor tariff clean-ups, Tennessee is clarifying that in package bids where part of the package includes a change in primary points that negatively affects Tennessee's revenues, the value of the primary point amendment will be treated as a negative adjustment to the value of the package bid.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14388 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–302–000]

Williams Gas Pipelines Central, Inc; Notice of Filing of Cash-Out Report

June 2, 2000.

Take notice that on May 30, 2000, Williams Gas Pipelines Central, Inc. (Williams) tended for filing, pursuant to Article 9.8(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from cash-outs. Williams proposes to make the refund upon Commission approval of its calculation method as set out in this report.

Williams states that pursuant to the cash-out mechanism in Article 9.8(a)(iv) of its FERC Gas Tariff, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.8(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.8(c). Williams is herewith filing its report of net revenue (sales less purchase cost) received from cash-outs.

Williams states that a copy of its filing was served on all jurisdictional 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 on or before June 9, 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/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14390 Filed 6–7–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–155–000, et al.]

PSEG Chorzow B.V., et al.; Electric Rate and Corporate Regulation Filings

May 31, 2000.

Take notice that the following filings have been made with the Commission:

1. PSEG Chorzow B.V.

[Docket No. EG00–155–000]

Take notice that on May 26, 2000, PSEG Chorzow B.V. (PSEG Chorzow) with its principal office at Weena 340, 3012 NJ Rotterdam, The Netherlands (mailing address: Postbus 21850, 3001 AW Rotterdam, The Netherlands), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Chorzow is a company organized under the laws of The Netherlands. PSEG Chorzow will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in (i) owning, or both owning and operating, primarily during the construction of a

new facility hereinafter described, an existing coal-fired, co-generation, electric generating facility consisting of an approximately 100 MWe and 490 MWt coal-fired electrical and thermal plant, located in Chorzow, Poland and (ii) owning, or both owning and operating a coal-fired electric and thermal generating facility, consisting of two electric generating units with a combined nominal capacity of approximately 226 MWe (net) and approximately 360 MWt (net) located in Chorzow, Poland; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: June 21, 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.

2. Ameren Energy Generating Company

[Docket No. ES00–40–000]

Take notice that on May 25, 2000, Ameren Energy Generating Company (Generating Co.) submitted an application with the Commission seeking blanket authorization to issue securities or assume liabilities similar to those granted to other utility-affiliated generation-only companies. In the alternative, Generating Co. requests authorization to issue from time to time during the period from June 23, 2000, through June 22, 2002, (a) long-term debt in an amount not to exceed $1 billion, and (b) short-term debt with the aggregate amount outstanding at any time not to exceed $300 million.

Comment date: June 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Electric Power, Inc.

[Docket No. ES00–41–000]

Take notice that on May 25, 2000, Midwest Electric Power, Inc. (MEP) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue from time to time during the period from June 19, 2000, through June 18, 2002, (a) long-term debt in an amount not to exceed $120 million and (b) short-term debt with the aggregate amount outstanding at any time not to exceed $70 million.

MEP also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 in order to obtain the requested funds from Electric Energy, Inc., its corporate parent.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER00–1727–001]

Take notice that on May 26, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include revised Specifications for the Long-Term Firm Point-to-Point Transmission Service to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreement Number 225, executed by American Municipal Power'Ohio, Inc. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after January 1, 2000.

A copy of the filing was served upon the affected Parties and state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER00–1820–001]

Take notice that on May 26, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing tariff sheet changes in compliance with the Commission's order of April 26, 2000 in this proceeding.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER00–2354–001]

Take notice that on May 26, 2000, Tampa Electric Company (Tampa Electric), amended its initial filing in this docket by withdrawing its request for acceptance of updated rates for short term power service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc. (collectively, Southern Companies).

Tampa Electric continues to request that the updated rates for emergency assistance service under the contract with Southern Companies be accepted and made effective on May 1, 2000.

Copies of the filing have been served upon Southern Companies and the Florida Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER00–2567–000]

Take notice that on May 23, 2000, pursuant to Section 35.15, 18 CFR 35.15, of the Commission's regulations, Florida Power Corporation (Florida Power), tendered for filing notice of termination of the Contract for Interchange Service dated December 1, 1995, between Florida Power and El Paso Merchant Energy, L.P., Florida Power Rate Schedule FERC No. 166. El Paso Merchant Energy, L.P., requested that Florida Power file to terminate the agreement.

Florida Power has requested waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective as March 25, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER00–2568–000]

Take notice that on May 23, 2000, Florida Power Corporation (Florida Power), pursuant to 18 CFR 35.15, of the Commission's regulations, tendered for filing notice of termination of the Contract for Interchange Service dated March 11, 1996, between Florida Power and El Paso Merchant Energy, L.P., Florida Power Rate Schedule FERC No. 160. El Paso Merchant Energy, L.P., requested that Florida Power file to terminate the agreement.

Florida Power has requested waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective as of March 25, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Lake Benton Power Partners, LLC

[Docket No. ER00–2596–000]

Take notice that on May 23, 2000, Lake Benton Power Partners, LLC (Lake Benton I), tendered for filing pursuant to 18 CFR 385.205, an application for an order accepting for filing, Amendment No. 1 to Lake Benton Power Partners, LLC, Rate Schedule FERC Supplement No. 1 to Zond Minnesota Development Corporation II Rate Schedule FERC No. 1, that reflects clarification agreed upon by Lake Benton Power Partners, LLC, and the purchaser, Northern States Power Company.

Lake Benton I requests that the Commission permit the Agreement to become effective on the date of filing of this application.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Lake Benton Power Partners II, L.L.C.

[Docket No. ER00–2597–000]

Take notice that on May 23, 2000, Lake Benton Power Partners II, L.L.C. (Lake Benton II), tendered for filing pursuant to 18 CFR § 385.205, an application for an order accepting for filing, Supplement Nos. 1 and 2 to Lake Benton Power Partners II, L.L.C., Rate Schedule FERC No. 1, that reflect clarifications agreed upon by Lake Benton Power II and the purchaser, Northern States Power Company.

Lake Benton II requests that the Commission permit the Agreement to become effective on the date of filing of this application.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–2598–000]

Take notice that on May 25, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing (1) blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff), (2) letters of assignment under the Power Sales Tariff and (3) two notices to terminate service agreements under the Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements, assignments and notices of termination to be made effective as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER00–2599–000]

Take notice that on May 25, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing three agreements: an Interconnection Agreement between Pacific Gas and Electric Company and Lassen Municipal Utility District (Lassen); an Islanding Agreement between Lassen, HL Power Company and PG&E; and a Letter Agreement dated May 12, 2000, regarding Interconnection Capacity and Study Procedures. Lassen and PG&E entered into the Interconnection Agreement (IA) to provide for the continued interconnection of their electric systems. The IA provides the terms and conditions for such interconnection, and contains no rates or services. Lassen will have a Scheduling Coordinator and will use transmission services provided under separate agreements with the California Independent System Operator Corporation (ISO), upon which agreements the effective date of this IA is contingent. The Islanding Agreement provides the terms and conditions to facilitate Lassen's separation from PG&E's transmission system at the Lassen-PG&E interconnection point and the HL Power Plant's sole provision of Lassen's electric energy and capacity requirements during periods of outages of the interconnection point. The Letter Agreement waives certain study requirements in the IA during times when there is unused capacity on the interconnecting transmission line.

Copies of this filing have been served upon Lassen, HL Power Company, the ISO and the California Public Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Central Illinois Light Company

[Docket No. ER00–2600–000]

Take notice that on May 25, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Public Service Company of Colorado.

CILCO requested an effective date of May 16, 2000, for the service agreements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER00–2601–000]

Take notice that on May 25, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Dynegy Power Marketing, Inc.

CILCO requested an effective date of May 22, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–2602–000]

Take notice that on May 25, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power and Light Company for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 15, 2000.

Duke states that this filing is in accordance with part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Trigen-Syracuse Energy Corporation

[Docket No. ER00–2603–000]

Take notice that on May 25, 2000, Trigen-Syracuse Energy Corporation (Trigen-Syracuse), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of Trigen-Syracuse FERC Electric Rate Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Trigen-Syracuse is seeking blanket approval to sell electric energy and capacity at market-based rates from a cogeneration facility located in Syracuse, New York (the Facility), to Sempra Energy Trading Corp. under Trigen-Syracuse FERC Electric Rate Schedule No. 1. Trigen-Syracuse also requests that the Commission accept Trigen-Syracuse FERC Electric Rate Schedule No. 2 so that Trigen-Syracuse may make sales of energy and capacity from the Facility other than pursuant to Trigen-Syracuse FERC Electric Rate Schedule No. 1 at market-based rates should the opportunity arise.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER00–2604–000]

Take notice that on May 25, 2000, Virginia Electric and Power Company tendered for filing a Control Area Service Agreement with Aquila Energy Marketing Corporation. The agreement is proposed to be effective as on June 1, 2000.

The filing has been served on Aquila, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corporation

[Docket No. ER00–2605–000]

Take notice that on May 25, 2000, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Sempra Energy Trading Corp., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on April 28, 2000.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER00–2606–000]

Take notice that on May 25, 2000, Niagara Mohawk Power Corporation tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and NEPA Energy LP, dated as of May 10, 2000.

Niagara Mohawk Power Corporation requests an Interconnection Agreement effective date of May 10, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2607–000]

Take notice that on May 25, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Public Service of Colorado. This agreement allows Public Service of Colorado to take firm point-to-point transmission service from LG&E/KU.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2608–000]

Take notice that on May 25, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Public Service of Colorado. This agreement allows Public Service of Colorado to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2609–000]

Take notice that on May 25, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Amerada Hess Corporation as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of May 8, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Potomac Electric Power Company

[Docket No. ER00–2610–000]

Take notice that on May 25, 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 Tenaska Power Services Co.

An effective date of May 22, 2000 for this service agreement, with waiver of notice, is requested.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER00–2611–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light Company—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of October 1, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Carolina Power & Light Company

[Docket No. ER00–2612–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement between CP&L and Amerada Hess Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of May 17, 2000, for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Carolina Power & Light Company

[Docket No. ER00–2613–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement and Operating Agreement for Network Integration Transmission Service executed between CP&L and City of Camden, South Carolina. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 1, 2000, for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2614–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 80 to add The Legacy Energy Group, LLC to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is May 25, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2615–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 81 to add Pepco Energy Services to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is May 25, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Florida Power & Light Company

[Docket No. ER00–2616–000]

Take notice that on May 26, 2000, Florida Power & Light Company (FPL), tendered for filing Service Agreements with Cinergy Services, Inc., as Agent for and on Behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., and Louisville Gas & Electric Company/Kentucky Utilities for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on May 1, 2000.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. New Century Services, Inc.

[Docket No. ER00–2617–000]

Take notice that on May 26, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Tri-State Generation and Transmission Association, Inc.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Tampa Electric Company

[Docket No. ER00–2618–000]

Take notice that on May 26, 2000, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to the interchange service contract between Tampa Electric and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc. (collectively, Southern Companies) that deletes Service Schedules B and C from the contract. Tampa Electric also submitted a notice of cancellation of Service Schedules B and C and the rates under Service Schedule B.

Tampa Electric proposes that the amendment and cancellations be made effective on April 26, 2000, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Southern Companies and the Florida Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Public Service Corporation

[Docket No. ER00–2619–000]

Take notice that on May 26, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 3 to its partial requirements service agreement with Upper Peninsula Power Company (UPPCO). Supplement No. 3 provides UPPCO's contract demand nominations for January 2001—December 2001, under WPSC's W–2A partial requirements tariff and UPPCO's applicable service agreement.

The company states that copies of this filing have been served upon UPPCO and to the State Commissions where WPSC serves at retail.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Tucson Electric Power Company

[Docket No. ER00–2620–000]

Take notice that on May 26, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

The details of the service agreements are as follows:

(1) Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of May 15, 2000 by and between Tucson Electric Power Company and PPL Montana, LLC. No service has commenced at this time.

(2) Non-Firm Service Agreement dated as of May 15, 2000 by and between Tucson Electric Power Company and PPL Montana, LLC. No service has commenced at this time.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER00–2621–000]

Take notice that on May 26, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Occidental Chemical Corporation (Occidental), and a Generator Imbalance Agreement with Occidental.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. International Transmission Company

[Docket No. ER00–2622–000]

Take notice that on May 26, 2000, International Transmission Company tendered for filing its open access transmission tariff, Original Volume 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994).

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions 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. 00–14387 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–231–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wren Compressor Station Project and Request for Comments on Environmental Issues

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wren Compressor Station Project involving the installation and operation of compressor facilities by Southern Natural Gas Company (Southern) in Jefferson County, Georgia.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the company's intent to install certain compressor unit facilities at an adjacent or nearby commercial property owned by Southern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Southern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Southern wants to add one compressor unit at its existing Wrens Compressor Station (C.S.). The Wrens C.S. is located at about milepost 459.87 on Southern's South Main Line System in Jefferson County, Georgia. The compressor unit installation is part of a provision of the Stipulation and Agreement filed by Southern in Docket Nos. RP990496–000 and RP99–496–001 (Settlement). Specifically, the Settlement provides that Southern file an application for authorization to install a 3,500 horsepower (hp) compressor unit at its existing Wrens Compressor Station.

Currently, there is a total of 2,120 hp at the Wrens C.S. With the addition of the compressor unit proposed in this application, the compressor station would have a total of 5,620 hp. Southern also proposes to install certain facilities to implement noise mitigation measures. Southern proposes to install the additional facilities beginning in April 2001, with an in-service date of October 1, 2001.

The general location of Southern's Wrens C.S. and a layout/plot plan of the facility are shown in appendix 1.[2]

Land Requirements for Construction

The area to be impacted by the installation is less than 0.5 acres in size. The additional compressor unit and other appurtenances would be installed using standard construction methods for compressor installations. The previously cleared and graded area would be excavated for footing, utility and piping stubs, and concrete footings. Flooring would be poured, and the walls erected. The building would be wired for electricity, and would be completed with the installation of the compressor unit.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be

[1] Southern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20425, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

changed based on your comments and our analysis.

- Impacts on local air environment as a result of the operation of the new compressor upgrades.
- Impacts on four noise-sensitive areas (NSAs) located between 600 and 740 feet from the proposed compressor building.

Public Participation

You can make a different by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket No. CP00–231–000.
- Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link of the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14399 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–233–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed South System Expansion Project and Request for Comments on Environmental Issues

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the South System Expansion Project involving construction and operation of facilities by Southern Natural Gas Company (Southern) in several counties in Alabama, Mississippi, and Georgia.[1] These facilities would consist of about 73 miles of various diameter pipeline and 24,220 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Southern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Southern wants to expand the capacity of its facilities in Alabama, Mississippi, and Georgia to transport an additional 335,800 thousand cubic feet per day of natural gas to Southern Company Services, Inc. (SCS), South Carolina Pipeline Corporation (SCPC), and the City of LaGrange, Georgia. Southern proposes to construct the project in two phases, with in-service dates proposed for June 1, 2002 (Phase I) and June 1, 2003 (Phase II), respectively. Southern seeks authority to construct and operate:

Phase I Facilities (2002)

- 5.67 miles of 30-inch-diameter pipeline loop[2] on its South Main 3rd Loop Line System from milepost (MP) 67.230 to MP 72.889 in Clark County, Mississippi (Loop 1);
- 5.0 miles of 30-inch-diameter pipeline loop on its South Main Lop 3rd Loop Line System from MP 102.845 to MP 107.849 in Sumter County, Alabama (Loop 2);
- 7.82 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System from MP 172.553 to MP 175.630 in Perry County, Alabama and from MP 175.630 to MP 180.357 in Dallas County, Alabama (Loop 3);
- 7.97 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System from MP 185.157 to

[1] Southern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

MP 187.270 in Dallas County, Alabama and from MP 187.270 to MP 193.130 in Autagua County, Alabama (Loop 4);

• 5.96 miles of 30-inch-diameter pipeline loop on its South Main 4th Loop Line System from MP 255.000 to MP 260.963 in Macon County, Alabama (Loop 5);

• 5.08 miles of 24-inch-diameter pipeline loop on its South Main 2nd Loop Line System from MP 459.869 to MP 464.950 in Jefferson County, Georgia (Loop 6);

• 1.50 miles of 8-inch-diameter pipeline loop on its LaGrange Extension Loop Line System from MP 14.250 to 15.750 in Lee County, Alabama (Loop 7); and

• One new meter station (Plant Urquhart Meter Station) at MP 493.82 on Southern's existing 16-inch-diameter South Main Line and 16-inch South Main Loop Line Systems in Aiken County, South Carolina.

Southern also proposes to install additional compression and make other modifications at its following compressor stations:

• One 4,445 horsepower (hp) unit at the Enterprise Compressor Station (C.S.) in Clarke County, Mississippi;

• One 4,700 hp unit at the York Compressor Station in Sumter County, Alabama;

• One 10,310 hp unit at the Auburn C.S. in Lee County, Alabama; and

• One 4,445 hp unit at the Thomaston C.S. in Upson County, Georgia.

As part of its Phase I facilities, Southern proposes to construct dual 20-inch taps at about MP 297.5 on Southern's 24-inch-diameter South Main Loop Line and 30-inch-diameter South Main 2nd Loop Line Systems in Lee County, Alabama. This interconnect would deliver natural gas to the planned Goat Rock Plan in Lee County, Alabama.

Phase II Facilities (2003)

Southern also seeks authority to construct and operate about:

• 10.39 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 1 from MP 72.899 to 81.65 in Clarke County, Mississippi, and from MP 81.65 to MP 83.293 in Lauderdale County, Mississippi;

• 10.54 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 2 from MP 107.849 to MP 118.386 in Sumter County, Alabama;

• 8.06 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 4 from MP 193.30 to MP 201.193 in Autauga County, Alabama; and

• 5.0 miles of 30-inch-diameter pipeline loop on its South Main 4th Loop Line System extending Loop 5 from MP 250.00 to MP 252.77 in Tallapoosa County, Alabama, and from MP 250.00 to 255.00 in Tallapoosa and Macon Counties, Alabama.

Southern also proposes to install one 10,310 hp compressor and make other modifications at Southern's existing Selma C.S. in Dallas County, Alabama.

As part of its Phase II facilities, Southern would also construct one 20-inch- tap and connection crossover (Autaugaville Tap) at MP 201.19 to connect Southern's 24-inch-diameter South Main Loop Line, 26-inch-diameter South Main Loop Line, 26-inch-diameter South Main 2nd Loop Line, and the proposed 30-inch-diameter South Main 3rd Loop Line Systems in Autauga County, Alabama. This interconnect would deliver natural gas to the planned Autaugaville Plant in Autagua County, Alabama.

The general location of Southern's proposed project facilities is shown on the map attached as appendix 1. Appendix 1 also includes a more detailed description of the facilities.[3]

Land Requirements for Construction

Construction of the proposed facilities would require about 889 acres of land, including the construction right-of-way and pipe storage yards, staging areas, and warehouse sites. For the construction of the 30-inch-diameter loop segments, Southern proposes to use a 95-foot construction right-of-way, which includes a 40- to 55-foot overlap of the existing right-of-way for workspace and temporary spoil storage. For the smaller diameter pipelines, Southern proposes to use either a 50- or 75-foot-wide construction right-of-way, which includes a 30- to 60-foot overlap of existing right-of-way. Because of the use of Southern's existing right-of-way for construction, Southern indicats that only 25 acres would be maintained as new permanent right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be changed based on your comments and our analysis.

• Geology and Soils

—Erosion control and right-of-way restoration.

—Potential for mixing of topsoil and subsoil.

• Water Resources and Wetlands

—A total of 52 perennial waterbodies would be crossed.

—A total of 24 wetlands, including 84.53 acres of forested, 12.79 acres of scrub/shrub, and 8.09 acres of emergent, would be crossed.

• Biological Resources

—Impacts on 28 federally threatened and/or endangered species that may be present in the project area.

—Impacts on about 234 acres of upland forest or woodland habitat.

—Impact on the Kinterbish Wildlife Management Area in Sumter County, Alabama.

• Cultural Resources

[3] The appendices referenced in this notice are not being printed in the **Federal Register**.Copies are available on the Commission's website at the ''RIMS'' link or from the commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

—Impacts on prehistoric and historic sites.
—Native American concerns.

• Land Use

—Impacts on 158 acres of planted pine.
—Impacts on residential area.
—Visual effect of the aboveground facilities on surrounding areas.
—Impacts on 4 residences within 50 feet of the proposed construction work area.

• Air and Noise Quality

—Impacts on local air and noise environment as a result of the operation of the new compressor upgrades.

• Alternatives

—Evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

• Nonjurisdictional Facilities

—Consideration of effects of construction of the associated facilities that may be constructed by SCS and SCPC, including the planned Goat Rock and Autaguaville Power Plants, and those associated laterals and meter stations which are planned to interconnect to Southern's facilities proposed herein.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426

• Label one copy of the comments for the attention of Gas 1.

• Reference Docket No. CP00–233–000.

• Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known at an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link of the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14400 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–47–000]

Trans-Union Interstate Pipeline, L.P., Notice of Availability of the Environmental Assessment for the Proposed Trans-Union Interstate Pipeline Project

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Trans-Union Interstate Pipeline, L.P. (Trans-Union) in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the environmental effects of the construction and operation of the proposed facilities in Claiborne and Union Parishes, Louisiana and Union County, Arkansas. These facilities would consist of about 41.7 miles of 30-inch-diameter pipeline, two mainline valves, and launcher/receiver facilities at the beginning and end of the pipeline.

The pipeline would supply 430,000 decatherms per day of natural gas to the planned nonjurisdictional electric power generation facility being developed by Union Power Partners (UPP) in Union County, Arkansas. In addition, Gulf States Pipeline Company plans to construct about 30.4 miles of 16- and 20-inch-diameter pipeline in Louisiana under section 311(a)(2) of the Natural Gas Policy Act which would provide a secondary supply as well as serve other customers.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before

the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Group 1, PJ–11.1;

• Reference Docket No. CP00–47–000; and

• Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the preceding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14396 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–82–000]

Williams Gas Pipelines Central, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Pleasant Hill Pipeline Project

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Williams Gas Pipelines Central, Inc. (Williams) in the above-referenced docket. The proposed project would include the construction and operation of approximately 1.5 miles of 24-inch-diameter pipeline; and 2,890-horsepower (hp) of compression at an existing compressor station; and the conversion of the regulatory authority of an 800–hp compressor unit at an existing compressor station from Natural Gas Policy Act (NGPA) Section 311 to Natural Gas Act (NGA) Part 284 service.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Williams proposes to build new pipeline and compression facilities to expand the capacity of its system in Kansas and Missouri. The new facilities would enable Williams to transport an additional 44,200 Dekatherms per day (Dth/d) of natural gas in the winter and an additional 88,200 Dth/d of natural gas in the summer.

The EA assesses the potential environmental effects of the construction and operation of the following proposed natural gas transmission facilities:

• About 1.5 miles of 24-inch-diameter pipeline from the Ottawa Compressor Station to the Ottawa Crossover in Franklin County, Kansas;

• Two upgraded compressor units: from 1,350-hp each to 2,000-hp each at the existing Peculiar Compressor Station in Cass County, Missouri; and

• One 1,590-hp turbine compressor at the Peculiar Compressor Station.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, affected landowners, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas/Hydro Group, PJ–11.3;

Reference Docket No. CP00–082–000; and

• Mail your comments so that they will be received in Washington, DC on or before July 1, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the ''RIMS'' link to information this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For

assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14397 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 2, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt:		
1. Project No. 696	5–24–00	Thomas H. Nelson.
2. CP00–59–001	5–5–00	Curtis B. James.
3. CP00–232–000	5–23–00	Charles de la Rock.
4. Project No. 2551	5–4–00	Frank M. Simms.
5. CP99–392–000	4–25–00	Don L. Klima.
6. CP00–6–000	5–30–00	Ken Huntington.
Prohibited:		
1. ER00–1262–001	5–31–00	Lydia B. Vollmer.

David P. Boergers,

Secretary.

[FR Doc. 00–14395 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–4]

Adequacy Status of Motor Vehicle Emissions Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Pennsylvania; Revised Attainment and ROP Plans for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and in the revised Rate of Progress Plans (ROP) for the Pennsylvania portion of the area submitted by the Commonwealth of Pennsylvania as a State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The Commonwealth submitted the revised plans to EPA on February 25, 2000. The plans consist of the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the 1999, 2002, and 2005 ROP plans for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. EPA has found the budgets for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area in the revised attainment and ROP plans submitted by the Pennsylvania Department of Environmental Protection (DEP) on February 25, 2000 adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Pennsylvania Department of Environmental Protection and are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Budney, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2184 or by e-mail at: Budney.Larry @epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document the terms ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The words ''revised SIP'' in this document refers to the revised attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the revised ROP plans for the Pennsylvania portion of the area submitted to EPA by the Pennsylvania DEP on February 25, 2000. The revised SIP includes the revised attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the revised ROP plans (1999, 2002 and 2005) for the Pennsylvania portion of the area. The Pennsylvania portion of the nonattainment area consists of Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties.

On March 2, 1999, the D.C. Circuit Court ruled that the budgets contained in submitted SIPs cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

By a transmittal letter dated February 25, 2000, PADEP submitted its revised SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. On March 13, 2000, we posted the

availability of the revised SIP and motor vehicle emission budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the mobile budgets. The comment period closed on April 24, 2000.

On May 31, 2000, we sent a letter to the Pennsylvania DEP that constituted final Agency actions on the adequacy of the budgets contained in the revised SIP. Those actions were EPA's findings that the budgets in the revised SIP are adequate for transportation conformity purposes. As a result of our findings, the budgets contained in the revised SIP submitted on February 25, 2000 by Pennsylvania DEP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area may be used for future conformity determinations. This is an announcement of adequacy findings that we already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments received.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of mobile budgets in a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999 entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''. We followed this guidance in making our adequacy findings for the budgets contained in the revised SIP submitted on February 25, 2000 by the Commonwealth of Pennsylvania. You may obtain a copy of this guidance from EPA's conformity website referred to above or by calling the contact name listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14598 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–3]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; District of Columbia, Maryland, Virginia; Revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area submitted by the Maryland Department of the Environment, Virginia Department of Environmental Quality and the District of Columbia Environmental Regulation Administration as State Implementation Plans (SIPs) revisions are adequate for transportation conformity purposes. The revised Phase II Plans were submitted to EPA on February 9, 2000 (VA), February 14, 2000 (MD) and on February 16, 2000 (DC). The revised Phase II SIPs consist of the revised attainment demonstration (attainment plan) for the Metropolitan Washington D.C. Ozone Nonattainment Area. EPA has found the attainment budgets in the submitted revised Phase II SIPs for the Metropolitan Washington D.C. area adequate for transportation conformity purposes.

DATES: The finding that the budgets of the revised attainment plan are adequate were made in letters dated May 31, 2000 from EPA Region III to the Maryland Department of the Environment, Virginia Department of Environmental Quality and the District of Columbia Environmental Regulation Administration are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov .

SUPPLEMENTARY INFORMATION:

Throughout this document ''we, us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the revised Phase II SIPs submitted on February 9, 2000, February 14, 2000 and February 16, 2000 by Virginia, Maryland and the District, respectively. The revised Phase II SIPs include the revised attainment plan for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Metropolitan Washington D.C. Nonattainment Area.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By transmittal letters dated as shown below, the Virginia Department of Environmental Quality, the Maryland Department of the Environment, and the Washington D.C. Department of Health, Air Quality Division each formally submitted revisions to the attainment plan consisting of changes to the budgets for the Metropolitan Washington D.C. Ozone Nonattainment Area. The revised Phase II SIPs submittal dates are:

Virginia—February 9, 2000
Maryland—February 14, 2000
Washington D.C.—February 16, 2000

On March 2, 2000, we posted the availability of the revised Phase II SIPs and their budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on April 3, 2000.

On May 31, 2000, EPA Region III sent letters to the Virginia Department of Environmental Quality, the Maryland Department of the Environment, and the Washington D.C. Department of Health, Air Quality Division which constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIPs. Those actions were EPA's finding that the mobile budgets contained in the revised attainment plan are adequate for transportation conformity purposes. As a result of our finding, the attainment budgets contained in the submitted revised Phase II SIPs for the Metropolitan Washington D.C. Nonattainment Area may be used for future conformity determinations. This is an announcement of an adequacy finding that we already made on May 31, 2000. The effective date of this finding is June

23, 2000. This finding will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of Submissions for Conformity''). The website will contain a detailed analysis of our adequacy finding and our responses to the public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of the mobile budgets of a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''. We followed this guidance in making this adequacy finding for the budgets contained in the revised Phase II SIPs submitted on February 9, 2000, February 14, 2000 and February 16, 2000 by Virginia, Maryland, and the District, respectively. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button) or by calling the contact name listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14599 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–5]

Adequacy Status of Motor Vehicle Emissions Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Delaware; Revised Phase II SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted by the State of Delaware as a State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The State of Delaware submitted its revised 2005 attainment demonstration (attainment plan) for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area on January 24, 2000. On February 3, 2000, Delaware submitted and its Post 1999 Rate-of-Progress (ROP) Plan (for milestone year 2002) for the Delaware portion of the Philadelphia-Wilmington-Trenton area , Kent and New Castle Counties. The combination of the attainment plan and Post 99 ROP plan are commonly referred to as the Phase II plan. EPA has found the budgets in the revised Phase II Plan submitted by the State of Delaware for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Delaware Department of Natural Resources and Environmental Control (DNREC) and are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Budney, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA. 19103 at (215) 814–2184 or by e-mail at: Budney.Larry@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document the terms ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The words ''revised Phase II SIP'' in this document refers to the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted to EPA by the DNREC on January 24, 2000 and the Post 1999 ROP plan (2002) for the Delaware portion of the area submitted to EPA by DNREC on February 3, 2000. The Phase II SIP includes the attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the Post 99 ROP plan (2002) for the Delaware portion of the area.

On March 2, 1999, the D.C. Circuit Court ruled that the budgets contained in submitted SIPs cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

The State of Delaware submitted a revised 2005 attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area to EPA on January 24, 2000 and a Post 1999 ROP plan (2002) for the Delaware portion of the area on February 3, 2000. On March 2, 2000, we posted the availability of the revised Phase II plan and the budgets contained in the plan on our conformity website for the purpose of soliciting public comment on the adequacy of the mobile budgets. The comment period closed on April 3, 2000.

On May 31, 2000, we sent a letter to DNREC that constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIP. Those actions were EPA's findings that the budgets are adequate for transportation conformity purposes. As a result of our findings, the budgets contained in Delaware's revised Phase II SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area may be used for future conformity determinations.

This is an announcement of adequacy findings that we already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments received.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay

timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of budgets in a submitted SIP is separate from EPA's completeness determination of that SIP, and separate from EPA's final action as to approve or disapprove the SIP. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999 entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''. We followed this guidance in making our May 31, 2000 adequacy findings for the budgets contained in the Delaware's January 24, 2000 submittal of its revised 2005 attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and in its February 3, 2000 submittal of its Post 1999 ROP plan (2002) for the Delaware portion of the area. You may obtain a copy of this guidance from EPA's conformity website referred to above or by calling the contact name listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14600 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–6]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Maryland; Revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted by the Maryland Department of the Environment (MDE) as State Implementation Plan (SIP) revisions are adequate for transportation conformity purposes. The revised Phase II Plan was submitted to EPA on December 21, 1999. Maryland's revised Phase II Plan consists of the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton nonattainment area and the 2002 and 2005 Post 99 Rate-of-Progress (ROP) plans for the Maryland portion of the Philadelphia-Wilmington-Trenton Nonattainment Area, Cecil County. EPA has found the budgets in Maryland's revised Phase II Plan for the Philadelphia-Wilmington-Trenton nonattainment area adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Maryland Department of the Environment. These adequacy findings are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the revised Phase II Plan for the Philadelphia-Wilmington-Trenton nonattainment area submitted on December 21, 1999. The revised Phase II Plan includes the 2005 attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton nonattainment area and the Post 99 ROP plans (2002 and 2005) for the Maryland portion of the Philadelphia-Wilmington-Trenton nonattainment area, Cecil County.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By a transmittal letter dated December 21, 1999, the Maryland Department of the Environment formally submitted revisions to the Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. On March 2, 2000, we posted the availability of the Revised Phase II Plan and the budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on April 3, 2000.

On May 31, 2000, EPA Region III sent a letter to the Maryland Department of the Environment which constitute final Agency actions on the adequacy of the budgets contained in the revised Phase II SIP. Those actions were EPA's findings that the budgets of the revised Phase II plan submitted by MDE for the Philadelphia-Wilmington-Trenton area are adequate for transportation conformity purposes. As a result of our May 31, 2000 findings, the attainment budgets and the ROP budgets contained in Maryland's December 21, 1999 revised Phase II SIP for the Philadelphia-Wilmington-Trenton nonattainment area may be used for future conformity determinations.

This is an announcement of adequacy findings that we have already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of Submissions for Conformity''). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding for budgets contained in a SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or disapprove the SIP. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''. We followed this guidance in making these adequacy findings of the budgets in Maryland's revised Phase II plan. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button) or by calling the contact name listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14601 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –6711–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a committee of the US EPA Science Advisory Board (SAB) will meet on the date and times noted below. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Ecological Processes and Effects Committee (EPEC)—June 19, 2000

The Ecological Processes and Effects Committee of the US EPA Science Advisory Board (SAB), will hold a public teleconference call on June 19, 2000 from 1 pm—3 pm Eastern Daylight Time.

Purpose of the Meeting—The purpose of the meeting is for the Committee to continue work on a self-initiated project to offer advice to the Agency on the content and design of an ecological report card. The Committee met on April 25–26, 2000 to discuss a proposed conceptual framework for reporting on ecological condition, and will meet in Washington, DC on September 20–22, 2000 to apply the framework to several Agency examples or programs. The June 19 teleconference call will provide an opportunity for Committee members to discuss the materials they are drafting to describe the conceptual framework. The Committee may also receive briefings from Agency staff on EPA activities relating to ecological indicators, and may discuss programs/projects that may be suitable case examples for the September EPEC meeting. The output of the Committee deliberations, following the September meeting, is expected to be a report to the Agency describing a proposed framework, with illustrative case examples relevant to EPA programs.

For Further Information—Instructions about how to participate in the teleconference call may be obtained by contacting Ms. Mary Winston, Management Assistant to the Committee, the week prior to the meeting (no later than June 14) at (202) 564–4538 or via e-mail at winston.mary@epa.gov. For additional information on the project, contact Ms. Stephanie Sanzone, Designated Federal Officer, at (202) 564–4561 or via e-mail at *sanzone.stephanie@epa.mail.* Any member of the public wishing to submit brief oral comments (5 minutes or less) must contact Ms. Sanzone at Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Sanzone no later than noon Eastern Daylight Time on June 12, 2000.

Providing Oral or Written Comments At SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at SAB meetings, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 1, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–14490 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00648A; FRL–6591–7]

Pesticides; List of Pests of Significant Public Health Importance; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On March 29, 2000, EPA issued a notice of availability for the draft Pesticide Registration Notice paper titled: ''List of Pests of Significant Public Health Importance.'' The comment period would have ended May 30, 2000. In order to solicit additional public comment, EPA has decided to extend the comment period to July 30, 2000.

DATES: Comments, identified by docket control number OPP–00648, must be received by EPA on or before July 30, 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–00648 in the

subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kevin Sweeney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5063; fax number: (703) 305–6596; e-mail address: sweeney.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, but may be of particular interest to manufacturers of pesticides intended for use against public health pests, and those responsible for public health programs involved in the control or regulation of public health pests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice being made available today. If you have any questions regarding the applicability of the notice to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the draft Pesticide Registration Notice from the EPA Home Page at the following web address: http://www.epa.gov/opppmsd1/PR—Notices/index.html#2000. You can also go directly to the **Federal Register** listings: http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the draft science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6125 for the paper titled ''List of Pests of Significant Public Health Importance.'' You may also follow the automated menu.

3. *In person.* The official record for this notice, as well as the public version, has been established under docket control number OPP–00648, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection from 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 OPP–00648 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, 1200 Pennsylvania Avenue., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), 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 mail your computer disk to the address identified above. 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–00648. 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.

II. What Action Is EPA Taking?

The Agency has issued the draft Pesticide Registration Notice titled ''List of Pests of Significant Public Health Importance'' and solicited comments on it. The background on this document can be found in the previous **Federal Register** notice published on March 29, 2000 (65 FR 16615) (FRL–6498–2). Due to a need to gain additional public comment, EPA has decided to extend the comment period to July 30, 2000.

List of Subjects

Environmental protection, Public health pests, Public health pesticides.

Dated: June 1, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–14498 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/08/2000			
20002875	CGW Southeast Partners IV, L.P	Johnston Industries, Inc	Johnston Industries, Inc.
20002896	Genzyme Corporation	Leslie Koo	Synpac (North Carolina), Inc. Synpac Pharmaceuticals (U.K.), Ltd.
20002958	Joseph Littlejohn and Levy Fund II, L.P ..	Fisher Holdings, Inc	Fisher Holdings, Inc.
20002959	Unilever N.V	S. Daniel Abraham	Slim.Fast Foods Company. Slim.Fast Nutritional Foods, L.L.C., Sun Nutritional, Inc.
20002961	CMGI, Inc	Primedia, Inc	Primedia, Inc.
20002962	Primedia, Inc	CMGI, Inc	CMGI, Inc.
20002970	MTD Products, Inc	Ryobi Limited	Ryobi Outdoor Produts, Inc.
20002976	Bill Gross' Idealab!	eve.com, Inc	eve.com, Inc.
20002979	InfoSpace.com, Inc	IQorder.com, Inc	IQorder.com, Inc.
20002983	Peter J. King	Peter J. King	Sunrise International Leasing Corporation.
20002990	Pequot Private Equity Fund II, L.P	SkyOnline, Inc	SkyOnline, Inc.
20002995	Starmark Holdings, L.L.C	Roger S. Ralph	Four Sports, Inc.
20002997	Morgenthaler Partners VI, L.P	Aztech Technology Partners, Inc	Copel, LLC; Fortran Corp; Mahon Communication Corporation.
20002998	Inverness/Phoenix Partners LP	PennCorp Financial Group, Inc., debtor-in-possession.	PennCorp Financial Group, Inc., debtor-in-possession.
20003011	Arthur L. Allen	Viasoft, Inc	Viasoft, Inc.
Transactions Granted Early Termination—05/09/2000			
20002933	Cap Gemini S.A	Ernst & Young U.S. LLC	Ernst & Young U.S. LLC.
20002934	Ernst & Young U.S. LLP	Cap Gemini S.A	Cap Gemini S.A.
20002973	HotJobs.com, Ltd	Resumix, Inc	Resumix, Inc.
Transactions Granted Early Termination—05/10/2000			
20002833	CMGI, Inc	AdAuction.com, Inc	AdAuction.com, Inc.
20002893	Rexam PLC	American National Can Group, Inc	American National Can Group, Inc.
20002946	Anadarko Petroleum Corporation	Union Pacific Resources Group, Inc	Union Pacific Resources Group, Inc.
20002964	Conseco, Inc	Fortis (B)	Ardiel Insurance Service, Inc. Associated California State Ins. Agencies, Inc.
20002965	Conseco, Inc	Fortis (NL) N.V	Ardiel Insurance Service, Inc. Associated California State Insurance Agencies, Inc.
Transactions Granted Early Termination—05/11/2000			
20002800	Neoforma.com, Inc	Eclipsys Corporation	Eclipsys Corporation.
20002834	Intergraph Corporation	3Dlabs, Inc. Ltd	3Dlabs, Inc. Ltd.
20002835	3Dlabs, Inc. Ltd	Intergraph Corporation	Intergraph Corporation.
20002884	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Baptist Health Hospitals and Health Systems, Inc.	Arizona Network Development, Inc. Arrowhead Community Hospital and Medical Center, Inc. Bethany Enterprises, Inc. CRV, Inc. Phoenix Baptist Hospital and Medical Center, Inc. Pleasant Properties, Inc.
20002887	The Williams Companies, Inc	SBC Communications, Inc	SBCI-Pacific Networks, Inc.
20002905	Paul G. Allen	Cablevision Systems Corporation	Cablevision of Michigan, Inc.
20002937	Robert J. Gourley	HPS, Inc	HPS, Inc.
20002940	Jay L. Wertheimer	Laguna Corporation	Laguna Corporation.
20002956	Deutsche Lufthansa AG	William L. Walker	Bizjet International Sales and Support, Inc.
20002985	Cecil Van Tuyl	Robert M. Kent	Kenny Kent Chevrolet, Inc.
20002988	Westburne, Inc	Eureka Holdings, Inc	Eureka Holdings, Inc.
20002993	The Bank of New York Company, Inc	ING Groep N.V	BHF Securities Corporation.
20002994	Koninklijke Ahold nv	Peapod, Inc	Peapod, Inc.
20002999	RSTW Partners III, LP	Packaging Services Incorporated	Packaging Services Incorporated.
20003013	AutoNation, Inc	Lawrence Konieczny	Six Flags Automotive, Inc. Westside Automotive, Inc.
20003019	President and Fellows of Harvard College.	Randall M. Hass	T.O. Hass Holding Co., Inc.
Transactions Granted Early Termination—05/12/2000			
19994584	Allied Waste Industries, Inc	Vivendi S.A	CBF, Inc.

Trans No.	Acquiring	Acquired	Entities
19994585	Vivendi S.A	Allied Waste Industries, Inc	Noble Road Landfill, Inc. Superior of Missouri, Inc. Superior of Ohio, Inc. Superior Services, Inc. Sycamore Landfill, Inc. American Disposal, Inc. BFI Waste Systems of North America, Inc. County Disposal, Inc.
20002793	Projekt Finanz Consult GmbH	A. Ahlstrom Corporation	Ahlstrom Machinery Corporation.
20002869	Hewlett-Packard Company	Zymed, Inc	Zymed, Inc.
20002904	Waste Connections, Inc	Allied Waste Industries, Inc	BFI Waste Systems of North America, Inc. Waste Connections of Kansas, Inc.
Transactions Granted Early Termination—05/15/2000			
20002847	Province Healthcare Company	New American Healthcare Corporation ...	NAHC of Wyoming, Inc.
20002882	General Electric Company	Atlas Copco AB	Atlas Copco Rotoflow, Inc.
20002891	Ashtead Group PLC	Rentokil Initial plc	BET USA, Inc.
20002899	NewSouth Holdings, Inc	Frank B. Stewart, Jr	UniversalCom, Inc.
20002915	Wind Point Partners IV, L.P	Northstar Health Services, Inc	Northstar Health Services, Inc.
20002953	Credit Suisse First Boston Equity Partners, L.P.	CTC Communications Group, Inc	CTC Communications Group, Inc.
20002954	Grace Investments, Ltd	Illinois Superconductor Corporation	Illinois Superconductor Corporation.
20002977	Fortress Investments Fund LLC	Brookdale Living Communities, Inc	Brookdale Living Communities, Inc.
20002980	Timothy F. Corwin	Kemp Biddulph	Biddulphland, Inc.
20002987	SGE Groupe	Michael Baker Corporation	Baker Support Services, Inc.
20003001	Bernard & Audre Rapoport	PennCorp Financial Group, Inc., debtor-in-possession.	PennCorp Financial Group, Inc., debtor-in-possession.
20003005	Kirtland Capital Partners III L.P	Vincent A. Morano	Essex Crane, Inc. Essex Crane Rental Corp.
20003006	Kirtland Capital Partners III L.P	Christopher J. Morano	Essex Crane, Inc. Essex Crane Rental Corp.
20003021	The Profit Recovery Group International, Inc.	EPS Solutions Corporation	TSL Services, Inc.
20003063	Severn Trent Plc	Kevin P. Murphy	Hydra-Stop, Inc.
20003072	Tribune Company	Hollywood.com, Inc	Hollywood.com, Inc.
20003097	UnitedHealth Group Incorporated	ChannelPoint, Inc	ChannelPoint, Inc.
20003107	Koninklijke Philips Electronics N.V	TriMedia Technologies, Inc	TriMedia Technologies, Inc.
Transactions Granted Early Termination—05/16/2000			
20002936	Telscape International, Inc	Pointe Communications Corporation	Pointe Communications Corporation.
20002967	Ledcor, Inc	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
20002969	TSG Capital Fund III L.P	Telscape International, Inc	Telscape International, Inc.
20002989	Solectron Corporation	Nortel Networks Corporation	Nortel Networks Corporation.
20003008	Jerome Seydoux	Ivex Packaging Corporation	Ultra Pac, Inc.
20003010	Babcock International Group PLC	Calvin Bamford, Jr	Globe Acquisition Corp. d/b/a Burelbach Industries Corp. Globe International, Inc. Globe Machine Manufacturing Company.
20003012	Thyssen Krupp AG	Linda E. Moore	Stahl Specialty Company.
Transactions Granted Early Termination—05/17/2000			
20002981	International Paper Company	Champion International Corporation	Champion International Corporation.
20003014	Cablevision Systems Corporation	Chum Limited	MuchMusic USA Venture.
20003016	NEC Corporation	Newco	Newco.
20003017	Mitsubishi Electric Corporation	Newco	Newco.
20003023	Calpine Corporation	Den norske stats oljeselskap a.s	Statoil Energy Power, Inc., and Celtic Power Corporation.
20003026	Bechtel Group, Inc	Madison Dearborn Capital Partners III, L.P.	@Link Holdings, Inc.
20003035	John Hancock Financial Services, Inc	MCN Energy Group, Inc	COBISA-Person Limited Partnership.
20003039	Oak Hill Capital Partners, L.P	GATX Corporation	GATX Corporation.
20003049	Vedior NV	Acsys, Inc	Acsys, Inc.
20003051	Cecil Van Tuyl	The Estate of Abram Misle, Deceased ...	Park Place Chevrolet & Imports, Inc. Park Place Pontiac-Cadillac-GMC, Inc.
20003053	Dr. Otto Happel	Sumner M. Redstone	WF Cinema Holdings, L.P.
20003054	Dr. Otto Happel	Time Warner, Inc	WF Cinema Holdings, L.P.
20003058	Meritor Automotive, Inc	Arvin Industries, Inc	Arvin Industries, Inc.
20003059	Arvin Industries, Inc	Meritor Automotive, Inc	Meritor Automotive, Inc.

Trans No.	Acquiring	Acquired	Entities
20003061	Westvaco Corporation	IMPAC Group, Inc	IMPAC Group, Inc.
20003064	Bill Gross' Idealab!	PayMyBills.com, Inc	PayMyBills.com, Inc.
20003070	Safeway, Inc	GroceryWorks.com, Inc	GroceryWorks.com, Inc.
20003073	Novell, Inc	CMGI, Inc	CMGion, Inc.
20003075	Robert Andy	Carl M. and Marie T. Bouckaert	Epsilon Products Company.
Transactions Granted Early Termination—05/18/2000			
20002984	Interdean Group Limited	Interconex, Inc	Interconex, Inc.
20003020	Peninsular and Oriental Steam Navigation Company.	Texas Freezer Company, Inc	Texas Freezer Company, Inc.
20003048	Telia A.B	Apex Global Information Services, Inc	Apex Global Information Services, Inc.
20003055	World Access, Inc	Joseph D. Fail	Prime TEC International, Inc.
20003069	Informa Group plc	The BISYS Group, Inc	BISYS Research Services, Inc.
20003080	Galen Holdings PLC	Duke University	Applied Clinical Concepts, Inc. Duke Clinical Research Institute.
20003081	Professor Kurt Jenny	Dr. Helmut List	AVL Medical Instruments AG.
20003083	ABRY Broadcast Partners III, L.P	Kelso Investment Associates V, L.P	Cygnus Business Media Holdings, Inc.
20003084	TCV III (Q), L.P	eLoyalty Corporation	eLoyalty Corporation.
20003086	Nortrax, Inc	Donald Neidetcher	METCO.
20003087	Nortrax, Inc	Roger N. Michaud	METCO.
20003089	Nortrax, Inc	K.C. Canary-Clifton Park, Inc	K.C. Canary-Clifton Park, Inc.
20003090	CSR Limited	Leppert Concrete Products, LLC	Leppert Concrete Products, LLC.
20003091	St. Ives plc	Joseph H. Weiss	Packard Press, Inc.
20003092	VS&A Communications Partners II, L.P ..	Third Millennium Communications, Inc	Third Millennium Communications, Inc.
20003095	REMEC, Inc	SkyOnline, Inc	SkyOnline, Inc.
20003100	MGC Communications, Inc	Primary Network Holdings, Inc	Primary Network Holdings, Inc.
20003109	Heywood Williams Group PLC	Fastec Industrial Corp	Fastec Industrial Corp.
20003119	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Top Line Electronics Corporation	Top Line Electronics Corporation.
20003120	Illinois PCS, LLC	Sprint Corporation	Sprint Spectrum L.P., Sprint Spectrum Equipment Co., L.P.
Transactions Granted Early Termination—05/19/2000			
20001681	Healtheon/WebMD Corporation	Quintiles Transnational Corp.	ENVOY Corporation.
20001682	Quintiles Transnational Corp	Healtheon/WebMD Corporation	Healtheon/WebMD Corporation.
20003050	ING Groep N.V	Acsys, Inc	Acsys, Inc.

For Further Information Contact: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–14450 Filed 6–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00127]

Developing a Model System for the Collection, Analysis, and Dissemination of Data on Genetic Tests; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Developing a Model System for the Collection, Analysis, and Dissemination of Data on Genetic Tests. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Public Health Infrastructure. For the conference copy of ''Healthy People 2010,'' visit the Internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to develop and evaluate a model system to assess the availability, quality, and usefulness of existing data on DNA-based genetic tests and testing algorithms. These data are needed to facilitate the appropriate transition of genetic tests from investigational settings to clinical and public health practice. By identifying data gaps and needs, this project can influence the way that genetic testing data are collected and analyzed in the future.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made

on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used to support genetic testing or generate new genetic test results.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities). Please see Addendum II (in the application kit) for important additional information.

1. Recipient Activities

a. Develop a comprehensive plan including time-phased and measurable objectives and proposed methods for implementing and evaluating the project.

b. Identify all applicable laws and develop procedures to protect confidentiality and maintain the anonymity of all test results.

c. Using experts, identify three DNA-based tests to guide in the finding, collection, and analysis of relevant data (published and unpublished).

d. Evaluate the availability, quality, and usefulness of data, identify data gaps and needs, and design simple and common data formats that support pooled analysis and comparison among studies.

e. Determine the core data elements needed (test- and population-specific) and assess the analytic validity, clinical validity and clinical utility of the studied genetic tests.

f. Develop and test a model system for actively collecting, analyzing, and disseminating aggregate data.

g. Evaluate the model system and summarize its strengths and limitations in transitioning genetic tests to clinical and public health practice and describe possible future enhancements.

h. Publish and disseminate results.

2. CDC Activities

a. Provide technical assistance and oversight of all project activities.

b. Assist in identifying DNA test experts to participate in collaborative analysis.

c. Provide scientific guidance in establishing selection criteria for the genetic tests to be studied.

d. Present project findings to relevant agencies and the Secretary's Advisory Committee on Genetic Testing.

e. Provide staff expertise in the implementation of the model system to be developed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one inch margins, and unreduced font. The application must be submitted unstapled and unbound.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit.

On or before August 4, 2000 submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background (15 Points)

The extent to which the applicant demonstrates an understanding of the program objectives by including a critical review of existing approaches to assessing the performance of DNA-based tests in public health applications.

2. Qualifications and Experience (25 Points)

The extent to which the applicant:

a. Identifies a principal investigator with demonstrated ability to carry out the proposed project,

b. Documents access to the necessary administrative, clinical, genetic, epidemiologic, laboratory, data management and statistical talent needed to carry out the project, and

c. Describes a project team that is experienced in collecting, organizing, analyzing, and interpreting DNA-based data on different conditions.

3. Plan and Objectives (20 Points)

a. The extent to which the applicant presents a well-defined project plan, including time-phased, measurable objectives.

b. The extent to which the applicant includes letters of support indicating the nature and extent of collaboration of key experts.

4. Methods (25 Points)

The extent to which the applicant describes detailed methods for implementing the project, including:

a. Identifying, recruiting, and collaborating with key experts,

b. Ensuring data anonymity and protecting confidentiality,

c. Identify available data for three DNA-based tests, identifying data gaps, and developing common data formats,

d. Determining core data elements and performing critical analysis,

e. Developing and testing a system for organizing and updating aggregate data sets, and disseminating results.

5. Evaluation (15 Points)

The extent to which the applicant:

a. Describes a plan to evaluate the ability of the model to collect, analyze, and disseminate data on genetic tests to facilitate their use in clinical and public health practice, and

b. Provides an evaluation plan that allows measurement of progress toward the achievement of the stated objectives.

6. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds. All budget categories should be itemized.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this

program. For a complete description of each, see Addendum I in the application kit.

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, [42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC Home Page on the Internet at <http://www.cdc.gov> (click on Funding). Please refer to Program Announcement Number 00127 when requesting information. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, E–13, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: 770–488–2718, Email address: mij3@cdc.gov

For program technical assistance, contact: Marta Gwinn, MD, MPH, Senior Medical Epidemiologist, Office of Genetics and Disease Prevention, National Center for Environmental Health Centers for Disease Control and Prevention, K–28, 4770 Buford Highway, NE, Atlanta, GA 30341–3724, Telephone number: 770–488–3235, Email address: mlg1@cdc.gov

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Conrol and Prevention (CDC).

[FR Doc. 00–14424 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 00141]

Notice of Availability of Funds; Surveillance of Intimate Partner Violence (IPV)

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Surveillance of Intimate Partner Violence (IPV). The purpose(s) of the program announcement are (1) to improve state injury surveillance capacity through the implementation of the Consensus Recommendations For Injury Surveillance In State Health Departments, September 1999 Report, for a copy of this report, visit the Internet site: (http://www.injuryprevention.org/stipda/s-pubs) and (2) to support the integration of population-based IPV surveillance systems into existing injury surveillance systems that will help determine the magnitude of IPV in population subgroups, and continued revision and testing of uniform definitions and recommended data elements. This program addresses ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve health. This announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of ''Healthy People 2010'', visit the Internet site: http://www.health.gov/healthypeople.

B. Eligible Applicants

Assistance will be provided only to the official public health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. States previously funded under announcement number 94483 ''State Injury Prevention Programs'' are eligible to apply (Massachusetts, Michigan and Rhode Island). States previously funded under announcement number 99134 ''State Injury Prevention Programs'' are not eligible to apply (Kentucky and Oklahoma).

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant cooperative agreement contract, loan, or any other form.

C. Availability of Funds

Approximately $1.2 million is available to fund up to four awards. It is expected that the average award will be $300,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under (1) Recipient Activities, and CDC will be responsible for the activities listed under (2) CDC Activities.

1. Recipient Activities

a. Enhance existing injury surveillance activities to support Intimate Partner Violence (IPV) surveillance to identify victims and occurrences of IPV, including data describing the magnitude of the problem and the extent of injuries (i.e., who is affected, areas and persons at greatest risk, and the type and source of the information used).

b. Enhance an existing injury surveillance system, capable of linking with one or more health-related data sources to determine intimate partner violence incidence and prevalence in the targeted area (*e.g.*, linkage of emergency department injury surveillance data or hospital discharge data with health-care based IPV surveillance data).

c. Enhance the capacity for general injury surveillance by incorporating the IPV surveillance system into other existing injury surveillance systems.

d. Using the Uniform Definitions for IPV Surveillance, assess the feasibility of enhancing existing injury surveillance and integrating a subset of the fifty recommended data elements: Uniform Definitions and Recommended Data Elements, 1999; http://www.cdc.gov/ncipc/pub-res/intimate.html into an existing health-care related injury surveillance system. Explain decisions made in selecting the subset of 50 data elements.

e. Establish and maintain cooperative partnerships with key personnel of potential data source agencies (*e.g.,* hospitals, emergency departments, etc.).

f. Monitor quality, representativeness and completeness of IPV surveillance data.

g. Collect and analyze surveillance data.

h. Produce and distribute periodic, progress reports to appropriate state and local agencies, and develop replication guidelines for future use by other states and localities.

i. Establish an advisory committee to exchange information and increase the likelihood of integrated injury surveillance systems.

In addition to the above, applicants should have well-developed surveillance capacity that includes the ability to: (See Consensus Recommendations for Injury Surveillance in State Health Departments—September 1999 Report.)

a. Access the 11 core data sets recommended for injury surveillance. The 11 data sets are vital records (VR), hospital discharge data (HDD), Fatality Analysis Reporting System (FARS), the Behavioral Risk Factor Surveillance System (BRFSS), the Youth Risk Behavioral Surveillance System (YRBSS), emergency department data (ED), medical examiner data and coroner data (ME), child death review data (CDR), the National Occupant Protection System (OPU), Uniform Crime Reporting System (UCR), and emergency medical services data (EMS).

b. Assess the completeness and validity of the 11 core data sets and evaluate the surveillance systems that generated these data using standard evaluation criteria.

c. Link data sets.

d. Ensure that each injury event is counted only once when using patient records.

e. Conduct special analyses.

f. Identify and measure interim program outcomes.

g. Evaluate state injury prevention program.

h. Use surveillance to support applied research.

i. Produce routine reports based on core data to support the five components of a model state injury prevention program: data collection and analysis; program design, implementation, and evaluation; coordination and collaboration; technical support and training; and public policy.

j. Develop and implement a surveillance system for additional major injury problems (*e.g.,* nonfatal interpersonal violence including intimate partner violence, sexual assault, and child abuse).

k. Develop unique surveillance systems to meet the state's individual data needs.

2. CDC Activities

a. If needed, provide technical assistance in the design of all phases of the IPV surveillance programs, including consultation on data collection instruments and procedures.

b. Provide technical assistance in developing a standardized approach to surveillance and related evaluation activities.

c. Provide consultation and assistance in problem assessment and target population identification, the evaluation of coverage, cost, and impact of surveillance activities, and design of scientific protocols.

d. Collaborate in the analysis and dissemination of IPV surveillance data.

e. Provide up-to-date scientific information about intimate partner violence and coordinate with related activities at CDC's National Center for Injury Prevention and Control.

f. Assist in the transfer of information and methods developed in this program to other geographical areas.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the Evaluation Criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 45 double-spaced pages, printed on one side, with one inch margins, no smaller than 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 60 pages including the appendix. No bound booklets, etc. should be attached.

In developing the application, the applicant must also include a two-page, double-spaced abstract. In following the format shown below, the applicant should also provide a detailed description of the first year activities and briefly describe future-year objectives and activities.

Format

1. Abstract.
2. Background and Need.
3. Goals.
4. Objectives.
5. Methodology.
6. Evaluation.
7. Coordination and Collaboration.
8. Project Management and Staffing.
9. Budget.
10. Human Subjects.
11. Other Requirements and Attachments.

F. Submission and Deadline

Application: Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 8, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (Not To Exceed Two Pages) (Not Scored)

The extent to which the applicant summarizes the existing injury surveillance system, the proposed IPV surveillance system, and the proposed integration of the IPV system into the injury surveillance system.

2. Background and Need (15 Points)

a. The extent to which the applicant documents the magnitude of the intimate partner violence problem in the applicant's targeted area, and provides a profile of the persons and groups at greatest risk.

b. The extent to which the applicant documents its current activities and previous experiences in injury surveillance, intimate partner violence surveillance, evaluation, and coordination with other agencies and potential partners.

c. The extent to which the applicant documents the current capacity and demonstrates the existence of a well-developed injury surveillance system to

collect and link health related data; what information is collected and what data sources are used, *e.g.* Hospital discharge data, emergency department data, and emergency services data, etc.

3. Goals (10 Points)

a. The extent to which the applicant states specific goals that indicate where the applicant anticipates the integration of intimate partner violence into the existing injury surveillance system will be at the end of the five-year project period.

b. The extent to which the applicant describes and provides evidence of its willingness and ability to undertake related projects to expand the capacity of the IPV surveillance system should additional funds become available.

4. Objectives (15 Points)

a. The extent to which the applicant states specific, time-phased, measurable and achievable objectives.

b. The extent to which the applicant relates the objectives directly to the project goals and the use of various health-related information sources, effort to achieve representativeness, surveillance system evaluation, collaboration, and demonstrates the utility of the surveillance system in replication efforts.

5. Methodology (20 Points)

a. The extent to which the applicant documents the capacity of the existing injury surveillance system; the proposed IPV surveillance system; and the proposed integration of the intimate partner violence surveillance system into the injury surveillance system.

b. The extent to which the applicant describes specific activities that are proposed to achieve each of the program objectives during the budget period.

c. The extent to which the applicant provides a time-line which indicates when each activity and preparations for activities will occur.

d. The extent to which the applicant provides evidence of an organizational chart that represents the actual structure of the integrated IPV injury surveillance system operating organization and its placement within the organizational units with existing jurisdiction and authority over other injury surveillance systems.

e. The extent to which the applicant provides evidence it has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

6. Evaluation (15 Points)

a. The extent to which the applicant describes the methods and design to be used to evaluate the integrated subset of the IPV surveillance system into the injury surveillance system, including what will be evaluated, data to be used, who will perform the evaluation and the time it will take (timeline) to do the evaluation.

b. The extent to which the applicant provides evidence of staff availability, expertise, and capacity to evaluate surveillance activities.

7. Coordination and Collaboration (10 Points)

a. The extent to which the applicant describes the relationship between the program and other organizations, agencies, and health department units that will relate to the program or which conduct related activities.

b. The extent to which applicant provides evidence of collaboration with academic institutions, public safety officials, or with other agencies. In addition, the extent to which the applicant describes responsibilities and composition of the surveillance advisory committee.

8. Project Management and Staffing (15 Points)

a. The extent to which the applicant documents the experience in the management of intimate partner violence surveillance, and describes the roles and responsibilities of the project director, epidemiologist, and each staff member, including a description of staff with appreciable experience in other injury surveillance systems expected to work in the integrated surveillance system.

b. The extent to which the applicant describes the allocation of staff to the activities outlined in the Methodology section.

c. The extent to which the applicant includes letters in the appendix from each collaborating consultant or outside agency stating their willingness and ability to fulfill the proposed responsibilities.

9. Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient, and consistent with the stated objectives and planned activities.

10. Human Subject (Not Scored)

a. The extent to which the applicant describes the degree to which human subjects may be at risk.

b. The extent to which the applicant describes assurances that all activities will conform to the requirements of 45 CFR part 46.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by a resulting cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum in the application package.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), and 391–394A [42 U.S.C. 241(a), 247b(k)(2), and 280b–280b–3] of the Public Health Service Act as amended.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the program announcement number (00141).

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Lead, Grants Management Specialist,

Announcement #00141, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2717.

For program technical assistance, contact: John D. Hemphill, National Center for Injury Prevention and Control Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K60, Atlanta, GA 30341, Telephone (770) 488–1285, Email address: jdh2@cdc.gov, FAX (770) 488–1011

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14425 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 00066]

Using Private Provider Partnerships To Strengthen the Immunization Message; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2000 funds to fund a cooperative agreement program with national private provider organizations which was published in the **Federal Register** on May 1, 2000, [Vol. 65, No. 84, Pages 25334–25336]. The notice is amended as follows:

On page 25335, Third Column, under Section F. Submission and Deadline, the submission due date is revised to read on or before July 18, 2000.

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14426 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Dermatologic and Ophthalmic 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 June 29, 2000, from 8:30 a.m. to 5:30 p.m. and on June 30, 2000, from 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Tracy K. Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Website, www.FDA.GOV.

Agenda: On June 29, 2000, during the initial open session, the committee will discuss new drug application (NDA) 20–010, Lotrisone™ Lotion (clotrimazole/betamethasone diproprionate), Schering-Plough, Inc., for treatment of tinea pedis, tinea cruris, and tinea corporis; and NDA 20–996, Dermex II™ Ointment (zinc oxinate), Dermex Pharmaceuticals, Limited Liability Corp., for treatment of actinic keratosis, basal cell carcinoma, and squamous cell carcinoma. On June 30, 2000, the committee will discuss NDA 21–026, (miconazole nitrate, USP 0.25%) ointment, Johnson & Johnson Consumer Companies, Inc., for treatment of diaper dermatitis.

Procedure: On June 29, 2000, from 10 a.m. to 5:30 p.m. and on June 30, 2000, from 8:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 21, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. on June 29, 2000, and between approximately 8:30 a.m. and 9:30 a.m. on June 30, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 21, 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.

Closed Committee Deliberations: On June 29, 2000, from 8:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information regarding pending investigational new drug applications issues (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 31, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14461 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices 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 June 19, 2000, 10 a.m. to 5 p.m.

Location: Hilton, Salons D and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 118, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a device for the treatment of obesity.

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 June 12, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 12, 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.

FDA regrets that it was unable to publish this notice 15 days prior to the June 19, 2000, Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 1, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14370 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Advisory Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

Date and Time: The meeting will be held on June 21, 2000, 8:30 a.m. to 5 p.m., and June 22, 2000, 8:30 a.m. to 12 noon.

Location: Quality Suites, Potomac II and III, 3 Research Ct., Rockville, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 21, 2000, the committee will discuss: (1) A reproposal for amendments to the performance standard for lasers (part 1040 (21 CFR part 1040)), (2) amendments being considered for the sunlamps standard (part 1040), and hear (3) a presentation addressing nonmedical ionizing radiation security systems, (4) a presentation concerning computed tomography fluoroscopy (CT) and the Year 2000 Nationwide Evaluation of X-Ray Trends Survey of CT. On June 22, 2000, the committee will hear: (1) An update on the reengineering of the radiological health program at the Center for Devices and Radiological Health, (2) a presentation on manufacturers' requirements and the medical device approval process, and (3) a presentation regarding how ultrasound diathermy (21 CFR part 1050) is regulated by FDA.

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 June 16, 2000. Oral presentations from the public will be scheduled on June 21, 2000, between approximately 11 a.m. and 11:20 a.m., and between approximately 1:45 p.m. and 2:05 p.m. Oral presentations from the public will be scheduled on June 22, 2000, between approximately 10:30 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 June 16, 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.

FDA regrets that it was unable to publish this notice 15 days prior to the June 21, 2000, Technical Electronic Product Radiation Safety Standards Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Technical Electronic Product Radiation Safety Standards Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 1, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14369 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1267]

Draft ''Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria'' dated May 2000. The draft guidance document provides recommended questions for deferral of donors at increased risk for malaria. The guidance document also provides the recommendations for donor questioning regarding travel to vacation resorts located in malarious regions. The draft guidance document currently being announced, when finalized, will replace the recommendations in the guidance entitled ''Recommendations for Deferral of Donors for Malaria Risk'' dated July 26, 1994.

DATES: Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by September 6, 2000.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: Recommendations for Donor

Questioning Regarding Possible Exposure to Malaria'' dated May 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria'' dated May 2000. The draft guidance document recommends questions to be asked of donors to determine possible exposure to malaria. The draft guidance document also provides recommendations for deferral of donors for malarial risk. The recommendations apply only to donations containing intact Red Blood Cells or platelets. Donations used for preparing plasma or plasma derivatives devoid of intact Red Blood Cells or platelets are excluded. The draft guidance document currently being announced, when finalized, will replace the recommendations in the guidance entitled ''Recommendations for Deferral of Donors for Malaria Risk'' dated July 26, 1994.

The draft guidance document represents the agency's current thinking on malarial risks for prospective donors. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by September 6, 2000. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: May 18, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–14371 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10003]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Medicare + Choice Beneficiary Appeal Notices, ''Notices of Denial of Medical Services,'' ''Notice of Denial of Request for Payment'' and Supporting Regulations in 42 CFR 422.568.

Form No.: HCFA–10003 (OMB# 0938–NEW).

Use: This collection includes two Medicare + Choice appeal notices, Denial of Service and Denial of Payment. Pursuant to the Social Security Act Section 1852(g)(1)(B), M+C organizations are required to issue notices to Medicare managed care beneficiaries when a request for either medical service or payment is denied. Additionally, the notices inform beneficiaries of their right to file an appeal.

All M+C organizations will be required to use these forms. Neither the Health Care Financing Administration (HCFA) nor the M+C organizations will use such notices to collect and analyze data on M+C beneficiary appeals. They are for information purposes only.

Frequency: On occasion.

Affected Public: Business or other for-profit and Individuals or Households.

Number of Respondents: 29,892.

Total Annual Responses: 29,892.

Total Annual Hours: 2,994.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14451 Filed 6–07–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2384]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Third Party Premium Billing Request and Supporting Regulations in 42 CFR 408.6;

Form No.: HCFA–2384 (OMB 0938–0041);

Use: The Third Party Premium Billing Request is used as an authorization form to designate that a family member or other interested party receive the Medicare premium bill and pay it on behalf of a Medicare beneficiary.

Frequency: On occasion;

Affected Public: Individuals or Households;

Number of Respondents: 15,000;

Total Annual Responses: 15,000;

Total Annual Hours: 6,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14452 Filed 6–7–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–216]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Organ Procurement Organization/Histocompatibility Laboratory Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations Contained in 42 CFR 413.20 and 413.24;

Form No.: HCFA–216 (OMB No. 0938–0102);

Use: This form is required by statute for participation in the Medicare program. The information is used to determine reasonable costs incurred to furnish treatment to End Stage Renal Disease (ESRD) patients by Organ Procurement Organizations and Histocompatibility Laboratories.

Frequency: Annually;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 108;

Total Annual Responses: 108;

Hours: 4,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14453 Filed 6–7–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Chicago Zoological Park, Brookfield Zoo, Brookfield, IL, PRT–805165.

The applicant requests a permit to import 50 blood, fecal and urine samples from 50 of the following animals: Black rhinoceros (*Diceros bicornis*), African wild dogs (*Lycaon pictus*), and Cheetah (*Acinonyx jabatus*). The samples are being collected by the Ministry of Environment and Tourism, Windhoek, Namibia and will be imported for scientific research.

Applicant: James Robbins, Harwood Heights, IL, PRT–027986.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John D. Pearson, Long Grove, IL, PRT–027538.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David B. Cull, Yanktown, SD, PRT–028159.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Smithsonian Institution, Washington, DC, PRT–027997.

The applicant requests a permit to import from Guyana study skins and associated frozen tissue samples obtained from five wild caught red siskin (*Carduelis cuculatta*). The specimens were collected and will be imported for scientific research.

Applicant: Ursula Bechert, Oregon State University, Corvallis, OR, PRT–023519.

The applicant requests a permit to import blood samples from Asian elephants (*Elephas maximus*) collected from captive-held specimens at the Bowmanville Zoo, Ontario, Canada, for scientific research.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Gordon F. Kolling, Hermosa, SD, PRT–028025.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: William C. McClure, Pittsburgh, PA, PRT–027989.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: George H. Brimhall, Paradise Valley, AZ, PRT–027988.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: John T. Shillingburg, Riviera Beach, FL, PRT–027987.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Dennis Lord, Woodstock, GA, PRT–027525.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Stanley S. Golub, Chester, NJ, PRT–028044.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Kevin Small, Bakersfield, CA, PRT–027926.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: John Martin, Forest Hill, MD, PRT–022471.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Fox Basin polar bear population, Nunavut, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–14414 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 2.0-acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, TX (Berger)

SUMMARY: David and Carol Berger (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–027260–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad *(Bufo Houstonensis)*. The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 2.0-acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027260–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

David and Carol Berger plan to construct a single family residence on 0.5 acres of the 2.0–acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2; Albuquerque, New Mexico.

[FR Doc. 00–14428 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, TX (Cooper)

SUMMARY: Lyle and Leah Cooper (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–027163–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo Houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027163–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Lyle and Leah Cooper plan to construct a single family residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–14429 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, TX

SUMMARY: G. Neil Mixon, Jr. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–027746.

The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (**Bufo Houstonensis**). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027746 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

G. Neil Mixon, Jr. plans to construct a single family residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–14427 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of issuance of two Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that two Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical Company	Exploration	May 22, 2000.
ARCO Alaska, Inc.	Exploration	May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: May 31, 2000.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 00–14454 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Quinault Indian Nation Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Quinault Indian Nation Liquor Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Quinault Indian Nation trust lands, and is in conformity with the laws of the State of Washington, where applicable and necessary. Although the Ordinance was adopted on January 20, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Quinault Indian Nation Liquor Ordinance, Resolution No. 00–156–77, was duly adopted by the Quinault Business Committee on January 20, 2000. The Quinault Indian Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol

abuse and its debilitating effects among individuals and family members within the Quinault Indian Nation.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 00–156–77, the Quinault Indian Nation Liquor Ordinance, was duly adopted by the Quinault Business Committee on January 20, 2000.

Dated: June 5, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

The Quinault Business Committee Liquor Ordinance, Resolution No. 00–156–77, reads as follows:

QUINAULT INDIAN NATION'S LIQUOR ORDINANCE, RESOLUTION NO. 00–156–77

TITLE 71

LIQUOR CONTROL

SECTION 71.01 PURPOSE

§ 71.01.010 Purpose

The Quinault Business Committee being vested with the power to protect the public health and to provide for the peace, safety and welfare of residents of the Quinault Indian Nation, hereby adopts this Title for the purpose of regulating the manufacture, distribution, sale, possession and consumption of liquor on the Quinault Indian Nation Reservation and lands under the jurisdiction of the Quinault Indian Nation. It is the Quinault Indian Nation's intent in enacting this Title to prohibit all traffic in liquor on the Quinault Indian Nation except to the extent allowed and permitted under the express terms of this Title. This Title is promulgated pursuant to the constitutional, delegated and inherent authority of the Quinault Indian Nation for the purpose of protecting the welfare, health, peace, and safety of all people residing on the Quinault Indian reservation and on lands under the jurisdiction of the Quinault Indian Nation.

SECTION 71.02 DEFINITIONS

§ 71.02.030 Definitions

The terms used in this Title shall mean:

(a) *Alcoholic Beverages*. Any distilled spirits, wine and malt beverages as defined in this Ordinance.

(b) *Alcoholic Beverage Dealer*. Any person who sells or engages in commercial traffic in alcoholic beverages, including manufacturers, retailers, solicitors, transporters and wholesalers.

(c) *Commission*. The Liquor Control Commission.

(d) *Contraband*. Any alcoholic beverage introduced into, or possessed, offered for sale or used within, the Quinault Indian Nation contrary to law and any receptacle or container in which such alcoholic beverages are found.

(e) *Director*. The Director of the Department of Revenue.

(f) *Distilled Spirits*. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, bandy, gin and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing not less than one-half of 1 percent of alcohol by volume.

(g) *Distiller*. Any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending or bottling of intoxicating liquor other than beer.

(h) *Liquor*. Any alcoholic beverage.

(i) *Malt Beverage*. A beverage made by the alcoholic fermentation of an infusion or location, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of 1 percent of alcohol by volume and commonly referred to as beer or ale.

(j) *Manufacturer*. Any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(k) *Off Sale*. The sale of any alcoholic beverage for consumption off the premises where sold.

(l) *On Sale*. The sale of any alcoholic beverage for consumption only upon the premises where sold.

(m) *One-Sale Dealer*. Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(n) *Package*. The bottle or immediate container of any alcoholic beverage.

(o) *Person*. Any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(p) *Quinault Indian Reservation*. Shall include the Quinault Indian Reservation and any and all lands owned, leased or under the jurisdiction of the Quinault Indian Nation, whether said lands are trust or allotted or lands held in fee patent status.

(q) *Retailer or Retail Dealer*. Any person who sells alcoholic beverages for other than resale.

(r) *Retail License*. An on-or off-sale license issued under the provisions of this Ordinance.

(s) *Revenue Department*. The Quinault Indian Nation Department of Revenue.

(t) *Sale*. The transfer, for a consideration, of title to any alcoholic beverage.

(u) *Solicitor*. Any person employed by a licensed wholesaler within or without the territorial limits of the Quinault Indian Nation, or by any distiller or manufacturer within or without the reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the reservation.

(v) *Transportation Company or Transporter*. Any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Quinault Indian Nation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the State and is destined to a point outside of the State.

(w) *Treasurer*. The duly elected and acting Treasurer of the Quinault Indian Nation.

(x) *Wholesaler*. Any person who sells alcoholic beverages to retailer for resale.

(y) *Wine*. Any liquid either commonly used for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of 1 percent of alcohol by volume but not more than 24 percent of alcohol by volume.

SECTION 71.03 LIQUOR CONTROL COMMISSION

§ 71.03.010 Liquor Control Commission

There is hereby created a Liquor Control Commission.

(a) The Liquor Control Commission shall consist of five members of the Business Committee appointed to the Commission by the President of the Quinault Indian Nation Business Committee.

(b) The President shall appoint one Commissioner as Chairman of the Liquor Control Commission. The Chairman shall preside at Commission hearings but shall not exercise his power to vote, except in the case of a tie.

(c) A quorum of the Commission shall consist of three members, and a quorum is required to exercise Commission authority.

(d) No Commission member shall participate in any Commission decision in which he has a direct interest or in which any member of his immediate family has a direct interest.

(e) In the absence of a duly constituted Commission, the Business Committee shall act as the Commission.

§ 71.03.020 Powers of the Liquor Control Commission

Commissioners shall be appointed for terms of 2 years, and shall be removed only for cause, after notice and an opportunity for a hearing before the Business Committee. When a vacancy occurs on the Commission, the President shall appoint a new Commissioner for the balance of the term.

(a) The Liquor Control Commission shall have the power to:

(1) Review license application and grant licenses;

(2) Conduct hearings on alleged violations of this Title;

(3) Establish rules and regulations governing the conduct of the Commission and the exercise of the Commission Authority;

(4) Collect taxes when authorized by the Business Committee, impose penalties, suspend and/or revoke licenses when violations of this Title are proved by a preponderance of the evidence; and

(5) Enjoin violations of this Title and enforce the orders of the Commission.

(b) Collections:

(1) Taxes, when authorized by the Business Committee, may be collected by the Commission through assessment and distraint or other necessary means;

(2) Penalties may be collected through the attachment, levy and sale of property or other necessary means; and

(3) Orders suspending or revoking licenses or enjoining the operations of liquor dealers may be enforced by the tribal police acting at the direction of the Commission.

SECTION 71.04 RETAIL LICENSES AND FEES

§ 71.03.010 Introduction, Sale, Possession for Sale and Distribution of Liquor

The introduction for the retail or wholesale sale, possession for the retail or wholesale sale, sale or the manufacture of liquor shall be unlawful within the Quinault Indian Reservation unless pursuant to a license issued by the Liquor Control Commission and in conformity with this Title, regulations adopted pursuant to this Title and the laws of the State of Washington when required by 18 U.S.C. 1161. This Title shall supersede and amend all prior laws inconsistent with this Title, including section 12.10.040.

§ 71.04.020 Retail License

The Liquor Control Commission may issue a retail license for the retail sale of liquor in business establishments within the Quinault Indian Reservation.

§ 71.04.040 Retail Licensing Fee

The fee for an annual retail license shall be $250 and may be increased annually by the Liquor Control Commission.

§ 71.04.050 Other Licenses

The Commission shall only grant Retail Licenses. No licenses for the manufacture of liquor or wholesale of liquor shall be granted until such time as the Business Committee amends this Title authorizing the Commission to grant such licenses under such terms and conditions as the Business Committee deems appropriate.

§ 71.04.060 Qualifications for License

No license under this Title shall be issued unless the applicant shall be 21 years of age, has filed a sworn application showing the applicant meets the standards in section 71.04.070 and has paid the license fee.

§ 71.04.070 Standards

An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver, Indian tribe or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, and partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and person of good moral character. Applicants must also be licensed with the Quinault Indian Nation as entitled to do business on the Quinault Indian Nation and qualified to obtain or have obtained a license to sell liquor from the State of Washington.

(a) The Liquor Control Commission may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(b) The Liquor Control Commission shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the reservation community shall be served. In considering applications, the Commission may take into account the following factors, among others, in determining whether the issuance of a license will serve the best interests of the Nation:

(1) Whether the license applied for is for the operation of a new or an existing retail liquor establishment;

(2) Whether the applicant is in compliance with applicable tribal, state and federal law;

(3) Whether the applicant has violated any provision of this Title, and if so, whether the violation has been remedied;

(4) The location, number and density of retail liquor establishments in the community;

(5) Whether food is sold at the establishment; and

(6) The health and welfare of the public.

§ 71.04.080 Public Comments

Before the issuance of any liquor license, the Commission may, but is not required, to take comments from the public. The Commission, however, shall be the determining authority for the granting of any tribal liquor license. If the Commission denies an application for a liquor license, the applicant may appeal that decision to the Business Committee within 30 days from the date of the Commission's decision. The Business Committee's decision shall be final.

SECTION 71.05 PROHIBITIONS

§ 71.05.010 General Prohibition

It shall be unlawful for any person to introduce for sale, manufacture or manufacture for sale, sell, offer or keep for sale or transport alcoholic beverages for sale on the Quinault Indian Reservation except where the person is licensed to conduct such activities by the Commission and only under the terms, conditions, limitations, and restrictions specified in this Title or regulations adopted pursuant to this Title. In addition to any other civil penalty provided for in this Title, each violation of this section may subject the violator to a civil fine not to exceed $5,000.

§ 71.05.020 Disposal Prohibited on Certain Days

No licensee shall sell alcoholic beverages on those days or at those times prohibited by the State of Washington. In addition, to any other civil penalty provided for in this Title,

any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.030 Prohibition as a Person Under 21 Years of Age

No licensee shall provide directly or by a clerk, agent or servant, intoxicating beverages to any person under the age of 21 years. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $100 for each violation.

(a) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a minor person. The Tribal Court shall have jurisdiction to hear such actions.

(b) An action under subsection (a) of this section shall be commenced within 2 years after the damage, injury or death.

§ 71.05.040 Prohibition as to Provision to Intoxicated Persons

(a) No licensee shall provide directly or by a clerk, agent or servant, alcoholic beverages to a visibly intoxicated person. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

(b) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a visibly intoxicated person. The Tribal Court shall have jurisdiction to hear such actions.

(c) An action under subsection (b) of this section shall be commenced within 2 years after the damage, injury or death.

§ 71.05.050 Prohibition as to Provision to Pregnant Persons

No licensee shall knowingly provide directly or by a clerk, agent or servant alcoholic beverages to any person who is pregnant. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.060 Prohibition Against Cashing Subsistence Checks

No licensee shall, directly or by a clerk, agent or servant, knowingly cash or accept any General Assistance check issued by the Federal, State or tribal government, any aid to families with Dependent Children check issued by the Federal, State or tribal government or any other Federal, State or tribal government subsistence check. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.070 Prohibition Against Drive-Up Windows

No licensee shall sell or provide alcoholic beverages from a drive through window or entrance. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

SECTION 71.06 VIOLATIONS OF TITLE/APPEAL

§ 71.06.010 General Penalties

Any person violating this Title or the regulations adopted pursuant to this Title shall, in addition to any other penalties authorized by this Title, be subject to suspension or revocation of their tribal license.

§ 71.06.020 Hearing on Alleged Violations

Anyone having information that a person has violated any provisions of this Title may file with the Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Department shall set the matter for a hearing before the Commission within 60 days. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than 5 days before the hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him or her as well as to present evidence and witnesses in his or her own defense.

§ 71.06.030 Suspension or Revocation of License

If after such hearing the Commission finds the violation set forth in the affidavit has been proved by preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time or imposing such other civil penalties as is provided for in this Title.

§ 71.06.040 Powers of the Chairman

The Chair of the Commission, or his designee, at a hearing under this Title shall have the power to administer oaths and to subpoena and examine witnesses.

§ 71.06.050 Appeal

Any Licensee may appeal the Commission's decision to the Quinault Tribal Court by filing a notice of appeal with the court, clearly stating the grounds therefor, and serving a copy of the notice of appeal by hand on the Director of the Department within 30 days from the date of the decision. The Quinault Tribal Court shall uphold the decision of the Liquor Control Commission unless its finds that the Commission's decision was arbitrary and capricious, an abuse of discretion, or not in accordance with this Title or other applicable law.

SECTION 71.07 CONTRABAND

§ 71.07.010 Contraband Alcoholic Beverages—Container—Forfeiture

The introduction, manufacture, distribution or possession for sale or sale of alcoholic beverages within the Quinault Indian Nation Reservation contrary to this Title is inimical to the public interest and such alcoholic beverages and any receptacle or container of any kind in which said alcoholic beverages are found, are hereby declared to be contraband. No property right shall exist in contraband alcoholic beverages or any receptacle or container wherein such alcoholic beverages are found. Contraband alcoholic beverages and any receptacle or container in which such alcoholic beverages are found are hereby declared forfeited and shall be seized forthwith.

§ 71.07.020 Seizure of Contraband Alcoholic Beverages—Containers—Search Warrant

When an officer of the tribe has probable cause to believe that a person has contraband alcoholic beverages within the Quinault Indian Reservation and a search warrant is required under tribal law or under the Federal Indian Civil Right Act, 25 U.S.C. 1301 *et seq.*, he may apply to the Tribal Court for a warrant to authorize the search of said person and any places, containers conveyances, and receptacles, etc., which the officer has probable cause to believe contain said contraband alcoholic beverages. If the Tribal Court determines that probable cause exists that a person has contraband alcoholic beverages within the territory of the tribe, then the court shall issue a search warrant describing the person, places and things to be searched and the things to be seized. The officer shall execute the search warrant and seize any and all contraband alcoholic beverages found and any receptacles and any containers in which said contraband alcoholic beverages are found.

§ 71.07.030 Judicial Determination as to Nature of Alcoholic Beverages Seized

(a) Within 10 calendar days after the seizure of any alcoholic beverages, or any receptacle or container in which said alcoholic beverages are found, on the grounds that they are contraband, any person claiming an interest therein may initiate an action for a determination as to whether the items seized are contraband by filing a claim with the Tribal Court and serving notice of the claim on the Director of the Department. The Tribal Court shall then schedule a hearing on the matter within 15 calendar days after the filing of the claim.

(b) The Tribal Court shall, upon good cause shown, permit discovery to be taken on an expedited basis. The Tribal Court shall regulate the manner and timing of such discovery; provided that when the Tribal Court orders expedited discovery, the time for a hearing may be postponed for a period of 60 days. All discovery shall be completed prior to the hearing date.

(c) The Nation shall have the burden to establish a prima facie case that items seized are contraband, and after such proof is made, the burden shall shift to the claimant to prove by a preponderance of the evidence that the items seized are not contraband.

(d) If the Tribal Court determines that the items seized by the Nation are not contraband, the court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the court determines that the items seized are contraband, the court shall declare the items to be contraband and the Nation may dispose of the contraband as it deems fit after the time for filing an appeal has elapsed.

(e) The Nation may appeal an adverse decision of the Tribal Court under this section to the Appellate Court by filing a notice of appeal within 10 calendar days of the date of the decision of the Tribal Court. Filing of the notice of appeal by the Nation shall automatically stay the decision of the Tribal Court. The Appellate Court shall uphold the decision of the Tribal Court unless it is clearly erroneous.

(f) The claimant may appeal an adverse decision of the Tribal Court under this section to the Appellate Court by filing a notice of appeal within 10 calendar days of the date of the decision of the Tribal Court and posting an appeal bond in an amount set by the Tribal Court. The Tribal Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the Nation on the appeal. Filing of the notice of appeal by the claimant and payment of the appeal bond shall automatically stay the decision of the Tribal Court. The Appellate Court shall uphold the decision of the Tribal Court unless it is clearly erroneous.

SECTION 71.08 EXCEPTION

§ 71.08.010 Exceptions to this Title

The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(a) For scientific research or manufacturing products other than liquor;

(b) Medical use under the direction of a physician, medical or dental clinic, or hospital;

(c) In preparation not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(d) By persons exempt from regulation in accordance with the laws of the United States; or

(e) For sacramental use such as wines delivered to priests, rabbis, and ministers.

SECTION 71.09 MISCELLANEOUS PROVISION

§ 71.09.010 Agreement by Licensee to Grant Access for Inspection Purposes

Every licensee under this Title, as a condition of the grant of tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Commission. These inspections shall be conducted by a duly appointed designee of the Commission, or tribal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Commission.

§ 71.09.020 Transferability

No license issued pursuant to this Title shall be transferable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for 60 days after the licensee's death, so long as said personal representative shall apply to the Commission for a new license within said 60-day period.

§ 71.09.030 Server Training

Every person who serves alcoholic beverages on the premises of an on-sale licensee shall attend 8 hours of training in a server training program approved by the Commission or the State of Washington on the latter of his or her 60th day of employment or within 60 days after the effective date of this Title.

§ 71.09.040 Tribal Sovereign Immunity

No provision of this Title shall be construed to permit the recovery of money damages against the tribe. No provision of this Title shall be construed to waive the sovereign immunity of the tribe.

§ 71.09.050 Consent to Civil Jurisdiction

A licensee shall stipulate in the license that for the purpose of this Title the licensee shall be subject to the civil jurisdiction of the Quinault Tribal Court.

SECTION 71.10 SEVERABILITY

§ 71.10.010 Severability

If for any reason, or circumstances, any provision(s) or section(s) of this Title are held invalid by the appropriate court of jurisdiction, the remainder of this Title and other provisions or sections shall not be affected in the application of this Title or to any person covered by this Title.

SECTION 71.11 EFFECTIVE DATE OF TITLE

§ 71.11.010 Continued Operation under existing Tribal or State License

This Title is effective after its adoption by the Business Committee. Any Licensee operating under an existing tribal or state license may continue to operate thereunder until December 31, 1998, provided that the licensee complies with all of the provisions contained herein. After December 31, 1998, any person operating under an existing state license, must apply with the Commission for a tribal license.

[FR Doc. 00–14465 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant

Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Seventh Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on April 7, 2000.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–14504 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–00–0777–XQ]

Notice of Meeting of the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting will be held on June 21–22, 2000. On June 21, the Council will focus on recreation issues in northwestern Utah. The RAC will participate in a field tour of the west half of Box Elder County and the northwest corner of Tooele County. Other resources such as minerals, range condition, and fire rehabilitation may be addressed as time allows. They will be departing from the Bureau of Land Management's Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, at 8 a.m. and concluding the tour in Wendover, Nevada.

On June 22, the RAC will continue working on the draft guidelines for recreation management. This meeting will be held in the Silver Room of the Silver Smith Hotel, Wendover, NV, at 8 a.m. and conclude at 4 p.m. with a public comment period scheduled from 3:30–4.

All meetings of the BLM's Resource Advisory Council are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: June 2, 2000.

Sally Wisely,

Utah BLM State Director.

[FR Doc. 00–14430 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–XU; GPO–0245]

Notice of the Meeting of the Eastern Washington Advisory Council; June 22, 2000, in Spokane, Washington

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on June 22, 2000. The meeting will convene at 9 a.m., at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary, to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. The Topic to be discussed is the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated June 2, 2000.

Joseph K. Buesing,

District Manager.

[FR Doc. 00–14431 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

National Park Service

Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains

AGENCY: National Park Service, Interior

ACTION: Notice

The Native American Graves Protection and Repatriation Act directs the Secretary of the Interior to establish and maintain an advisory committee composed of seven private citizens nominated by Indian tribes, Native Hawaiian organizations, and national museum organizations and scientific organizations [25 U.S.C. 3006]. One of the review committee's responsibilities is to make recommendations regarding specific actions for developing a process for the disposal of culturally unidentifiable Native American human remains in the possession or control of museums and Federal agencies [25 U.S.C. 3006 (c)(5)]. After lengthy deliberations, the committee makes the following recommendations.

A. Intent of NAGPRA

1. The legislative intent of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) is stated by the title of the statute. Repatriation means the return of control over human remains and cultural items to Indian tribes and Native Hawaiian organizations.

2. Specifically, the statute required:

a. The disposition of all Native American human remains and cultural items excavated on or removed from Federal lands after November 16, 1990 [25 U.S.C. 3002 (d)(2)]. Disposition is based on linkages of lineal descent, tribal land, cultural affiliation, or aboriginal land.

b. The repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections if requested by a culturally affiliated Indian tribe or Native Hawaiian organization [25 U.S.C. 3005]. Repatriation is based on linkages of lineal descent or cultural affiliation.

c. The development of regulations for the disposition of unclaimed human remains and objects [25 U.S.C. 3002 (3)(b)] and culturally unidentifiable human remains in Federal agency and museum collections [25 U.S.C. 3006].

3. Although the legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed in NAGPRA, the statute does not prohibit their voluntary repatriation by museums or Federal agencies to the extent allowed by Federal law.

4. The statute acknowledges the legitimate need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical, and scientific information conveyed by those remains and objects [25 U.S.C. 3002 (3)(b) and 3006 (8)(b)].

5. While the statute does not always specify repatriation, it is implicit that the process be guided by the rights and needs of Indian tribes and Native Hawaiian organizations.

B. Culturally Unidentifiable Human Remains

1. Federal agencies and museums must make a determination as to whether Native American human remains in their control are related to lineal descendants, culturally affiliated with a present-day Federally recognized Indian tribe or a Native Hawaiian organization, or are culturally unidentifiable. This determination must be made in consultation with any appropriate Indian tribes or Native Hawaiian organizations, and through a good faith evaluation of all relevant and available documentation.

2. A determination that human remains are culturally unidentifiable may change to one of cultural affiliation as additional information becomes available through ongoing consultation or any other source. There is no statute of limitations for lineal descendants, Indian tribes, or Native Hawaiian organizations to make a claim.

3. A Federal agency or museum determination that human remains are culturally unidentifiable may occur for different reasons. At present, three categories are recognized:

a. Those for which cultural affiliation could be determined except that the appropriate Native American organization is not Federally recognized as an Indian tribe.

b. Those which represent an earlier identifiable group, but for which no present-day Indian tribe has been identified by the Federal agency or museum.

c. Those for which the Federal agency or museum believes that evidence is insufficient to identify an earlier group.

4. Documentation

a. Documentation is required for inventory completion and determinations of cultural affiliation by Federal agencies and museums [25 U.S.C. 3003 (5)(b)(2)]. Documentation should be prepared in accordance with standards such as those outlined in 43 CFR 10.9 (c) and 10.14.

b. Documentation must occur within the context of the consultation process. Additional study is not prohibited if the parties (Federal agencies, museums, lineal descendants, Indian tribes, and Native Hawaiian organizations) in consultation agree that such study is appropriate.

c. Once inventories have been completed, the statute may not be used to require new scientific studies or other means of acquiring or preserving additional scientific information from human remains and associated funerary objects [25 U.S.C. 3003 (b)(2)].

d. With the exception of information exempted from the Freedom of Information Act, documentation prepared in compliance with the statute is a public record.

C. Guidelines for the Disposition of Culturally Unidentifiable Human Remains

1. Respect must be the foundation for any disposition of culturally unidentifiable human remains. Human remains determined to be culturally unidentifiable are no less deserving of respect than those for which cultural affiliation has been established.

2. Since human remains may be unclaimed, or determined to be culturally unidentifiable for different reasons, there will be more than one appropriate disposition (repatriation) solution. Examples of appropriate repatriation solutions include the return of:

a. Human remains that are determined to be culturally unidentifiable that were recovered from tribal land.

b. Human remains that are determined to be culturally unidentifiable that were recovered from the aboriginal land of an Indian tribe.

c. Human remains that are culturally unidentifiable for which there is a relationship of shared group identity with a non-Federally recognized Native American group.

3. A Federal agency or museum may also seek the recommendation of the review committee for the disposition of culturally unidentifiable human remains based on other criteria than those listed above.

D. Proposed Models for the Disposition of Culturally Unidentifiable Human Remains

1. Joint recommendations by Federal agencies, museums, and claimants. Repatriation of culturally unidentifiable human remains may proceed in those cases where:

a. All the relevant parties have agreed in writing,

b. Statutory requirements have been met; and

c. The guidelines listed above have been followed.

Note: The review committee has recommended repatriation of culturally unidentifiable human remains that have met these criteria for both museums—including the Robert S. Peabody Museum of Archaeology-Phillips Academy; Commonwealth of Virginia-Department of Historic Resources; Dartmouth College-Hood Museum; Minnesota Indian Affairs Council; Iowa Historical Society; Sonoma State University; Peabody Museum-Harvard University; University of Nebraska-Lincoln; New Hampshire Division of Historical Resources; California State University-Fresno; and Washington State Historical Society—and Federal agencies, including the US Army-Fort Hunter-Liggett; National Park Service-Fort Clatsop National Monument; National Park Service-Carlsbad Caverns National Park/Guadalupe Mountains National Park; and US Forest Service-Ocala National Forest.

2. Joint recommendations from regional consultations

a. Historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. For example, issues in the Southeast, where most Indian tribes were forcibly removed during the 19th Century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California differ significantly from those in the Great Plains. Therefore, it is recommended that regional solutions be developed that best fit regional circumstances.

b. The review committee recommends a process in which:

i. Indian tribes and Native Hawaiian organizations define regions within which the most appropriate solutions for disposition of culturally unidentifiable human remains may be determined.

ii. Within each region, the appropriate Federal agencies, museums, Indian tribes, and Native Hawaiian organizations consult together and propose a framework and schedule to develop and implement the most appropriate model for their region.

iii. Regional consultation meetings may be open to other parties with a legitimate interest in disposition, with the consent of the appropriate Federal agencies, museums, Indian tribes, and Native Hawaiian organizations.

iv. Dispositions agreed upon through regional consultation meetings will be made by the appropriate Federal agencies, museums, and Indian tribes.

v. If a disposition agreement can not be reached through regional consultation meetings, the dispute may be brought before the review committee.

vi. Any proposed regional disposition agreement must meet all statutory requirements as well as the guidelines listed above.

E. Regulations.

The review committee requests that the Secretary of the Interior develop a draft proposed rule [43 CFR 10.11] based on these recommendations to be considered by the review committee at its next meeting. Following review by the committee, the proposed rule will be published for additional public comment in the **Federal Register**.

Dated: May 9, 2000.

Armand Minthorn,

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 00–14487 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Clay County, SD in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

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 Clay County, SD in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD. This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency who has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff in consultation with representatives of the Yankton Sioux Tribe of South Dakota and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.

In 1926, human remains representing one individual were recovered from the Vermillion Bluff Village (39CL1), located on the left bank of the Vermillion River, Clay County, SD by workmen at the R.C. Davis residence. These human remains were donated to the W.H. Over Museum, Vermillion, SD. In 1974, these human remains were transferred to the SARC for documentation and repatriation. No known individual was identified. The 14 associated funerary objects include a circular-shaped iron rod, an elk metapodial scraper, an elk antler scraper, three polished pipestone balls, a top-shaped piece of pipestone, three undrilled pipestone pipes, a used pipestone pipe, a steel knife with a horn handle, and two pieces of scoria.

Based on associated funerary objects and manner of interment, this individual has been identified as Native American. The associated funerary objects and manner of interment also indicate this burial dates to the historic period (post-1800 A.D.). Based on continuities of material culture, oral tradition, and historical evidence, the cultural affiliation of the Historic-period component of the Vermillion Bluff Village site and the burial listed above have been affiliated with the Yankton Sioux Tribe of South Dakota. In 1859, the Yankton tribe was removed from this area in Clay County, SD to the Yankton Indian Reservation in South Dakota.

Based on the above mentioned information, officials of the South Dakota Archaeological Research Center 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 South Dakota Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 14 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 South Dakota Archaeological Research Center 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 Yankton Sioux Tribe of South Dakota. This notice has been sent to officials of the Yankton Sioux Tribe of South Dakota and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709–1257; telephone: (605) 394–1936, before July 10, 2000. Repatriation of the human remains and associated funerary objects to the Yankton Sioux Tribe of South Dakota may begin after that date if no additional claimants come forward.

Dated: May 31, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnership Programs.

[FR Doc. 00–14489 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Sledge Island, AK in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Sledge Island, AK in the possession of University of Alaska Museum, Fairbanks, AK. This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency who has control of these Native American human remains and associated funerary objects.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Nome Eskimo Community.

In 1950, human remains representing five individuals were recovered from Sledge Island, AK during surveys conducted under the auspices of the University of Alaska Museum by George Schumann. No known individuals were identified. No associated funerary object are present.

In 1956, human remains representing one individual were recovered from Sledge Island, AK during surveys conducted under the auspices of the University of Alaska Museum by Otto Geist and Ivar Skarland. No known individual was identified. The nine associated funerary objects are two knife handles and seven faunal remains consisting of three dog bones and four polar bear bones.

In 1968, human remains representing four individuals were recovered from Sledge Island, AK by William Tuttle, who donated these human remains to the University of Alaska Museum. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the sites listed above have been identified as historic period occupations (post-1780 A.D.).

Based on the above mentioned information, officials of the University

of Alaska 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 ten individuals of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the nine objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Nome Eskimo Community.

This notice has been sent to officials of the Nome Eskimo Community. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, fax: (907) 474–5469, before July 10, 2000. Repatriation of the human remains and associated funerary objects to the Nome Eskimo Community 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: May 30, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–14488 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 12, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street SW. Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–762 (Remand)(Static Random Access Memory Semiconductors from Taiwan)— briefing and vote. (The Commission will transmit its views on remand to the U.S. Court of International Trade on June 26, 2000.)
5. Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 276–277, 296, 409–410, 532–534, and 536–537 (Review) (Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 26, 2000).
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14580 Filed 6–6–00; 11:09 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the actions entitled *United States* v. *Gayner, et al.,* Civil Action No. 00CV11037EFH (D. Mass.), and *United States* v. *Glynn,* Civil Action No. 99–40133 (D. Mass.), was lodged on May 26, 2000, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the claims of the United States against several potentially responsible parties (''Settling Defendants'') at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts (''Site''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The consent decree will also resolve the claims of the Commonwealth of Massachusetts (''Commonwealth'') in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Robert E. Gayner, MCL Development Corporation, Edward J. Camille, and John J. Glynn, Jr., as Trustee of the Environmental Restoration Engineering Trust and the AIF Realty Trust. The consent decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 (including claims for natural resource damages), and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

Under the proposed consent decree, the Settling Defendants will pay $300,000 to the United States in order to reimburse the United States for its past unreimbursed response costs incurred in connection with the Site and $75,000 to the Commonwealth to reimburse the Commonwealth for its past unreimbursed response costs incurred in connection with the Site. In addition, the Settling Defendants have agreed to record an Environmental Restriction and Easement (''Easement'') with respect to each of their properties located at the Site. The Easements will impose certain restrictions on the use of these properties and will also provide access rights to the United States (until completion of the remedial action at the Site) and the Commonwealth (after completion of the remedial action at the Site).

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington D.C. 20044, and should refer to *United States* v. *Gayner et al.,* DOJ Ref. Number 90–11–2–340D. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region 1, located at One Congress Street, Suite 1100, Boston, MA 02114 (contact Peter DeCambre, 617–918–1890). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC, 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $30 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–14455 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Holden, et. al.*, Civil Action No. 00CV11036EFH (D. Mass.), was lodged on May 26, 2000, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the claims of the United States claims against several potentially responsible parties (''Settling Defendants'') at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts (''Site''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq*. The consent decree will also resolve the claims of the Commonwealth of Massachusetts (''Commonwealth'') in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Nelson W. Holden, as Trustee of the Holden–Ashland Trust, Martha E. Holden, as Trustee of the Holden–Ashland Trust, and William M. Leacu. The Environmental Protection Agency has determined that the Settling Defendants qualify for a *de mimimis* settlement under section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B). The consent decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 (including claims for natural resources damages), and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

Under the proposed consent decree, the Settling Defendants have agreed to record an Environmental Restriction and Easement (''Easement'') with respect to each of their properties located at the Site. The Easements will impose certain restrictions on the use of these properties and will also provide access rights to the United States (until completion of the remedial action at the Site) and to the Commonwealth (after completion of the remedial action at the Site).

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. box 7611, Ben Franklin Station, Washington DC 20044, and should refer to *United States* v. *Holden, et al.*, DOJ Ref. Number 90–11–2–340C. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region 1, located at One Congress Street, Suite 1100, Boston, MA 02114 (contact Peter DeCambre, 617–918–1890). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $23.75 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–14456 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 33) Ganes Chemicals Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropopoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ganes Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ganes Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14478 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 12, 1999, and published in the **Federal Register** on May 25, 1999, (64 FR 28214), Noramco, Inc., 1400 Olympic Drive, Athens, Georgia 30601, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigations included inspection and testing of the company's physical

security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 26, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14477 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 19, 2000, and April 27, 2000, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by letters to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Pentobarbital (2270)	II

The firm plans to manufacture amphetamine and pentobarbital as a bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 7, 2000.

Dated: May 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14479 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; Fiscal Year 1999 State Domestic Preparedness Equipment Program Needs Assessment.

The Department of Justice, Office of Justice Programs (OJP), Office for State and Local Domestic Preparedness (OSLDPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by June 16, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Frank Lepage, Chief, Grants Management Operations Branch, Office for State and Local Domestic Preparedness, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 616–2922.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

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

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

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

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

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Fiscal Year 1999 State Domestic Preparedness Equipment Program Needs Assessment.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Office of Justice Programs, Office for State and Local Domestic Preparedness Support.

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, State, and Local Government.

Abstract: Section 1404 of the Defense Against Weapons of Mass Destruction Act of 1998 (Title XIV of Public Law 105–261; 50 U.S.C. 2301) as amended by Section 1064 of the National Defense Authorization Act of 2000 (Title X of Public law 106–65; 50 U.S.C. 2301) authorizes the Department of Justice to collect information from state and local jurisdictions to assess the threat and risk of terrorist employment of weapons of mass destruction against cities and other local areas. This data collection is a one-time event that will allow states to: (1) Report current jurisdictional needs for equipment, training, exercises, and technical assistance; (2) forecast projected needs for this support; and, (3) identify the gaps that exist at the jurisdictional level in equipment, training, exercises, and technical assistance that OJP/OSLDPS funding will be used to address. Additionally, the information collected will guide OJP/OSLDPS in the formulation of domestic preparedness policies and with the development of OSLDPS programs to enhance state and local first responder capabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The data collection being

proposed is a one-time effort incorporating three main components: A terrorist threat and risk assessment, a public health capabilities assessment, and an equipment needs and capabilities assessment. Information will be collected by approximately 9,000 local law enforcement, public health, and emergency management agencies. In addition, a state administrative agency in each state will roll-up the local data and submit this information to OJP/OSLDPS. Collection and tabulation of the raw data at the local level may take up to one month. Jurisdictions using the OJP data collection tool designed for this exercise may experience burdens ranging from 4–8 hours to collect tabulate and input data. In addition, roll-up of the data at the state level and electronic submission to OJP may take up to 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden associated with this one-time data collection will be approximately 66,200 hours.

If additional information is required, contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: June 2, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–14421 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1279]

National Institute of Justice Announcement of the Tenth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the tenth meeting of the National Commission on the Future of DNA Evidence.

DATES: The tenth meeting of the National Commission on the Future of DNA Evidence will take place on Sunday, July 9, 2000 from 1 p.m. to 5 p.m.,EST, and on Monday, July 10, 2000 from 9 a.m. to 5 p.m., EST.

ADDRESSES: The meeting will take place at the Grand Hyatt Hotel, 1000 H Street, N.W. Washington, D.C. 20001 Phone: (202) 584–1234.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director. Phone: (202) 616–8123. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Dated: June 2, 2000.

Doug Horner,

Acting Director, National Institute of Justice.

[FR Doc. 00–14442 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,011]

Cooper Energy Services, Grove City, Pennsylvania; Notice of Revised Determination on Reconsideration

On April 27, 200, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former worker of the subject firm. The notice was published in the **Federal Register** on May 4, 2000 (65 FR 25947).

Investigation findings show that the workers are primarily engaged in the production of castings and machined components. The worker were denied TAA because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of castings or machined components from Mexico or Canada.

The petitioners presented evidence that some of the production of pistons was shifted to Canada and is being returned to the United States.

New information obtained from the subject firm on reconsideration reveal that for a short period of time during which the machining centers were being transferred from Grove City, Pennsylvania, to another domestic location, the company source machined components from a Canadian firm. Other findings on reconsideration show that the company is increasing its reliance on castings from Mexico.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Cooper Energy Services, Grove City, Pennsylvania, were adversely affected by increased imports, including those from Canada and Mexico, of articles like or directly competitive with castings and machined components produced at the subject firm.

''All workers of Cooper Energy Services, Grove City, Pennsylvania, who became totally or partially separated from employment on or after October 13, 1998, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;'' and

''All workers of Cooper Energy Services, Grove City, Pennsylvania, who became totally or partially separated from employment on or after October 13, 1998,

through two years from the date of this issuance, are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 31st day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14472 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May and June, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,582; Forge Products Corp., Cleveland, OH
TA–W–37,503; Swiss–M–Tex L.P., Travelers Rest, SC
TA–W–37,605; Hyperion Seating Corp., Lewisburg, TN
TA–W–37,573; Santa Cruz Industries, Santa Cruz, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,621; Westwood Lighting, Inc., El Paso, TX
TA–W–37,548; Red Plating, Inc., Providence, RI
TA–W–37,640; The Montana Power Co., Butte, MT
TA–W–37,561; Manpower Staffing Services, San Jose, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,563; Tecumseh Products Co., Somerset, KY
TA–W–37,597; Lebanon Machine, Lebanon, OR

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,606 & A; Rocky Apparel LLC, Greenwood, MS and Ruleville, MS: March 28, 1999
TA–W–37,630; Motor Coils Manufacturing Co., Braddock, PA: April 17, 1999
TA–W–37,630; Motor Coils Manufacturing Co., Braddock, PA: April 17, 1999
TA–W–37,416; Triboro Electric Co L.P., Doylestown, PA: April 1, 2000
TA–W–37,609; TI Group Automotive Systems Corp., Valdosta, GA: March 28, 1999
TA–W–37,639; Peninsula Light Metals, LLC and Optima Wheels Formerly Known as Pacific Baja Light Metals, La Miranda, CA: April 29, 1999
TA–W–37,581; General Electric Industrial Systems, 60 Frame Area, Tell City, IN: March 9, 1999
TA–W–37,607; Henry I. Siegel, Inc., Bruceton, TN: April 30, 2000.
TA–W–37,448; Regal Ware, Inc., Jacksonville, AR: February 23, 1999
TA–W–37,552; Williamette Industries, Dallas, OR: May 29, 1999
TA–W–37,554; Ross Corp., Eugene, OR: March 25, 1999
TA–W–37,656; United Protective Clothing, Inc., Purvis, MS: April 11, 1999
TA–W–37,575; Southeastern Apparel Finishing, Inc., Johnson City, TN: March 20, 1999
TA–W–37,558; Exide Corp., Reading, PA: March 20
TA–W–37,569; National Castings, Cicero, IL: March 16, 1999
TA–W–37,362; Jasper Sportswear Corp., Brooklyn, NY: February 1, 1999
TA–W–37,647; The Eureka Co. Div. of White Consolidated Industries, Inc., Bloomington, IL: April 14, 1999
TA–W–37,477; Pinewood Casual, Inc., Philipsburg, PA: February 21, 1999
TA–W–37,535; Alliance Carolina Tool and Mold Corp., Arden, NC: March 22, 1999
TA–W–37,482; Quantum Corp., DLT and Storage Systems Group, Colorado Springs, CO: March 1, 1999
TA–W–37,530; Kellwood Co d/b/a American Recreation Products, Inc., Mineola, TX: March 23, 1999

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May and June, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or thereat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3)

and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. there was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03849; A. Schulman, Inc., Dispersion Div., Orange, TX
NAFTA–TAA–03810; SWISS–M–Tex L.P., Travelers Rest, SC
NAFTA–TAA–03882; Schmalbach-Lubeca Plastic Containers USA, Inc., Novi, MI
NAFTA–TAA–03846; Lebanon Mchine, Lebanon, OR
NAFTA–TAA–03848; Coho Energy, Inc. d/b/a Coho Resources, Inc., Dallas, TX
NAFTA–TAA–03828; Oregon Manufacturing Services, Inc.; Klamath Falls, OR
NAFTA–TAA–03916; Pope & Talbot, Inc., Newcastle Plant, Newcastle, WY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03886; Ingersoll-Rand Transportation Organization, Los Angeles, CA

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03865; Sharp Manufacturing Company of America, Memphis, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment.

Affirmative Determinations NAFTA–TAA
NAFTA–TAA–03851; National Castings, Cicero, IL: April 7, 1999
NAFTA–TAA–03827; Ross Corp., Eugene, OR: March 24, 1999
NAFTA–TAA–03897; Hillsville Apparel, Inc., Hillsville, VA: May 1, 1999
NAFTA–TAA–03823; Alliance Carolina Tool and Mold Corp., Arden, NC March 22, 1999
NAFTA–TAA–03836; Sony Professional Products Co., Transcom Div., Boca Raton, FL: April 4, 1999
NAFTA–TAA–03893; Peninsula Light Metals, LLC and Optima Wheels, Formerly Known as Pacific Baja Light Metals, La Miranda, CA: April 24, 1999
NAFTA–TAA–03899; TI Group Automotive Systems, Corp., Valdosta, GA: May 2, 1999
NAFTA–TAA–03875; Motor Coils Manufacturing Co., Braddock, PA: May 1, 1999
NAFTA–TAA–03867; Sensus Technologies, Inc., Foundry and Bronze Machining, Uniontown, PA: April 12, 1999
NAFTA–TAA–03873; Solectron Corp., Suwanee, GA: April 25, 1999
NAFTA–TAA–03885; Lind Shoe Co., Somerset, WI: April 20, 1999
NAFTA–TAA–03891; Nortel Networks, Santa Clara, CA: April 27, 1999
NAFTA–TAA–03843; Trinity Industries, Inc., Butler, PA: April 1, 1999
NAFTA–TAA–03838; Rugged Sportswear, Siler City, NC: March 31, 1999
NAFTA–TAA–03864; DTM Products, Div. of Flextronics International, Niwot, CO: April 17, 1999
NAFTA–TAA–03889; Pairgain Technologies, Inc., Tustin, CA: February 25, 1999
NAFTA–TAA–03884; Grayson Enterprises, Inc., Eaton, IN: April 26, 1999
NAFTA–TAA–03833; Berne Apparel, Berne, IN: March 30, 1999
NAFTA–TAA–03718; Oneida Limited Silversmiths, Sherrill, NY: February 4, 1999
NAFTA–TAA–03862; Elcon Products International, Fremont, CA: April 6, 1999
NAFTA–TAA–03901; Hamilton Beach/Proctor Silex, Inc., Mt Airy, NC: January 28, 2000
NAFTA–TAA–03616 & A; Tuckaseigee Mills, Inc., Sewing Div., Bryson City, NC and Sylva, NC: December 1, 1998
NAFTA–TAA–03900; Triboro Electric Co., L.P., Doylestown, PA: April 1, 2000

I hereby certify that the aforementioned determinations were issued during the month of May and June, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 1, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14475 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,893]

Chemall, Inc., Calabrian Chemical Corporation, CuC1 Department, Port Neches, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 22, 1999 applicable to workers of Calabrian Chemical Corporation, CuC1 Department, Port Neches, Texas. The notice was published in the **Federal Register** on January 14, 2000 (FR 65 2432).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of Cuprous Chloride (CuC1). New information provided by the State shows that Chemall, Inc., Kingwood, Texas is the parent firm of Calabrian Chemical Company, located in Port Neches, Texas. New information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account at Chemall, Inc., Kingwood, Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Calabrian Chemical Corporation, CuC1 Department who were adversely affected by increased imports of Cuprous Chloride (CuC1).

The amended notice applicable to TA–W–36,893 is hereby issued as follows:

All workers of the CuC1 Department engaged in employment related to the production of Cuprous Chloride (CuC1) at Chemall, Inc., Calabrian Chemical Corporation, Port Neches, Texas who became totally or partially separated from employment on or after September 20, 1998 through December 22, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of May, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–14470 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37–451A and TA–W–37–451B]

Cross Creek Apparel, Inc.; Walnut Cove, NC; Newport, NC; Amended Certification Regarding Eligibility To Apply for worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 4, 2000, applicable to workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21473).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information provided by the company shows that worker separations will occur at Cross Creek's Newport, North Carolina facility when it closes in July, 2000. The workers are engaged in employment related to the production of knit apparel. Accordingly, the Department is amending the determination to cover workers of Cross Creek Apparel, Inc., Newport, North Carolina.

The intent of the Department's certification is to include all workers of Cross Creek Apparel, Inc. adversely affected by increased imports.

The amended notice applicable to TA-W–37,451A is hereby issued as follows:

All workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina (TA–W–37,451A) and Newport, North Carolina (TA–W–37,451B) who became totally or partially separated from employment on or after February 21, 1999 through April 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14469 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,261, and TA–W–37,261A)

Ithaca Industries, Inc., Glennville, Georgia; Corporate Headquarters, Wilkesboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 29, 2000, applicable to workers of Ithaca Industries, Inc., Glennville, Georgia. The notice was published in the **Federal Register** on March 17, 2000 (65 FR 14627).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Corporate Office, Wilkesboro, North Carolina location of Ithaca Industries, Inc. The Corporate Office provides administration and support function services for Ithaca's manufacturing plants located throughout North Carolina and Georgia.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the worker certification to cover the workers of Ithaca Industries, Inc., Corporate Office, Wilkesboro, North Carolina.

The amended notice applicable to TA–W–37,261 is hereby issued as follows:

''All workers of Ithaca Industries, Inc., Glennville, Georgia (TA–W–37,261), and Corporate Office, Wilkesboro, North Carolina (TA–W–37,261A) who became totally or partially separated from employment on or after January 6, 1999 through March 1, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington D.C. this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14468 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37, 446]

Mulay Plastics Casa Grande, AZ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Mulay Plastics, Casa Grande, Arizona. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,446; Mulay Plastics, Casa Grande, Arizona.

(May 31, 2000)

Signed at Washington, D.C. this 31st day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14474 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3857]

Fort James Operating Company, Wauna Mill, Clatskanie, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 11, 2000, in response to a petition filed on behalf of workers at Fort James Operating Company, Wauna Mill, Clatskanie, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 30th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14473 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3921]

Mid-American Electro-Cords, Riblet Products Corporation, Middlebury, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on May 18, 2000, in response to a petition filed on May 15, 2000 on behalf of workers at Mid-American Electro-Cords, Riblet Products Corporation, Middlebury, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14471 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–066]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Monday, July 10, 2000, 8:15 a.m. to 5:30 p.m.; Tuesday, July 11, 2000, 8:15 a.m. to 5:30 p.m; and Wednesday, July 12, 2000, 8:15 a.m. to noon.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Mars Program Restructuring
—OSS Strategic Plan
—OSS Program/Budget Status
—Theme Status Reports
—Explorer Program Status
—NASA-University Study
—Reports from Subcommittees
—Research Program Report

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14372 Filed 6–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–067)]

NASA Advisory Council, Space Flight Advisory Committee (SFAC); Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Flight Advisory Committee.

DATES: Wednesday, June 28, 2000 from 8 a.m. until 11:30 a.m.; on Thursday, June 29, 2000 from 8 a.m. until 5 p.m.; and on Friday, June 30, 2000 from 8 a.m. until 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Room MIC 7, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Stacey Edgington, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room. The agenda for the meeting is as follows:

—Shuttle upgrades review.
—Overview, status and metrics for Office of Space Flight programs.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 2, 2000.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14374 Filed 6–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Continued Management of the Fund for U.S. Artists at International Festivals and Exhibitions

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for continued management of the Fund for U.S. Artists at International Festivals and Exhibitions. This is a public-private partnership that ensures representation of the excellence, diversity, and vitality of the arts of the United States at international festivals and exhibitions worldwide. The work includes: identifying and resolving Fund operational issues; recommending policy positions; providing monthly activity and budget reports; linking artists with festivals abroad; promoting the Fund to U.S. artists; providing a structure to support performing artists and arts organizations invited to international festivals; and administering certain funds recommended for disbursal by the Federal Advisory Committee on International Exhibitions (FACIE) to support exhibitions that represent the United States at significant international venues. Those interested in receiving the solicitation package should reference Program Solicitation PS 00–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitation PS 00–06 is scheduled for release approximately June 28, 2000 with proposals due on August 1, 2000

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts

Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 00–14457 Filed 6–7–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Media Arts section (Creativity & Organizational Capacity categories)—June 26–28, 2000, Room 716. A portion of this meeting, from 1:45 p.m. to 2:45 p.m. on June 28th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 26th, from 9 a.m. to 6:30 p.m. on June 27th, and from 9 a.m. to 1:45 p.m. and 3:45 p.m. to 5:30 p.m. on June 28th will be closed.

Folk & Traditional Arts section (Creativity & Organizational Capacity categories)—June 22, 2000, Room 716, from 8:30 a.m. to 6 p.m. This will be a closed meeting.

Theater/Musical Theater section A (Creativity & Organizational Capacity categories)—July 10–14, 2000, Room 714. A portion of this meeting, from 3:30 p.m. to 5:30 p.m. on July 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on July 10–12, from 9:30 a.m. to 3:30 p.m. on July 13th, and from 9:30 to 5 p.m. on July 14th, will be closed.

The closed portions of these meetings are 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, 2000, 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, NW, Washington, DC 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, DC, 20506, or call 202/682–5691.

Dated: June 1, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14274 Filed 6–07–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material.''

2. *Current OMB approval number:* 3150–0008.

3. *How often the collection is required:* Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

4. *Who is required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

5. *The number of annual respondents:* 350 licensees.

6. *The number of hours needed annually to complete the requirement or request:* 57,012 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,837 hours (approximately 182 hours per respondent).

7. *Abstract:* NRC regulations in 10 CFR Part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Submit, by August 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–14285 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Company; Dresden Nuclear Power Station, Unit 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–19, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

Dresden, Unit 2, is currently licensed to operate 40 years commencing with the issuance of the construction permit on January 10, 1966. At present, the Facility Operating License for Dresden, Unit 2, expires on January 10, 2006. The licensee seeks an extension of the license term for Dresden, Unit 2, to allow it to operate until 40 years from the issuance of its Provisional Operating License. The Dresden, Unit 2, Provisional Operating License was issued on December 22, 1969. The proposed change would extend the license term for Dresden, Unit 2, to December 22, 2009. This action would extend the period of operation to the full 40 years, from the date of the Provisional Operating License, as provided by the Atomic Energy Act and the Code of Federal Regulations.

The proposed action is in accordance with the licensee's application for license amendment dated April 30, 1999.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to continue to operate Dresden, Unit 2, for 40 years from the date of issuance of their Provisional Operating License. This extension would permit the unit to operate for the full 40-year design-basis lifetime, consistent with the Commission policy stated in Memorandum dated August 16, 1982, from William Dircks, Executive Director for Operations, to the Commissioners, and as evidenced by the issuance of more than 50 such extensions to other licensees.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that extending the Dresden, Unit 2, Facility Operating License No. DPR–19 for approximately forty-seven months would not create any new or unreviewed environmental impacts. This change does not involve any physical modifications to the facilities, and there are no new or unreviewed environmental impacts that were not considered as part of the *Final Environmental Statement related to operation of Dresden Nuclear Power Station, Units 2 and 3* (FES), dated November 1973, as supplemented by Environmental Assessment (EA) dated February 26, 1990, to extend the Unit 3 Facility Operating License to 40 years and EA dated June 7, 1990, to convert the Unit 2 Provisional Operating License to a 40-year full-term Facility Operating License. Evaluations for the FES, as supplemented by the EAs, considered a 40-year operating life. The considerations involved in the NRC staff's determination are discussed below.

Radiological Impacts of the Hypothetical Design-Basis Accidents

The offsite exposure from releases during postulated accidents was evaluated and found acceptable during the operating license stage and subsequent license amendments. This type of evaluation involves four issues: (1) Type and probability of postulated accidents, (2) the radioactivity releases calculated for each accident, (3) the assumed meteorological conditions, and (4) population size and distribution in the vicinity of the facility. The staff has concluded that neither the type and probability of postulated accidents nor the radioactivity releases calculated for each accident would change through the proposed extended operation. Also, the meteorological conditions are not expected to change during the proposed extended operation and, therefore, any further consideration is not warranted. Thus, the population size and distribution in the vicinity of the facility are the only time-dependent parameters that require consideration. Dresden Units 2 and 3 are located on the same site. The February 26, 1990, Unit 3 EA on extending the Unit 3 Facility Operating License to 40 years evaluated population changes to 2011. The staff used the same population assessment in the June 7, 1990, EA on converting the Unit 2 Provisional Operating License to a full-term Facility Operating License. Therefore, this licensing action, which extends the Unit 2 Facility Operating License to December 22, 2009, does not represent a change from what the staff previously evaluated and found acceptable. Further, there are no changes to the current exclusion area, low population zone, and nearest population center distance, and the licensee will continue to meet the requirements of 10 CFR 100.11(a) for the proposed license term extension. Also, there is no expected change in land usage during the license terms that would affect offsite dose calculations. Therefore, cumulative exposure to the general public due to a design-basis accident would not be adversely affected. Accordingly, the staff concludes that the proposed action will not significantly change previous conclusions regarding the potential environmental effects of offsite releases from postulated accident conditions.

Radiological Impacts of Annual Releases

On an annual basis, the licensee submits an Occupational Radiation Exposure Report to the NRC. The data show that the collective occupational exposure at Dresden is in a declining trend. The 3-year annual average collective occupational exposure per reactor at Dresden, Units 2 and 3, has dropped from about 614 person-rem/year in 1989 to about 243 person-rem/year in 1999. Through continued implementation of ''As Low As Reasonably Achievable (ALARA)'' and other programs, and by continuing to apply new techniques as they are developed by the industry, the licensee expects to minimize occupational exposure for Dresden, Unit 2, during the period of the license extension. Based on its review of historical radiation exposure data at Dresden, the licensee's continued implementation of ALARA, and the licensee's continued compliance with the requirements of 10 CFR Part 20, the staff concludes that the projected occupational exposures through the proposed extended period will continue to remain significantly below the exposures experienced during the first half of the plant's operation.

In accordance with the plant Technical Specifications (TSs), the licensee has established several radiation monitoring programs including a program that follows 10 CFR Part 50, Appendix I guidelines to maintain radiation doses to members of the public ''As Low As Reasonably Achievable (ALARA).'' The Appendix I guidelines establish radioactive design/dose objectives for liquid and gaseous offsite releases including iodine particulate radionuclides. In addition, routine releases to the environment are governed by 10 CFR Part 20, which states that such releases should be ALARA. Each year, the licensee submits an ''Annual Radioactive Effluent Release Report'' that provides an annual

assessment of the radiation dose as a result of effluents released from the facility. These reports show that release of radioactive liquids and gases have historically been only a small percentage of the Appendix I guidelines. As a result of the continued implementation of the ALARA program, offsite exposures can be expected to remain lower than the Appendix I guidelines and FES estimates.

In accordance with plant TSs, the licensee has an established Radiological Environmental Monitoring Program by which the licensee monitors the effect of operation of its facilities on the environment. This is accomplished by continuously measuring radiation levels and airborne radioactivity levels and periodically measuring amounts of radioactivity in samples at various locations surrounding the plants. Continued environmental monitoring and surveillance under the program ensure early detection of any increase in exposures over the proposed license term extension.

Accordingly, the staff concludes that the radiological impact on the public due to the proposed license term extension would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR Part 20.

The staff has reviewed the environmental impacts attributable to the transportation of spent fuel and waste from the Dresden site. With respect to the normal conditions of transport and possible accidents in transport, the staff concludes that the environmental impacts are bounded by those identified in Table S–4, ''Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor,'' of 10 CFR 51.52 for burnup levels up to 60,000 MWD/MTU and 5 weight percent U–235 enrichment (53 FR 6040 and 53 FR 30355). The staff concludes that the environmental impact related to the transportation of fuel and waste remains low and is not significantly increased by the change in the expiration date of the operating license.

Based on the conservative population estimate in the FES dated November 1973 and EAs dated February 26, 1990, and June 7, 1990, and low radiological exposure from plant releases during normal operation and postulated accidents, and the environmental monitoring program, the staff concludes that the radiological impact on the public due to the proposed action would be insignificant and the conclusions of the FES remain valid.

Environmental Impact of the Uranium Fuel Cycle

At present, Dresden, Unit 2, is licensed to store new fuel with enrichments up to 5.0 weight percent uranium-235 (U–235). In its EA dated February 29, 1988 (53 FR 6040), the staff concluded that the environmental impact of extended fuel irradiation up to 60,000 megawatt-days per metric ton uranium (MWD/MTU) and increased enrichment up to 5 weight percent are bounded by the impacts reported in Table S–4 of 10 CFR 51.52.

On March 3, 2000, the licensee submitted an application to extend fuel cycles from eighteen to twenty-four months. Based on twenty-four month cycle lengths, the total projected number of fuel cycles remaining at Unit 2 before the current Facility Operating License expiration date (January 10, 2006) is 3. The proposed extended operating license term will increase the number of Unit 2 fuel cycles to a total 5. The licensee has projected that Unit 2 will lose full core discharge capability in 2001, well before any operation under the proposed extended license term. The licensee states that it is pursuing various options including on-site dry cask storage to store additional fuel assemblies; such matters are beyond the scope of this license amendment.

Based on the above, the staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of Dresden, Unit 2.

Non-radiological Impacts

The major non-radiological impact of the plant on the environment is the operation of the plant's cooling water system and discharge to the Illinois River. The Illinois Environmental Protection Agency (IEPA), Division of Water Pollution Control, has reviewed and considered the environmental impacts of the Dresden, Unit 2, water discharge into the Illinois River in its issuance of the National Pollutant Discharge Elimination System (NPDES) permit and renewals. The NPDES permit is conditional upon the discharge's complying with provisions of the Illinois Environmental Protection Act and of the Clean Water Act (as amended or as supplemented by implementing guidelines and regulations). On August 28, 1995, the Board adopted and renewed NPDES permits to Dresden, Unit 2, until June 1, 2000. The Board found that discharges from Dresden, Unit 2, are consistent with its policy with respect to maintaining high quality waters in Illinois. The licensee will continue to abide by the NPDES permits and, accordingly, expects the IEPA to renew and issue NPDES permits every 5 years. Also, the proposed action does not involve any historic sites. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no action'' alternative). Denial of the proposed action would result in Dresden, Unit 2, shutting down prematurely upon expiration of the present operating license.

Chapters 9 and 10 of the Dresden FES present alternatives and a cost-benefit analysis for Dresden, Units 2 and 3. Operation of Dresden, Unit 2, in the present plant configuration for approximately 4 additional years would only require incremental yearly costs. The environmental costs for the extended period of operation would be less than the cost of replacement power or the installation of new electrical generating capacity. Continued operation of the facility would avert potential non-radiological environmental effects of greenhouse gases and other airborne effluents from non-nuclear plants that would be required to operate in order to replace the power from Dresden, Unit 2. Moreover, the overall cost per year of the facility would decrease under the proposed action because the initial capital outlay and the decommissioning fund outlay would be averaged over a greater number of years. In summary, the cost-benefit advantage of Dresden, Unit 2, compared to alternative electrical generating capacity improves with the extended plant lifetime.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for Dresden, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 9, 2000, the staff consulted with

the Illinois State official, Mr. Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 30, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library Component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–14492 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–37]

Commonwealth Edison Company, Dresden Nuclear Power Station, Unit 1; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to Commonwealth Edison Company (ComEd). The requested exemption would allow ComEd to deviate from the requirements of Certificate of Compliance 1008 (the Certificate), Appendix B, Items 1.4.6.b and 1.4.6.c and place HI-STAR 100 Cask Systems, loaded with spent nuclear fuel, on a concrete storage pad with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Dresden Nuclear Power Station (Dresden) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated April 24, 2000, ComEd requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to deviate from the requirements of Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c. ComEd is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

ComEd plans to use the HI-STAR 100 Cask System to store spent nuclear fuel, generated at Dresden Unit 1, at an ISFSI located in Morris, Illinois, on the Dresden Nuclear Power Station site. The Dresden ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting ComEd from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214, ComEd will be authorized to place loaded HI–STAR 100 Casks Systems on cask storage pads that include the following characteristics:

(1) Compressive Strength: ≤ 4,200 psi at 28 days.

(2) Reinforcement top and bottom (both directions): Reinforcement area and spacing determined by analysis Reinforcement shall be 60 ksi yield strength ASTM material.

The storage pad characteristics specified above would be in lieu of those specified in Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c, respectively. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On November 24, 1999, as supplemented February 4, 18 and 28, and March 2, 16 and 31, 2000, the cask designer, Holtec International (Holtec), submitted to NRC an application to amend Certificate of Compliance 1008. The requested amendment includes revisions to the storage pad specifications in Items 1.4.6.b and 1.4.6.c in Appendix B to the Certificate. Item 1.4.6.b requires a concrete compressive strength of less than or equal to 4,200 psi; Holtec is requesting that this requirement be revised to specify a concrete compressive strength of less than or equal to 4,200 psi at 28 days. Item 1.4.6.c includes the requirement that the reinforcement yield strength be less than or equal to 60,000 psi; Holtec is requesting that this requirement be revised to specify that reinforcement shall be 60 ksi yield strength ASTM material. The NRC staff has reviewed the application and determined that placement of HI–STAR 100 Cask Systems on storage pads with the revised characteristics would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: There are a number of Dresden Unit 1 spent fuel assemblies in the Dresden Unit 2 spent fuel pool. To maintain full core offload capability in the Dresden Unit 2 spent fuel pool once new fuel arrives for the Fall 2001 refueling outage, ComEd needs to begin loading Dresden Unit 1 spent fuel into storage casks in June 2000. Unless the exemption is granted or the Certificate is amended, the storage pads at the Dresden ISFSI will not be in full conformance with the Certificate. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that ComEd plans to begin loading HI–STAR 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by ComEd and Holtec.

Environmental Impacts of the Proposed Action: The potential environmental impact of using the HI–STAR 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STAR 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 171, 09/03/99). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation].''

The HI–STAR 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

The HI–STAR 100 Cask System consists of a stainless steel multi-purpose canister and a steel overpack. The welded MPC provides confinement and criticality control for the storage

and transfer of spent nuclear fuel. The overpack provides radiation shielding and structural protection of the MPC during storage and handling operations. Special design feature requirements for the cask and for the site are specified in Certificate of Compliance 1008, Appendix B. These include the storage pad design characteristics.

Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a safety evaluation of the proposed exemption and the Certificate amendment. The proposed exemption and Certificate amendment request authorization to use storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days. This is a deviation from the pad requirement currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.b, which does not specify a time frame for when the concrete compressive strength is to be measured. A time frame is necessary because concrete typically gets stronger as it ages. Measuring the concrete compressive strength at 28 days is standard practice. Thus, specifying a time frame of 28 days provides clarification and ensures that full compliance with the Certificate can be achieved.

The proposed exemption and Certificate amendment also request authorization to use storage pads with concrete reinforcement made of 60 ksi yield strength ASTM material. This is a deviation from the storage pad requirements currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.c, which specifies a reinforcement yield strength of less than or equal to 60,000 psi. The standard practice for reinforcing bar specification and procurement is by the grade of the material. Reinforcing bar specified as Grade 60 has a nominal yield strength of 60 ksi and may in fact exceed 60 ksi. Thus, specifying the concrete reinforcement as ''60 ksi yield strength ASTM material'' takes into account that the yield strength is a nominal value and ensures that full compliance with the certificate can be achieved.

The staff found that the proposed exemption and Certificate amendment are consistent with the cask drop and tipover analyses presented in the Safety Analyses Report for the HI–STAR 100 Cask System and do not reduce the safety margin. In addition, the staff has determined that placement of loaded HI–STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (64 FR 171, 09/03/99).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of placing loaded HI–STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted: On May 19, 2000, Mr. F. Niziolek, Reactor Safety Section Head, Illinois Department of Nuclear Safety, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 so that ComEd may place loaded HI–STAR 100 Cask Systems on concrete storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Dresden ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the ComEd exemption request dated April 24, 2000, which is docketed under 10 CFR Part 72, Docket No. 72–37.

The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14494 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket 72–36]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption from Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to Southern Nuclear Operating Company, Inc. (SNC). The requested exemption would allow SNC to deviate from the requirements of Certificate of Compliance 1008 (the Certificate), Appendix B, Items 1.4.6.b and 1.4.6.c and place HI–STAR 100 Cask Systems, loaded with spent nuclear fuel, on a concrete storage pad with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Edwin I. Hatch Nuclear Plant (Hatch) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated May 1, 2000, SNC requested an exemption from the requirements of 10 CFR 72.212(b)(2)(i) and 72.214 to deviate from the requirements of Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c. The NRC staff determined that, to deviate from those conditions of the Certificate, an exemption from the requirement of 10 CFR 72.212(a)(2) is also necessary. SNC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

SNC plans to use the HI–STAR 100 Cask System to store spent nuclear fuel, generated at Hatch, at an ISFSI located in Baxley, Georgia, on the Edwin I. Hatch Nuclear Plant site. The Hatch

ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting SNC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214, SNC will be authorized to place loaded HI–STAR 100 Casks Systems on cask storage pads that include the following characteristics:

(1) Compressive Strength: ≤ 4,200 psi at 28 days.

(2) Reinforcement top and bottom (both directions): Reinforcement area and spacing determined by analysis Reinforcement shall be 60 ksi yield strength ASTM material.

The storage pad characteristics specified above would be in lieu of those specified in Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c, respectively. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On November 24, 1999, as supplemented February 4, 18 and 28, and March 2, 16 and 31, 2000, the cask designer, Holtec International (Holtec), submitted to NRC an application to amend Certificate of Compliance 1008. The requested amendment includes revisions to the storage pad specifications in Items 1.4.6.b and 1.4.6.c in Appendix B to the Certificate. Item 1.4.6.b requires a concrete compressive strength of less than or equal to 4,200 psi; Holtec is requesting that this requirement be revised to specify a concrete compressive strength of less than or equal to 4,200 psi at 28 days. Item 1.4.6.c includes the requirement that the reinforcement yield strength be less than or equal to 60,000 psi; Holtec is requesting that this requirement be revised to specify that reinforcement shall be 60 ksi yield strength ASTM material. The NRC staff has reviewed the application and determined that placement of HI–STAR 100 Cask Systems on storage pads with the revised characteristics would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: SNC needs to reduce the inventory of spent nuclear fuel assemblies at the Hatch Units 1 and 2 spent fuel pools to maintain sufficient spent fuel storage capacity to provide full-core offload capability for Hatch Units 1 and 2. With the discharge of spent fuel from Unit 2 during the 1998 refueling outage, the combined capacity of the two spent fuel pools no longer provides adequate reserve to allow full-core offload for both Units 1 and 2. Following the Unit 1 Fall 2000 outage, the combined storage capacity of the Unit 1 and 2 spent fuel pools will be less than required to allow full-core discharge from either Unit 1 or 2. To allow preparation for the Unit 1 Fall 2000 refueling outage, SNC must begin cask loading activities in June 2000 and complete them by July 2000. Unless the exemption is granted or the Certificate is amended, the storage pads at the Hatch ISFSI will not be in full conformance with the Certificate. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that SNC plans to begin loading HI–STAR 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by SNC and Holtec.

Environmental Impacts of the Proposed Action: The potential environmental impact of using the HI–STAR 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STAR 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 171, 09/03/99). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation].''

The HI–STAR 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

The HI–STAR 100 Cask System consists of a stainless steel multi-purpose canister and a steel overpack. The welded MPC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The overpack provides radiation shielding and structural protection of the MPC during storage and handling operations. Special design feature requirements for the cask and for the site are specified in Certificate of Compliance 1008, Appendix B. These include the storage pad design characteristics.

Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a safety evaluation of the proposed exemption and the Certificate amendment. The proposed exemption and Certificate amendment request authorization to use storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days. This is a deviation from the pad requirement currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.b, which does not specify a time frame for when the concrete compressive strength is to be measured. A time frame is necessary because concrete typically gets stronger as it ages. Measuring the concrete compressive strength at 28 days is standard practice. Thus, specifying a time frame of 28 days provides clarification and ensures that full compliance with the Certificate can be achieved.

The proposed exemption and Certificate amendment also request authorization to use storage pads with concrete reinforcement made of 60 ksi yield strength ASTM material. This is a deviation from the storage pad requirements currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.c, which specifies a reinforcement yield strength of less than or equal to 60,000 psi. The standard practice for reinforcing bar specification and procurement is by the grade of the material. Reinforcing bar specified as Grade 60 has a nominal yield strength of 60 ksi and may in fact exceed 60 ksi. Thus, specifying the concrete reinforcement as ''60 ksi yield strength ASTM material'' takes into account that the yield strength is a nominal value and ensures that full compliance with the certificate can be achieved.

The staff found that the proposed exemption and Certificate amendment are consistent with the cask drop and tipover analyses presented in the Safety Analyses Report for the HI-STAR 100 Cask System and do not reduce the safety margin. In addition, the staff has determined that placement of loaded HI-STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental

effects assessed in the initial rulemaking (64 FR 171, 09/03/99).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of placing loaded HI-STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted: On May 19, 2000, Mr. J. Setzer, State Liaison Officer, Environmental Protection Division, State of Georgia, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 so that SNC may place loaded HI-STAR 100 Cask Systems on concrete storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Hatch ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the SNC exemption request dated May 1, 2000, which is docketed under 10 CFR Part 72, Docket No. 72–36.

The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14495 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Byproduct Material Risk Review; Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1712, ''Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel.''

ADDRESSES: Copies of NUREG–1712 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Torre Taylor, Mail Stop TWFN 9–C–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 415–7900, e-mail: tmt@nrc.gov.

SUPPLEMENTARY INFORMATION: On August 25, 1999 (64 FR 46456), NRC published draft NUREG–1712, ''Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel'' for public comment. All comments received during the comment period were considered in the preparation of the final NUREG report. The final version of NUREG–1712 is now available. The NUREG presents the results of a survey conducted of NRC and Agreement State materials licensing and inspection personnel concerning: (1) Typical annual doses to workers for the various systems defined for nuclear byproduct material uses; (2) safety of each system under various conditions; (3) the types and frequencies of incidents occurring at each system; (4) definitions of safety; and (5) opinions about the appropriate bases for regulatory decision making.

Electronic Access

NUREG–1712 will also be available at NRC's web site under Reference Library—Technical Reports or directly at http://www.nrc.gov/NRC/NUREGS/1712/index.html.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

Patricia Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–14493 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Office of Volunteer Recruitment and Selection; Information Collection Requests Under OMB Review; OMB Number: 0420–0001

AGENCY: Peace Corps.

ACTION: Notice of public use of form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the National Agency Check Questionnaire for Peace Corps Volunteers Background Investigation. Section 22 of the Peace Corps Act (22 U.S.C. 2501 *et seq.*) mandates that ''all persons employed or assigned to duties under the Act shall be investigated to ensure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President.''

DATES: The Peace Corps invites comments on or before July 10, 2000.

ADDRESSES: A copy of the information collection may be obtained from Paul Davis, Manager Placement Unit, Peace Corps, 1111 20th Street NW., Washington, DC 20526. Mr. Davis may be contacted by telephone at (202) 692–1836. Comments on these forms should be addressed to Mr. David Rostker, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20523.

Dated: June 1, 2000.

Michael J. Kole,

Director of Administrative Services and Certifying Official.

[FR Doc. 00–14458 Filed 6–5–00; 1:18 pm]

BILLING CODE 6051–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Evidence for Application of Overall Minimum: OMB 3220–0083.

Under Section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. The Social Security Overall Minimum Guarantee is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of forms G–319 (Statement Regarding Family and Earnings for Special Guaranty Computation) and G–320 (Statement by Employee Annuitant Regarding Student Age 18–19). One form is completed by each respondent. The RRB proposes no changes to Form G–319 or Form G–320.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No(s).	Annual responses	Time (min)	Burden (hrs)
G–319 *Employee Completed:*			
With assistance	95	26	41
Without assistance	5	55	5
G–319 *Spouse Completed:*			
With assistance	95	30	48
Without assistance	5	60	5
G–320:			
With assistance	86	10	14
Without assistance	4	26	2
Total	290	.....	115

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–14459 Filed 6–7–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Voluntary Customer Surveys in Accordance with E.O. 12862.

(2) *Form(s) submitted:* G–201.

(3) *OMB Number:* 3220–0192.

(4) *Expiration date of current OMB clearance:* 7/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other-for-profit, Regulatory or Compliance.

(7) *Estimated annual number of respondents:* 2,050.

(8) *Total annual responses:* 2,050.

(9) *Total annual reporting hours:* 727.

(10) *Collection description:* The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–14413 Filed 6–7–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 12, 2000.

Closed meetings will be held on Monday, June 12, 2000 at 10:30 a.m. and on Thursday, June 15, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9) (A) and (10), permit consideration for the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Monday, June 12, 2000 will be:

• An administrative proceeding of an enformcement nature.

The subject matter of the closed meeting scheduled for Thursday, June 15, 2000 will be:

• Institution of injunctive actions; and

• Institution and settlement of adminstrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meetng items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: June 5, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14535 Filed 6–5–00; 4:19 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in this issue.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 5, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, June 15, 2000 at 11 a.m. has been canceled.

Dated: June 6, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14581 Filed 6–6–00; 11:10 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42862; File No. SR–CBOE–00–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Permit the Chairman of the Appropriate Floor Procedure Committee To Exercise the Authority of the Committee To Decrease the Size of Orders Eligible for Entry Into the Retail Automatic Execution System During Unusual Market Conditions

May 30, 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 Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to permit the Chairman of the appropriate Floor Procedure Committee (''FPC''), or the Chairman's designee, to exercise the authority of the Committee to decrease the size of orders eligible for entry into CBOE's Retail Automatic Execution System (''RAES'') during unusual market conditions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 1, 1998, the Commission approved a CBOE rule change that allowed the Chairman of the appropriate FPC, or the Chairman's designee, to exercise the authority of the FPC to *increase* the size of orders eligible for entry into RAES.[3] This measure, which has been successfully utilized at the Exchange, is exercised when the Chairman, or his/her designee, believes that taking such action could alleviate a potential backlog of unexecuted orders where an option class is experiencing a large influx of orders. It has allowed the Exchange to react more quickly and efficiently to potential backlog situations. However, CBOE rules do not currently allow the Chairman to decrease the contract size limit for orders eligible for entry into RAES (an ability that the FPC maintains pursuant to CBOE Rule 6.8(e)).

The Exchange now proposes to amend its rules to allow the Chairman of the appropriate FPC, or the Chairman's designee, to exercise the authority of the FPC to *decrease* the size of orders eligible for entry into RAES for equity option classes during unusual market conditions.

Exchange Rule 6.8(a)(i) states, ''the appropriate Floor Procedure Committee shall determine the size of orders eligible for entry into RAES.'' Paragraph (e) of CBOE Rule 6.8 states that ''[e]ligible orders must be for fifty or fewer contracts on series placed on the system * * *. The appropriate FPC, in its discretion, may determine to restrict the size and kind of eligible orders, including but not limited to, lowering contract limits.'' The FPCs, particularly the Equity Floor Procedure Committee (''EFPC''), have discovered through experience in overseeing the operation of RAES, that it is sometimes necessary to temporarily reduce the eligible order size levels (which are amounts that the Exchange has been aggressively increasing in recent years) in situations where unusual market conditions exist.

However, the decision to decrease the RAES eligible order size to address these unusual market situations must be made quickly to be effective. Because the EFPC commonly consists of twenty or more members who conduct business in all parts of the floor, it is not practicable to provide notice to all the

[3] *See* Securities Exchange Act Release No. 40736 (December 1, 1998), 63 FR 68323 (December 10, 1998) (File No. SR–CBOE–98–37).

members of the Committee and convene a meeting to make these decisions. It is also not practicable to expect these members to monitor the situation when they are trying to conduct a business on the floor that requires their attention. Intra-day meetings are not only impracticable to convene but would distract these members from the conduct of their business on the floor.

Consequently, the EFPC has determined to delegate its authority under CBOE Rule 6.8 to the Chairman of the EFPC, or to the Chairman's designee, to decrease the eligible order size for RAES in unusual market conditions provided that the Chairman or his designee believes the action is warranted and provided the decision is made for no more than one trading day (as is currently the case for the Chairman increasing the order size eligibility for RAES). As proposed, to the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to decrease the RAES eligible order size for that subsequent day. Further, any decisions made by the Chairman or his designee to decrease the RAES eligible order size for a particular option class for consecutive days will be reviewed by the FPC at its next regularly scheduled meeting. After reviewing these decisions the FPC can provide guidance to the Chairman or his designee about the use of this authority if they feel it is appropriate.

2. Statutory Basis

By allowing the Chairman of the appropriate FPC or his designee to make decisions to decrease the eligible order size for RAES, the Exchange can sustain the operation of RAES during unusual market conditions in an efficient manner. The filing, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Act [4] in that it is designed 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 to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–00–10 and should be submitted by June 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14405 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42869; File No. SR–NASD–00–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade-Reporting of Average-Price Trades in Nasdaq-Listed Securities

May 31, 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 May 17, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 17, 2000, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to require all transaction in Nasdaq-listed securities that are done on a weighted average basis or effected based on other special-pricing formulae, to be reported with a special .W indicator. Proposed deletions are in brackets.

* * * * *

Rule 4632. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq originally filed the proposal of May 11, 2000, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). On May 17, 2000, Nasdaq submitted a letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission, amending the proposal (''Amendment No. 1''). In Amendment No. 1, Nasdaq requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). Because Nasdaq amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal re-filed as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

(7)–(8) No Change.
(b)–(f) No Change.

Rule 4642. Transaction Reporting

(a)(1)–(5) No Change.
(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.
(7)–(8) No Change.
(b)–(f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Recently, the NASD filed SR–NASD–00–21 with the Commission to amend Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed in the over-the-counter market (*i.e.,* in the ''Third Market'') and that are executed on a weighted average or other special-pricing basis to be reported with a .W indicator.[4] The purpose of SR–NASD–00–21 is to increase pricing transparency and eliminate investor confusion that could occur if investors see prints go across the tape that are unrelated to the current market. Faced with similar concerns for Nasdaq-listed securities, Nasdaq proposes in this filing to amend NASD Rules 4632 and 4642, to require all transactions (not just agency crosses) in Nasdaq-listed securities that are executed on a weighted-average or other special-pricing formulae basis to be reported with a .W trade modifier.

By way of background, prior to proposing the amendments to NASD Rule 6420 for the listed environment, the NASD learned that a sizable number of trades in exchange-listed securities effected in the Third Market after hours are volume-weighted/special-pricing formula transactions, which are effected on a principal or riskless principal basis. These volume-weighted/special-pricing formula trades are often effected at a price unrelated to the close—or if effected during the trading day, the last sale—on the primary exchange. These trades are then reported to the NASD and the consolidated tape without a special modifier to denote they are being effected at a price *unrelated* to the last sale on the primary exchange. Because these trades are not effected as agency crosses and thus not subject to the .W reporting requirement in NASD Rule 6420(a)(6), they are reported to the NASD and the consolidated tape without a modifier. Consequently, these weighted average/special-pricing formula trades affect the reporting to the media and vendors of the last sale in the exchange-listed security. The reporting of trades on a weighted average/special-pricing formulae basis without a modifier creates investor confusion regarding the last sale price. Moreover, there exists the potential for disorderly markets when a security opens the next day on the primary exchange at a price that, although related to the last sale on the primary exchange, is unrelated to the last reported price that was effected on a weighted average basis on the previous day prior to 6:30 p.m. Eastern Time.[5] In response to these concerns, the NASD recently proposed to amend NASD Rule 6420 to require a .W trade modifier for all weighted average price trades, not just those effected on an agency-cross basis. This proposal (SR–NASD–00–21) currently is pending before the Commission.

Nasdaq believes that many of the same concerns associated with last sale reporting of weighted average or special-priced formula trades that exist for listed securities also exist for Nasdaq securities. In an effort to reduce investor confusion by increasing pricing transparency for last sale data, Nasdaq proposes to amend NASD Rules 4632 and 4642 to require the .W modifier for all weighted average and special-pricing formula trades that occur in Nasdaq-listed securities.

Specifically, NASD Rules 4632(a)(6) and 4642(a)(6) require members to append a .W to a trade report when effecting transactions occurring at prices based on average-weighting or other special-pricing formulae in the security. When adopted, the scope of Rules 4632(a)(6) and 4642(a)(6) was limited to agency cross trades effected on a weighted average or other special-pricing formulae basis because a majority of the trades, at the time, were being effected on an agency-cross basis. Since 1992, the market has changed in many ways. In particular, Nasdaq recently amended a number of its rules to allow certain systems, including the Automated Confirmation and Transaction System (''ACT''), to stay open until 6:30 p.m. to facilitate the reporting of trades executed after-hours.[6] As part of this initiative, Nasdaq amended Rules 4632 and 4642 to require members to report within 90 seconds transactions effected between 9:30 a.m. and 6:30 p.m. Prior to this change, the 90 second trade-reporting requirement applied to transactions effected between 9:30 a.m. and 5:15 p.m. and transaction effected between 5:15 and 6:30 p.m. were not subject to 90 second trade reporting requirements. Rather, such transactions were reported the next day (*i.e.,* T+1) on an ''as of'' basis.

One effect of the after-hours rule changes has been to subject transactions that previously were reported on an ''as of'' basis, T+1—because they were effected between 5:15 p.m. and 6:30—to 90 second trade reporting requirements. Similar to the listed environment, Nasdaq recently has learned that a sizable number of trades effected during the 5:15 p.m. and 6:30 p.m. time period are volume-weighted or special-pricing formula transactions, which are effected on a principal or riskless principal basis. These trades are often effected at a price unrelated to the close or if effected during the trading day, the last sale on Nasdaq. Because these trades are not executed as agency crosses, they are not subject to the .W reporting requirements in Rules 4632(a)(6) and 4642(a)(6). Thus, these trades are reported to the tape without a modifier. Nasdaq believes that there is the potential for investor confusion because these trades are often effected at a price unrelated to the current market, yet investors have no way of knowing this from the media report. Thus, investors may believe that the trade they are seeing represents the current market, when in actuality, the trade represents a price determined by a special formula. As a short-term method of alleviating confusion before this rule change could be proposed, the Nasdaq requested that NASD members report these weighted average trades effected between 4:00 and 6:30 p.m., on an ''as of'' basis, T+1.

In light of the foregoing efforts, the Nasdaq proposes to amend NASD Rules 4632 and 4642 to require all

[4] *See* SR–NASD–00–21.

[5] All times mentioned in this proposal are Eastern Standard times.

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (order approving File No. SR–NASD–99–57 on a pilot basis).

transactions, not just agency crosses, in Nasdaq-listed securities that are based on a weighted average or other special-pricing formulae, to be reported with the .W modifer.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[7] of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In addition, the Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii)[8] of the Act by ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Nasdaq believes that reporting transactions in exchange-listed securities that are marked with a special indicator to identify their unique pricing formulae is appropriate for regulatory purposes and reduces investor confusion with regard to these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect 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 May 17, 2000, the date on which it was filed and, since 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,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with 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 NASD. All submissions should refer to File No. SR–NASD–00–28 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[9] The Commission notes that Nasdaq gave the Commission notice of its intent to file the proposed rule change through its original filing of the proposal pursuant to Section 19(b)(2) of the Act on May 11, 2000.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42876; File No. SR–NASD–99–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Certain Listing Standards of The Nasdaq Stock Market, Inc.

May 31, 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 November 22, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Association submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 10, 2000, and April 27, 2000, respectively. 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

Nasdaq has filed with the Commission a proposed rule change to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 (''Amendment No. 1''). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarified that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] *See* Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 (''Amendment No. 2''). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.

clarify certain provisions of its listing standards. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(19) No change

(20) *''Market Capitalization'' means the closing bid price multiplied by total shares outstanding, including all common and convertible preferred shares (but excluding redeemable convertible preferred shares, other than preferred stock redeemable solely by issuer).*

(20)–(36) renumbered as (21)–(37)

(b) No change

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change

(b) No change

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change

(8)(A) A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. *Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.*

(B) No change

(C) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(9)–(24) No change

(25) Corporate Government Requirements

* * * * *

(A)–(G) No change

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change

b. when the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change

d. in connection with a transaction other than a public offering involving:

1. the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change

(26)–(28) No change

(d) No change

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify the inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) No change

(2)(A) No change

(B) No change

(C) No change

(D) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(3)–(20) No change

(21) Corporate Governance Requirements

* * * * *

(A)–(G) No change

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change

b. when the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change

d. in connection with a transaction other than a public offering involving:

1. the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change

(22)–(24) No change

(f) No change

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing

underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(c) No change

(d) *Rights and* Warrants

(1) *Rights or* warrants to purchase designated securities may be designated if [the warrants] *they* substantially meet the above criteria; provided, however, that they shall not be *subject to the publicly held shares, market value of publicly held shares, or bid price requirements and shall not be* required to meet the criteria set forth in paragraph (a)(2)*, (b)(2), or (c)(1)* if immediately after the distribution, there are at least 450,000 *rights or* warrants outstanding.

(2) No change

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the date of application of the issuer. Determinations of beneficial ownership for purposes of paragraphs (a)(2), (b)(2), and (c)(1) shall be made in accordance with SEC Rule 13d–3. In the case of American Depositary Receipts, the computations required by paragraphs (a)(1), (a)(5), and (b)(1) shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S–12 under the Securities Act of 1933. *In the case of American Depositary Receipts, the underlying security will be considered when determining the computations required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (c)(1), (c)(2), (c)(5), and (c)(6) of this rule.*

(f)–(g) No change

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(f) No change

(g) American Depositary Receipts

In the case of American Depositary Receipts, the underlying security will be considered when determining the ADR's qualification for continued inclusion on Nasdaq under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), and (b)(5) of this rule.

4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(h) No change

(i) Shareholder Approval

(1) Each NNM issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated securities under subparagraph (B), (C), or (D) below:

(A) No change

(B) when the issuance *or potential issuance* will result in a change of control of the issuer;

(C) No change

(D) in connection with a transaction other than a public offering involving:

(i) the sale*,* [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) the sale*,* [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2)–(6) No change

(j)–(n) No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nadaq is proposing certain clarifying, non-substantive amendments to certain provisions of its listing standards. Specifically, the proposed changes will: (1) Define market capitalization; (2) codify the time frames for determining compliance with the continued inclusion requirements for market capitalization and number of market makers; (3) clarify the need for shareholder approval for a transaction in which the *potential* issuance of shares could exceed the applicable threshold; (4) codify the method used to determine whether an American Depository Receipt complies with the listing standards; and (5) clarify the non-application of the publicly held shares, market value of publicly held shares, and bid price initial inclusion requirements to rights and warrants to be listed on the National Market.

Rule 4310(c)(2)(B)(ii) and 4450(b)(1)(A) set forth the market capitalization standards for continued inclusion on The Nasdaq SmallCap Market and the Nasdaq National Market, respectively. These rules, however, unlike the bid price requirement, do not provide time frames for determining when an issuer is non-compliant or when it has regained compliance with these standards. Accordingly, Nasdaq proposes to amend Rule 4310(c)(8)(C)[5] to clarify that a failure to meet the market capitalization continued inclusion requirement shall result if the deficiency continues for a period of ten consecutive business days and that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days.[6] Furthermore, NASD rules do not define market capitalization. In making this calculation, Nasdaq has traditionally considered the market value of all common and convertible preferred stock (excluding redeemable convertible preferred shares other than preferred stock redeemable solely by the issuer).

[5] Although the time frames regarding compliance with the continued inclusion market capitalization standards are proposed to be set forth only in Rule 4310(c)(8)(A), these time frames, like those for the minimum bid price and market value of public float, are applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Specifically, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[6] Although this proposed rule, like the minimum bid price requirement, states that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days, issuers are also required to demonstrate more than mere temporary compliance in order to protect the interests of prospective investors. *See, e.g., Ryan-Murphy, Inc.,* Securities Exchange Act Rel. No. 38999 (Sept. 2, 1997).

As such, Nasdaq proposes to codify this definition in proposed Rule 4200(a)(20).

Rule 4310(c)(8)(A) provides that an issuer that fails to meet the continued inclusion requirements for the number of market makers has 30 calendar days to regain compliance. The rule, however, does not indicate how the issuer can regain compliance. Consequently, Nasdaq proposes to amend this rule to provide that compliance is achieved by meeting the applicable standard for a minimum of ten consecutive business days, which is similar to the method for determining compliance with the bid price requirement.[7]

Rules 4310(c)(25)(H)(i)(b) and (d), 4320(e)(21)(H)(i)(b) and (d), and 4460(i)(1)(B) and (D) refer only to the issuance of shares in conjunction with the requirement for shareholder approval, while Rules 4310(c)(25)(H)(i)(c)(2), 4320(e)(21)(H)(i)(c)(2), and 4460(i)(1)(C)(ii), require shareholder approval based on the present or potential issuance of shares. Nevertheless, Nasdaq has consistently interpreted the former shareholder approval rules as including potential issuances in order to protect shareholders' right to vote on significant corporate transactions. The proposed rule changes would therefore conform the language of these rules.

Historically, Nasdaq has looked to the underlying security of an American Depositary Receipt (ADR) for determining compliance with certain standards (*e.g.*, round lot shareholders, number of shares in the public float, market value of public float, and market capitalization). Rule 4320 provides the initial and continued listing standards for ADRs, but does not make clear whether the underlying security should be considered when determining compliance. The proposed rule change would clarify the continued inclusion time frame requirements for market capitalization purposes, and the fact that the underlying security should be considered when determining compliance in the case of ADRs.

Rule 4420(d)(1) does not currently reference the initial listing of rights on the Nasdaq National Market. Specifically, although the Nasdaq National Market continued listing standards address both warrants and rights, the initial listing standards mention only warrants. This Rule also states that warrants to purchase designated securities may be listed on the Nasdaq National Market provided that they substantially meet the initial inclusion requirements applicable to common stock. Consistent with the industry practices for pricing this type of security, Nasdaq has not historically required issuers to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards. As such, Nasdaq proposes to amend this rule to clarify that the initial inclusion rules apply to rights as well as warrants and that issuers are not required to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards with respect to rights or warrants.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] which requires, among other things, the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, Nasdaq's proposed rule changes are aimed at clarifying certain listing standards, thus providing greater transparency in the rules for issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–69 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14447 Filed 6–07–00; 8:45 am]

BILLING CODE 8010–01–M

[7] Although the method of regaining compliance with the continued inclusion requirement for the number of market makers is proposed to be set forth only in Rule 4310(c)(8)(A), the method for regaining compliance is applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. As stated previously, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.*See*Amendments No. 1 and 2, *supra* notes 3 and 4.

[8] Issuers, however, must continue to comply with the requirement that there be at least 450,000 warrants outstanding immediately after the public distribution as set forth in existing NASD Rule 4420(d)(1). This rule is also being amended to clarify existing Nasdaq policy that there must be 450,000 rights outstanding immediately after the public distribution.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42863; File No. SR–NYSE–99–30]

Self-Regulatory Organizations; New York Stock Exchange Inc., Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to NYSE's Procedures for Delisting a Security and Related Issuer Appeals

May 30, 2000.

I. Introduction

On June 23, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its procedures for delisting a security and the accompanying appeals process available to the issuer. The Exchange submitted Amendment No. 1 to its proposal on December 27, 1999,[3] Amendment No. 2 on March 9, 2000,[4] and Amendment No. 3 on March 26, 2000.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on April 20, 2000.[6] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange is proposing to modify the Exchange's procedures for delisting a security and related issuer appeals. The Exchange proposes to amend its process by changing the composition of the Committee for Review of the Exchange's Board of Directors, which hears delisting appeals by issuers, to consist of its Public Directors and one of its Industry Directors and by allowing the Committee to meet by telephone without seeking the permission of the Chairman of the Board.

The Exchange also proposes to issue a press release disclosing the status of a company that the Exchange has determined should be removed from the list, along with the rationale for that determination. In addition, the Exchange is proposing to append an identifier suffix to the ticker symbols of securities that have been determined by Exchange staff to warrant suspension and delisting. The Exchange would also append an identifier suffix during a transition by a listing company that falls below the continued listing criteria to another market.

Finally, in a change that the Exchange believes will address both timing and the anomaly of hearing an issuer's listing appeal *after* the suspension in trading, the appeal would also generally stay the suspension of trading. Reviews would be conducted on the next monthly review day, which is at least 25 business days from the date the issuer's request for review is filed with the Exchange.

Specifically, with regard to the changes to the appeal process and the implementation of a press release requirement, the Exchange proposes to amend its Listed Company Manual (''Manual'') and NYSE Rule 499 as follows:

1. Implement a press release process triggered by a staff decision to suspend and delist security;

2. Clarify that a request for appeal would stay the suspension unless the staff determines that a stay is contrary to the interest of the public and investors;

3. Specify that issuers can request to appear before the Committee for Review and that the Committee may grant or deny such request, provided that an explicit rationale for a denial is provided;

4. Shorten the time periods relating to the appeal process such that (a) the issuer must notify the Exchange of its intent to appeal within ten business days of receiving notice that the Exchange staff has determined that its security should be delisted and (b) written submissions must be served within seventeen business days from the date the issuer received notice of its right to a review; and

5. Clarify that counterparty service is the responsibility of each party (not the Exchange's Office of the General Counsel) and that such service must be made in the same manner as service on the Office of the General Counsel.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market, by providing investors with notice when a company is being considered for delisting by the Exchange by issuing a press release and appending a suffix to the security. The Commission believes that some investors may consider the NYSE's intent to delist a security from the Exchange an important factor in their investment decision. The proposed rule change allows investors to consider this factor while continuing to allow the securities to be traded on the Exchange pending the listed company's appeal.

The Commission also believes that the proposal provides fair procedures for issuers, while giving the Exchange the ability to delist an issuer that has failed to meet the Exchange's standards for continued listing. The Commission believes that the proposed appeals process is fair to issuers because it would allow companies to appeal suspension decisions, require written denials for oral appeals, and generally allow companies to trade on the NYSE pending their appeal. The Commission believes this process should ensure that the issuer's concerns are heard, yet eliminate unreasonable delays between the time that a company is identified as not meeting the continued listing requirements and the suspension of its securities from trading.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–99–30) is approved, as amended.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 21, 1999 (''Amendment No. 1'').

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated March 7, 2000 (''Amendment No. 2'').

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 (''Amendment No. 3'').

[6] Securities Exchange Act Release No. 42689 (April 13, 2000), 65 FR 21230.

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14448 Filed 6–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42884; File No. SR–OCC–99–16]

Self Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Exercises by Put Holders During a Shortage of the Underlying Security

June 1, 2000.

On November 2, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 29, 2000.[2] On April 10, 2000, OCC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

OCC is amending Article VI, Section 19 of its By-laws to eliminate OCC's authority to prohibit exercises by put holders that would be unable to deliver the underlying security due to a shortage of the underlying security. In lieu thereof, the amended By-laws give OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock will extend past the option expiration date and upon making that determination to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the rule change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally when there is a shortage of the underlying securities.

A similar change will be made to Article XV, Section 3 and Article XX, Section 3 with respect to dollar-denominated and cross-rate foreign currency options by deleting Article XV, Section 3 (b)(2) and Article XX, Section 3(b)(2). The deletions will conform the treatment of foreign currency puts to the treatment of equity puts by eliminating OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying interest. OCC already has the authority to fix cash settlement prices for foreign currency puts in appropriate circumstances.

Finally, Article XXIV, Section 5 of OCC's By-laws, which relates to buy-write options unitary derivatives (BOUNDs),[4] has been amended to conform OCC's treatment of BOUNDs put holders in shortage situations with its treatment of equity and foreign currency options holders in similar situations.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency not be designed to permit unfair discrimination among participants in the use of the clearing agency. The Commission finds that OCC's rule change is consistent with OCC's obligation under the Act because it amends OCC's rules so that put and call holders are treated similarly when there is a shortage of the underlying security.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14408 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42861; File No. SR–PCX–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to House-Keeping Amendments to Rules on Floor Brokers

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rules 19b–4 thereunder,[2] notice is hereby given that on November 5, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange)'') 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 Exchange. Additionally, on March 23, 2000, the Exchange filed with the Commission Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its options Floor Broker rules by renumbering certain Options Floor Procedure Advices (''OFPAs''), clarifying existing provisions, eliminating superfluous provisions, and incorporating current policies and procedures into the text of Rule 6. The text of the proposed rule change is available at the PCX and at the Commission.

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

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42563 (Mar. 22, 2000), 65 FR 16679.

[3] OCC amended its proposed rule change to extend the proposed change to cover foreign currency options and cross-rate foreign currency options. Because the amendment made no substantive changes to OCC's proposal other than to include additional option products OCC clears, republication of notice was not required.

[4] See Securities Exchange Act Release No. 37603 (Aug. 26, 1996) 61 FR 46500 (Sept. 3, 1996), for amendments to OCC's By-laws and Rules to provide for the issuance, clearance, and settlement of BOUNDs.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulations, SEC, dated March 22, 2000. The Amendment corrects several typographical errors and clarifies the wording of the proposed rule change.

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

With regard to current PCX rules governing activities of Floor Brokers, the Exchange is proposing to make the following changes to the text of Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts''):

First, the Exchange proposes to change the procedures on registration of Floor Brokers pursuant to Rule 6.44 [4] Currently, the application for registration as a Floor Broker will be approved when the applicant passes a Floor Broker examination. The Exchange proposes to eliminate the current rule provision stating that the Options Floor Trading Committee (''OFTC'') must review and approve each application as outlined in Rule 6.44. The Exchange believes that the OFTC review and approval of each Floor Broker is unnecessary because each Floor Broker's name is routinely posted. If there are any problems with a particular Floor Broker that the Exchange has not otherwise identified, those problems can be brought to the attention of the Exchange's Membership Committee before the Floor Broker's application for membership is approved. In addition, the rule, as amended, will provide that an applicant Floor Broker's name will be posted on the bulletin board of the floor of the Exchange for ten calendar days (rather than three business days, as currently stated).[5]

Second, the Exchange proposes to add a provision to Rule 6.45 which states that, regarding FLEX Options, ''Floor Brokers may not act as such in respect of FLEX Options contracts unless one or more Letter(s) of Authorization on behalf of such Floor Brokers has been issued by a Clearing Member in accordance with Rule 8.115(b).'' This restates the same requirement as provided in Rule 8.115(b), and is being added to centralize the obligations of Floor Brokers in one section of the rules.

Third, the Exchange proposes to renumber OFPA A–10, Subject: Broker Responsibility on Print Throughs, as Rule 6.46(d).[6] The Exchange also proposes to make technical changes to new Rule 6.46(d). Specifically, the Exchange proposes to eliminate the third sentence of OFPA A–10, (proposed Rule 6.46(d)), which states that ''[w]ith respect to trading during the day, the Options Floor Trading Committee finds that it is a generally accepted industry practice that a Broker is responsible for whatever number of contracts print-through a limit order.'' The Exchange proposes to eliminate this language because it believes it is redundant and superfluous given the text of Rule 6.46 pertaining to the responsibilities of Floor Brokers and proposed Rule 6.46(d), which requires that Floor Brokers take responsibility for print-throughs. The Exchange proposes this rule change to centralize the responsibilities of Floor Broker with respect to print-throughs.

Fourth, the Exchange proposes to renumber OFPA A–11, Subject: Broker Responsibility to Cancel Best Bid or Best Offer, as Rule 6.46(e).[7] The Exchange proposes this change to centralize the responsibilities of Floor Brokers with respect to their responsibilities to cancel bids and offers.

Fifth, the Exchange proposes to renumber OFPA D–4, Use of Order Which Specify More than One Contract, as Rule 6.46(f).[8] The Exchange proposes to clarify the types of orders referred to in this rule. Specifically, where Floor Brokers may accept orders that bid for or offer a specified number of contracts and no less, the Exchange proposes to codify that these orders include designated as ''fill or kill,'' ''all or none,'' or ''immediate or cancel,'' (including such orders specifying that any unfilled portion of a multiple order is to be immediately canceled). However, the Floor Brokers must assure that all such orders (including the contingency) are vocalized in the trading crowd, and that the bid or offer is not disseminated. The Exchange proposes this change to clarify and centralize the responsibilities of Floor Brokers with respect to trading responsibilities.

Sixth, the Exchange also proposes to change Rule 6.46, Commentary .02, which currently requires Floor Brokers to make all persons in the trading crowd aware of each request for a quote. Since this requirement is not feasible when applied to large, active trading crowds, the Exchange proposes to modify the rule to require Floor Brokers to make reasonable attempts to make all persons in the crowd aware of such requests.

Seventh, the Exchange proposes to add Rule 6.47(c)(5), relating to crossing

[4] Rule 6.44 currently states that:

''An applicant for registration as a Floor Broker shall file his application in writing with the Department of Operations on such forms as the Exchange may prescribe. Applications shall be reviewed by the Options Floor Trading Committee, which shall consider an applicant's ability as demonstrated by his passing a Floor Broker examination prescribed by the Exchange, or such other factors as the Option Floor Trading Committee deems appropriate. After reviewing the application, the Options Floor Trading Committee shall either approve or disapprove the applicant's registration as a Floor Broker. Before a registration shall become effective, the Exchange, upon direction of the Options Floor Trading Committee, shall post the name of the applicant on the bulletin board on the Floor of the Exchange for at least three (3) business days. The registration of any person as a Floor Broker may be suspended or terminated by the Options Floor Trading Committee upon a determination that such person has failed to perform properly as a Floor Broker.''

[5] Similar changes are proposed for registration of Market Makers under Rule 6.33. *See* Securities Exchange Act Release No. 42035 (Oct. 19, 1999), 645 FR 57681 (Oct. 26, 1999) (File No. SR–PCX–99–13).

[6] OFPA A–10 states that:

''Pursuant to Rule 6.46(a), the Options Floor Trading Committee has made a determination regarding print-throughs on limit orders held either by a Floor Broker, or an Order Book Official. This determination distinguishes print-throughs which occur intra-day from print-throughs occurring on the opening. With respect to trading during the day, the Options Floor Trading Committee finds that it is a generally accepted industry practice that a Broker is responsible for whatever number of contracts print-through a limit order. when a print-through is discovered, the Broker should ascertain whether the limit price or a more favorable price is available. If a more favorable price is available, the order for the customer should be filled at the more favorable price; if a more favorable price is not available, the Broker, or the Exchange, to the extent provided in Rule 6.59, in the case of a Book trade, is responsible at the original limit price for whatever number of contracts have traded-through the limit. The Options Floor Trading Committee has determined that print-throughs on the opening should be treated differently than those which occur intra-day. On the opening, the Floor Broker, or the Exchange, to the extent provided in Rule 6.59, in the case of a Book trade, is responsible for the number of contracts which trade-through the customer's limit at the opening price, rather than at the limit price. If a more favorable price than the opening price is available, the order should be filled at the more favorable price.''

[7] OFPA A–11 states that:

''Under certain circumstances a best bid or best or best offer is disseminated as a result of an order presented by a Floor Broker. It shall be the responsibility of the Floor Broker holding such order to instruct the Order Book staff to remove such bid or offer when it is canceled or when such order which represented such best bid or offer has been filled in its entirety.''

[8] OFPA D–4 states that:

''Rule 6.74 states in part: 'A bid or offer for more than one option contract shall be deemed to be for that amount or any lesser number of option contracts, unless specified otherwise.' This Rule permits Floor Brokers to accept orders which bid for or offer a specified number of contracts and no less. Thus the Rule permits vocalization of such bids or offers in the trading crowds. However, any Floor Broker making a bid or offer contingent upon the execution of a specified amount of contracts must vocalize such contingent [sic] and should use diligence in assuring that the posted market does not reflect such bid or offer. 'Immediate or cancel' orders which specify that any unfilled portion of a multiple order is to be immediately canceled, are covered by this provision.''

of solicited orders, to allow a Floor Broker to step out of a crowd to solicit interest, after announcing an order, and then return to the crowd without re-announcing the order if he continued to be within hearing distance while outside the crowd. Specifically, the Exchange proposes that if a Floor Broker announces an order in the trading crowd, and then steps out of the trading crowd to solicit interest, but continues to be within hearing distance, the Floor Broker need not re-announce the order upon returning to the trading crowd. This change is intended to codify the current practice on the trading floor.

Eighth, the Exchange proposes to renumber OFPA A–6, Subject: Responsibility of Floor Brokers in Effecting A Cross Trassanaction as new PCX Rules 6.47(d), (e) and (f).[9] Specifically, the Exchange proposes to renumber paragraph one of OFPA A–6, pertaining to the requirement of a Floor Broker to allow members in the trading crowd a reasonable period in which to respond to the bid and/or offer prior to consummating a cross transaction, as Rule 6.47(d).

The Exchange also proposes to renumber the second and third paragraphs of OFPA A–6 as Rule 6.47(e). The second and third paragraphs of OFPA AA–6 pertain to situations when a Floor Broker may deem it necessary to place one side of the proposed cross transactions on the Order Book with the intention of effecting the cross transaction with the Order Book.

With respect to the renumbering of OFPA AA–6, the Exchange proposes to renumber the fourth and fifth paragraphs of OFPA AA–6, pertaining to stock/option orders, as Rule 6.47(f). The Exchange proposes these changes to centralize rules relating to crossing transactions within Rule 6.47.

Ninth, the Exchange proposes to renumber OFPA AA–9, Subject: Discretionary Transactions (Floor Brokers) as Rule 6.48(b).[10] The Exchange also proposes to renumber OFPA BA–10, Subject: Discretionary Transactions by Market Makers, as Rule 6.48(c).[11] The Exchange proposes to renumber OFPA A–9 and B–10 to centralize obligations of Members regarding Discretionary Transactions by Floor Brokers and Market Makers.

Tenth, the Exchange proposes to adopt new Rule 6.49(a) to provide that Floor Brokers who are required to establish and maintain error accounts pursuant to Rule 4.21 may only use such accounts for the purpose of correcting bona fide errors. The Exchange proposes this rule change to clarify the Floor Broker's proper use of an error account. This change is consistent with the provisions of Rule 6.14.

Finally, the Exchange proposes to renumber OFPA A–2, Subject: Floor Broker Acting as Both Principal and Agent in the Same Transaction, as Rule 6.50.[12] The Exchange proposes these changes to centralize all rules applicable to Floor Brokers with respect to use of error accounts.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)[13] of the Act, in general, and Section 6(b)(5)[14] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

[9] ''Floor Brokers are cautioned that they must allow members in the trading crowd a reasonable period in which to respond to the bid and/or offer prior to consummating the cross transaction. While the Options Floor Trading Committee will not attempt to define a reasonable period in terms of a specific time limit, they will deem an obvious attempt to execute the cross in an uninterrupted sequence with the announcement of the bid and offer to be a violation of Rule 6.47, and grounds for objection to the cross transaction. In some instances, a Floor Broker may deem it necessary to place one side of the proposed cross transaction on the Order Book with the intention of effecting the cross transacting with the Order Book. To effect such a transaction, the Floor Broker must use the following procedure: Following the announcement of the new bid or offer by the Order Book Official or his clerk, the Floor Broker must again request a market in the series, and upon determination that the bid or offer represented by the Order Book is the best market, he may then execute the cross by trading with the order on the Book. When a stock/option order is taken to a crowd for execution, the stock transaction must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure should be observed: After agreement with other members of the crowd has been reached as to the terms of the transaction, the option order tickets shall be written up and time-stamped, However, the order tickets should not be turned in to the Order Book Official at this time. The members shall attempt to immediately effect the transaction in the underlying or related security. If the stock transaction cannot be executed immediately or is effected at a price different than the agreed-upon price, the members shall not be held to the option transaction. If the stock transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock transaction is effected, the option trade tickets should be given to the Order Book Official. This procedure applies to all executions of stock/option orders.''

[10] OFPA A–9 states that:

''Pursuant to Rule 6.48, the Options Floor Trading Committee has determined that no Floor Broker shall hold concurrently a 'not held' market order to buy [sic] a 'not held' market order to sell (or orders which have the effect of such 'not held' market orders to buy and to sell) the same series of options for the same account or for accounts of the same beneficial owner. Holding such orders will be interpreted as allowing the Floor Broker discretion with respect to whether to purchase or sell such options. A 'not held' order is an order market 'not held,' 'NH' or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.''

[11] OFPA B–10 states that:

''Rule 6.48 provides that a Floor Broker shall not exercise discretion with respect to choice of class or series of options to be bought or sold, number of contracts to be bought or sold, or whether the trnsaction shall be a purchase or a sale. It further provides that a Market Maker shall not exercise discretion over an account unless he has a direct interest in such account. The Options Floor Trading Committee has determined that a Market Maker may not exercise discretion over any account other than: (i) A joint account approved pursuant to Rule 6.39, or (ii) an account in which he has a direct interest. For purposes of this Advice and Rule 6.48, the term 'direct interest' in an account shall be limited in its meaning to include only a participation in the profits and losses in such account, or in the case of a partnership or corporation, a representative of such partnership or corporation who has a supervisory responsibility over such account. Furthermore, only persons registered as Market Makers and subject to the performance obligations set forth in Rule 6.37, may exercise discretion over an account. A Market Maker wishing to effect such discretionary transactions for accounts other than his personal account or a joint account must enter the order with a Floor Broker and the procedures set forth in Options Floor Procedure Advice BA–6 shall be applicable with the following modifications: (A) The name of the Market Maker for whom the transaction is being executed must be printed at the bottom of the ticket (BA–6A–1(c)), along with the badge number of the Market Maker exercising discretion (*i.e.*, Joe Trader/M07); and (B) A 'D' shall be placed after the Market Maker's number, for whose account the trade is executed, in the firm box (*i.e.*, M05 D). NOTE: The identification of the order as a discretionary order is required under Rule VI, Section 43(7), 'Record of Orders.'''

[12] OFPA A–2 states that:

''Under Rule 6.43, a Floor Broker 'is an individual * * * who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from members.' Pursuant to this Rule, a Floor Broker holding an agency order shall under no circumstances fill any part of such order as principal unless he inadvertenly 'misses the market' for the account of his customer and, owing a report at a specified price or better, cannot effect the necessary transaction except by filling all or some portion of the order as principal. For the purposes of facilitating a customer order via the firm error account, in connection with a broker's 'missing the market,' the Options Floor Trading Committee has determined that the following procedures shall be applicable. (1) Floor Broker errors (positions resulting from a broker's error or omission) shall be liquidated promptly except for unusual circumstances which are beyond the control of such Floor Broker. (2) Error account positions not liquidated by the next business day shall be maintained in a customer (investment) account and subject to customer margin. (3) Error account positions, not initially established as part of an investment transaction (*i.e.*, executed as agent) may not subsequently be transferred, adjusted, or journaled into a market maker account. (4) The price and size of the transaction, if made through the Exchange's adjustment system, must be justified by the market condition at the time the order was entered, if it was a market order and at the limit or better if it was a limit order.''

[13] 15 USC 78f(b).

[14] 15 USC 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–45 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14406 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42866; File No. SR–Phlx–00–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying a Provision Implementing a Closing Rotation on the Last Day of Each Calendar Quarter

May 30, 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 16, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1047 to codify a provision implementing a closing rotation on the last trading day of each calendar quarter. Specifically, Phlx Rule 1047, Commentary .01(e) would provide that on the last day of each calendar quarter, a closing rotation for some equity options series may be commenced at 4:02 p.m. or after the closing price of the stock in its primary market is established, whichever is later. Orders will not be accepted at or after 4:02 p.m. The trading floor will be given prior notice regarding which options series will be subject to a closing rotation. The text of the proposed rule is available at the Exchange and at the Commission.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, 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

Currently, under Phlx Rule 1047, Commentary .01, two Floor Officials, with the concurrence of a Market Regulation Officer, may direct that a trading rotation be employed to aid in producing a fair and orderly market and shall specify for each trading rotation, the options contracts to be included and the sequence of such options contracts in the rotation. According to the Phlx, this provision is commonly relied upon to permit quarterly rotations.

The Phlx is proposing to amend its Rule 1047 to expressly provide for closing rotations on the last trading day of each calendar quarter, for certain equity options traded on the Phlx. The Exchange will provide prior notice to the trading floor of which options series will be subject to a closing rotation. As with other rotations, the procedures governing quarterly closing rotations will require that two Floor Officials and a Market Regulation Officer may direct that the rotation take place. They will specify the particular equity options contracts to be included and the sequence of such options contracts in the rotation.

The Exchange believes that on the last day of the calendar quarter there is increased order flow in exchange-traded options and in the underlying securities, particularly at the end of the trading day. For instance, many large money managers adjust their positions at the end of the calendar quarter for tax reasons. As a result of this activity in both the underlying and the options market, the last sale print for many stocks is often delayed. Therefore, the Exchange believes that it is important to provide the opportunity for a closing rotation at the end of each calendar quarter to account for late prints and increased order flow. These rotations will allow the Exchange members to

adjust options prices in line with the closing prices of the underlying securities.

In addition, quarterly rotations allow the execution at the end of the day of orders at a single price more efficiently. The closing rotation will also give investors and other interested parties more accurate closing prices for Phlx options on these high volume days. The Exchange believes that a specific rule governing quarterly closing rotation acts as notification to the investing public that a quarterly rotation may take place. However, the Exchange believes that the procedure described above also allows flexibility for those equity options series which do not experience increased activity, and, thus, will not be subject to a closing rotation.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) [4] in particular, in that it is designed to promote just and equitable principles of trade and provide for a fair and orderly market by codifying specific provisions which allow the Exchange to conduct quarterly rotations in order to account for late prints and high amounts of order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(1) [6] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Phlx Rule 1047 currently provides the authority to floor officials to direct trading rotations in specific option classes, thus the Exchange believes the proposal satisfies the requirements of Rule 19b–4(f)(1). This proposed rule change serves as clarification to note that there may be closing rotations in certain equity options on the last day of the calendar quarter.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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.

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 coping 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 Phlx.

All submissions should refer to File No. SR–Phlx–00–27 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14403 Filed 6–07–00; 8:45 am]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42868; File No. SR–Phlx–99–26]

Self-Regulatory Organizations; Order Approving Proposed Amendment to the By-Laws and Corresponding Changes to the Rules of the Philadelphia Stock Exchange, Inc., Relating to Various Committees

May 31, 2000.

I. Introduction

On July 30, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's By-Laws and corresponding Phlx Rules to streamline its committee process. The Phlx filed Amendments No. 1 and No. 2 to the proposed rule change on October 4, 1999 [3] and February 23, 2000, respectively. The **Federal Register** published the proposed rule change, Amendment No. 1, and the substance of Amendment No. 2, for comment on March 6, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

The Exchange has proposed By-Law amendments to provide for streamlining the committee process as follows: (i) Dissolving the Arbitration Committee, whose limited remaining functions would be transferred to the Executive committee, who will oversee ongoing arbitrations filed before the transfer of arbitration responsibilities to the National Association of Securities Dealers, Inc. (''NASD'') in October,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation (Division''), Commission, from John Dayton, Counsel, Phlx, dated October 1, 1999 (''Amendment 1''). Amendment No. 1 proposes certain technical changes. Specifically, it amends Phlx Rule 930 to reflect the fact that the Arbitration Committee is being eliminated from the By-Laws. Amendment No. 1 also proposes changes to Phlx Rule 950, §§ 1 and 2, to reflect the elimination of the Arbitration Committee. The Phlx also submitted a letter (hereinafter referred to as ''Amendment No. 2''), confirming that the board will continue to engage an independent auditing firm to administer all elections. The contents of Amendment No. 2 were substantively discussed in the notice.

[4] Securities Exchange Act Release No. 42464 (Feb. 28, 2000), 65 FR 11826.

1998; [5] (ii) dissolving the Elections Committee and transferring its functions, along with those of the Nominating Committee, to the Nominating and Elections Committee; and (iii) consolidating the three Quality of Markets Committees into a single Quality of Markets Committee with responsibilities for all three Phlx trading floors.

First, the Exchange has proposed to amend its By-Laws to dissolve the Arbitration Committee and transfer its duties to the Executive Committee. The Phlx states that it ceased accepting arbitration cases on October 1, 1998 and that jurisdiction for Phlx arbitration cases now resides with the NASD. Currently, the Exchange is processing and closing the cases that were filed prior to October 1, 1998.[6] Following the cessation of these cases, the arbitration function at the Exchange will cease, as will the need for any committee oversight of these matters.

Second, the Exchange has proposed several changes to the Nominating Committee and the Elections Committee, essentially collapsing them into a single committee. The Exchange proposes to eliminate the Elections Committee, and move its powers to the Nominating Committee. The Exchange also proposes to amend its By-Laws to change the name of the Nominating Committee to the Nominating and Elections Committee. The Exchange believes this change will help to streamline the functions of the two committees.

The Elections Committee administers membership elections. The Nominating Committee submits nominations for industry and non-industry Governors who stand for election by the members. Because these two Committees perform functions related to the election and appointment of Governors of the Exchange, the Exchange believes that the merging of the Elections Committee with the Nominating Committee will not impair the functioning of any of their tasks.[7] The Exchange believes that merging these responsibilities should improve efficiency as well as coordination, as the same group of committee members will oversee the complete election-related process.

Finally, the Exchange has proposed to reduce the number of Quality of Markets Committees from three to one, also to improve efficiency.[8] In addition, the Exchange proposes to amend its By-Laws to ensure that the Committee will contain at least as many non-industry as industry members. The proposed language provides that ''[t]he [Quality of Markets] Committee will have broad representation that shall include at least as many non-industry as industry Committee members.''[9] The current language requires present committees to be ''equally balanced''. The Exchange believes that the proposed language will give it more flexibility to constitute the proposed Committee while retaining the appropriate non-industry representation.

The Exchange believes that the consolidation of the Quality of Markets Committees should also improve the input of the committee on the overall committee process by taking advantage of the overlap in issues emanating from each of the three trading floors, as well as providing for more singular input. The Exchange further believes that this consolidation of committee functions will be beneficial to the functioning of the committee process by decreasing the number of committee assignments for some public, non-industry and industry Governors, allowing them to concentrate more of their energies to their remaining assignments, as well as lowering the costs associated with convening meetings. The Exchange believes the quality of information received from the committees by the Board of Governors will not be affected by the consolidation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section 6(b)(5) of the Act,[10] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. In addition, the Commission finds that the proposed rule change further the objectives of sectin 6(b)(3) [11] which requires an exchange's rules, among other things, to be designed to assure a fair representation of its members in the administration of its affairs.[12]

The Commission believes that it is reasonable for the Exchange to dissolve the Arbitration Committee and transfer its remaining duties to the Executive Committee. The Commission notes that the NASD has jurisdiction over Phlx arbitration cases filed after October 1, 1998 and that following the completion of cases filed before October 1, 1998, the Exchange will have no arbitration duties.[13] In addition, the Commission believes that the Executive Committee is fully capable of overseeing the adjudication of the remaining cases. The Commission also notes that although the Executive Committee contains more members (9) than the current Phlx Arbitration Committee (4), the members of the Executive Committee represent varying interests similar to the Arbitration Committee and include on-floor, off-floor, and non-industry (including one public) members.

The Commission also believes that it is reasonable for the Exchange to combine the Nominating Committee and the Elections Committee into one committee—the Nominating and Elections Committee. These committees perform distinct but related functions. As noted above, the Elections Committee oversees the election process while the Nominating Committee submits nominations for industry and non-industry governors who stand for election by the members. While the Commission believes it is within the Phlx's business judgment in determining that the merged committees should be able to function more efficiently as a single unit, we are concerned about assuring that elections are administered fairly and adequately monitored. The Commission notes that the Exchange has addressed this by committing itself to continue its current practice of engaging an independent auditing firm to administer all Exchange elections. The Commission believes that this safeguard will help to ensure that all Exchange elections, particularly

[5] *See* Securities Exchange Act Release No. 40517 (Oct. 1, 1998), 63 FR 54177 (Oct. 8, 1998) (SR–Phlx–98–28).

[6] As of May 26, 2000, one case is currently pending with the Arbitration Committee that would be transferred to the Executive Committee. Potentially twelve arbitration cases in federal court could be transferred back to the Phlx. Phone call between John Dayton, Counsel, Phlx, and Sonia Patton, Attorney, Division, Commission, on May 26, 2000.

[7] The Commission notes that the Exchange currently has a policy of engaging an independent auditing firm to administer elections. This practice will continue following the merger of the Nominations Committee and the Elections Committee. *See* Amendment No. 2, *supra* note 3. Of course, any changes to the practice would have to be submitted pursuant to Section 19(b)(1) of the Act.

[8] Currently the Exchange has three separate Quality of Markets Committees for each of the three trading floors: equity, equity-index options, and foreign currency options.

[9] *See* Proposed Phlx By-Law Art. X, § 10.20.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(3).

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See supra*, note 6.

contested elections, will be administered in a manner that is fair to all participants in the election process.

Finally, the Commission believes that it is reasonable for the Exchange to consolidate all three of its Quality of Markets Committees into one Quality of Markets Committee responsible for all three Phlx trading floors. The COmmission does not disagree with the Phlx's conclusion that the resulting committee could function more efficiently by taking advantage of the overlap in issues that face each of the three current committees. The Commission notes that the resulting committee will be required to contain at least as many non-industry as industry members, which will ensure that the committee will retain appropriate non-industry representation. While current rules require each of the Quality of Markets Committees to be ''equally balanced,'' the new language will, in the Phlx's view, give it more flexibility in the new committee's composition. Without specifically addressing this issue, the Commission simply notes that by requiring the newly merged committee to be comprised of broad representation with at least the same number of non-industry and industry directors, the new rule language should ensure that the composition of the new Quality of Markets Committee is consistent with the section 6(b)(3) requirement for fair representation in the administration of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–99–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14404 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42883; File No. SR–Phlx–00–40]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Amend Phlx By-Law Article IV, Section 4–18

June 1, 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 April 21, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx By-Law Article IV, sections 4–18(a) and (e) by expanding its indemnification and insurance coverage to directors and committee members of the Exchange. Below is the text of the proposed rule change. New language is *italicized.*

By-Law Article IV

Indemnification

Sec. 4–18.(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a ''proceeding''), by reason of the fact that he or she is or was Governor, officer, or committee member of the Exchange or is or was serving at the request of the Exchange as an officer, *director,* employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an ''indemnitee''), whether the basis of such proceeding is alleged action in an official capacity as a Governor, officer, *committee member, director,* employee or agent or in any other capacity while serving as a Governor, officer, *committee member, director,* employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee who has ceased to be a Governor, officer, *committee member, director,* employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof with respect to proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Governors of the Exchange.

Section 4–18(b) through (d). No change.

Sec. 4–18.(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, *director,* employee or agent of the Exchange or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

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 Phlx 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 Phlx represents that the purpose of the proposed rule change is to clarify the original intent of the Exchange, by expanding the Exchange's indemnification and insurance coverage to include persons serving at the request of the Exchange as a Governor, officer, committee member, director, employee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan. Although Governors, officers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

employees, and agents are expressly covered by the relevant provisions, the words ''director'' and ''committee member'' were inadvertently omitted from Phlx By-Law Article IV, section 4–18(a) when it was last amended on August 22, 1997.[3] The word ''director'' was also inadvertently omitted from Phlx By-Law Article IV, section 4–18(e).[4]

The Exchange believes that the proposed amendments to its By-Law Article IV, sections 4–18(a) and (e) will remove any uncertainty as to whether a person serving as a director or committee member of another entity, at the request of the Exchange, is entitled to mandatory indemnification to the fullest extent provided in the Exchange's By-Laws.[5] The Phlx claims that such persons arguably are already covered as ''agents'' in sections 4–18(a) and (e). The Phlx, however, proposes to amend By-Law Article IV, sections 4–18(a) and (e) to make this coverage more explicit. The Phlx believes that clarifying the extent of its indemnification and insurance coverage is important in the recruitment of qualified persons to serve as Governors, directors, committee members and or agents for the Exchange, to actively participate in Exchange Governance, and to represent the Exchange on the boards of other committees and entities.

2. Statutory Basis

The Phlx represents that the proposed rule change would afford persons such as Governors, employees, agents, committee members, and directors for the Exchange, mandatory indemnification and insurance coverage to the fullest extent provided in the Exchange's By-Laws. For this reason, the Exchange believes that the proposed rule change is consistent with section 6 of the Act[6] in general, and in particular, with section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, as well as 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the Phlx's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[9] because it promotes just an equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest, by permitting persons serving as committee members and directors for the Exchange to receive mandatory indemnification and insurance coverage as provided in the Exchange's By-Laws.[10]

The Commission finds that the Phlx's proposed rule change will correct the Phlx's inadvertent omission of persons serving as directors and committee members for the Exchange from its indemnification and insurance provisions, thus clarifying the Exchange's original intentions. The Commission also supports the Phlx's goal of attracting qualified candidates to serve as Governors, directors, committee members and/or agents for the Exchange, to participate in Exchange Governance, and to represent the exchange on the boards or other committees and entities.

The Commission finds good cause for approving the proposed rule change (SR–Phlx–00–40) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission notes that other exchanges, the National Association of Securities Dealers Regulation, Inc. (''NASD Regulation'') and the Nasdaq Stock Market, Inc. (''Nasdaq'') have similar indemnification and insurance provisions.[11] The Commission also notes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.[12] Accordingly, the Commission believes that there is good cause, consistent with section 6(b)(5) and 19(b) of the Act,[13] to approve the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–40 and should be submitted by June 29, 2000.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14409 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

[4] Telephone conversation between Murray Ross, Vice President and Secretary, Phlx, and Susie Cho, Attorney, Division of Market Regulation (''Division''), Commission (May 8, 2000).

[5] *Id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Chicago Board Options Exchange, Inc., Constitution Article IX, Section 9.1; New York Stock Exchange, Inc., Constitution Article XII, Section 1; NASD Regulation, By-Law Article X, Sections 10.1 and 10.2; and Nasdaq By-law Article VII, sections 8.1 and 8.2.

[12] 15 U.S.C. 78s(b). *See* Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 62385 (October 10, 1997); Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

[13] 15 U.S.C. 78f(b)(5) and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notice. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *State Vocational Rehabilitation Agency Claim (SSA–199–U2) and Subpart V—Payments for Vocational Rehabilitation Services, 20 CFR Sections 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213 and 416.2217—0960–0310.* The information collected on Form SSA–199–U2 and through these current rules is used by the Social Security Administration (SSA) to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

Number of Respondents: 80–100.

Frequency of Response: On occasion.

Number of Responses: 16,300.

Average Burden Per Response: Varies from 23 minutes to 4 hours.

Estimated Annual Burden: 9,048 hours.

2. *SSA/DDS Cost-Effectiveness Measurement System (CEMS) Data Reporting Form—0960–0384.* Form SSA–1461 is used by SSA to collect data necessary for detailed analysis and evaluation of costs incurred by State Disability Determination Services (DDS's) in making determinations of disability. The data are also used in determining funding levels for each DDS. The respondents are State DDS's that collect data for cost analysis and evaluation.

Number of Respondents: 52.

Frequency of Response: 4.

Average Burden Per Response: 6 hours.

Estimated Annual Burden: 1,248 hours.

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: June 2, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–14445 Filed 6–7–00; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–196]

WTO Consultations Regarding Argentina—Patent and Test Data Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 30, 2000, the United States requested consultations with Argentina under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Argentina's failure to fully implement its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) with respect to its legal regimes governing patents and data protection. The United States considers Argentina's patent and data protection regimes to be inconsistent with its obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65 and 70 of the Agreement. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Argentina. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 28, 2000, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, Attn: Argentina—Patent and Test Data Protection Dispute: Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Stephen Kho, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On May 6, 1999, the United States filed a consultation request (WT/DS171/1) regarding Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. Consultations were held on June 15, 1999 and again on July 27, 1999. On May 30, 2000, the United States supplemented its claims in this dispute with additional concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These new concerns relate to Argentina's regimes governing patents in Law 24,481 (as amended by Law 24,572), Law 24,603, and Decree 260/96; and data protection in Law 24,766 and Regulation 440/98, and in other related statutes and regulations. Specifically,

the United States believes that, in addition to the previous claims, Argentina:

- Fails to protect against unfair commercial use of undisclosed test or other data, submitted as a requirement for market approval of pharmaceutical or agricultural chemical products;
- Improperly excludes certain subject matter, including micro-organisms, from patentability;
- Fails to provide prompt and effective provisional measures, such as preliminary injunctions, for purposes of preventing infringements of patent rights from occurring;
- Denies certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation;
- Fails to provide certain safeguards for the granting of compulsory licenses, including timing and justification safeguards for compulsory licenses granted on the basis of inadequate working;
- Improperly limits the authority of its judiciary to shift the burden of proof in civil proceedings involving the infringements of process patent rights; and
- Places impermissible limitations on certain transitional patents so as to limit the exclusive rights conferred by these patents, and to deny the opportunity for patentees to amend pending applications in order to claim certain enhanced protection provided by the TRIPS Agreement.

As such, these new concerns appear to be inconsistent with Argentina's obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65, and 70 of the Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(3) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–196, Argentina—Patent and Test Data Protection Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14510 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–199]

WTO Consultation Regarding Brazil—Patent Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested consultants with Brazil under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding provisions in Brazil's patent regime that establish a ''local working'' requirement for the enjoyment of exclusive patent rights that can only be satisfied by the local production—and not the importation—of the patented subject matter. The United States considers that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994). Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Brazil. USTR invites written comments from the public concerning the issues raised on this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 28, 2000, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W.,, Washington, DC, 20508, Attn: Brazil—Patent Protection Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Stephen Kho, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

Although Brazil has a largely WTO-consistent patent regime that has been in place for some time, there remains a longstanding difference of views between the United States and Brazil over a narrow provision in the TRIPS

Agreement that the United States considers Brazil to be violating. Specifically, the United States is concerned about provisions of Brazil's 1996 industrial property law (Law No. 9,279 of May 14, 1996; effective may 1997) and other related statutes and regulations, which establish a ''local working '' requirement for the enjoyment of exclusive patent rights that can only be satisfied by the local production—and not the importation—of the patented subject matter.

Brazil's ''local working'' requirement stipulates that a patent shall be subject to compulsory licensing if the subject matter of the patent is not ''worked'' in the territory of Brazil. Brazil then explicitly defines ''failure to be worked''as ''failure to manufacture or incomplete manufacture of the product,'' or ''failure to make full use of the patented process.'' The United States considers that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the TRIPS Agreement, and Article III of the GATT 1994.

Having been unable to resolve this difference over the past five years, the United States decided to resort to WTO dispute settlement procedures and on May 31, 2000, requested consultations with Brazil.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–199, Brazil—Patent Protection) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14511 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–198]

WTO Consultations Regarding Romania's Use of Minimum Import Prices for Customs Valuation Purposes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested consultations with Romania under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Romania's 1997 Customs Code (L141/1997) and Ministry of Finance General Customs Directive (Ordinance No. 5, 4 August 1998) and other related statutes and regulations. The United States alleges that Romania's customs code, directives, regulations and practice arbitrarily establish minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits. Additionally, Romania has instituted burdensome procedures for investigating import prices when the C.I.F. value falls below the minimum import price. The United States considers that this practice is inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation (''CVA''); general notes 1, 2, and 4 of Annex 1 of the CVA; Articles II, X, and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement of Textiles and Clothing. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (''DSU''), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Romania. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 31 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508, Attn: Romania Customs Valuation Dispute. Telephone: (202) 395–3581.

FOR FURTHER INFORMATION CONTACT: Melida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street N.W., Washington, D.C., (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meeting in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

The Agreement on Customs Valuation sets forth a clear hierarchy for the determination of the customs value of imported goods, and in no case may the customs value be determined on the basis of a minimum price (Articles 1 through 7). Romania's customs code, directives and regulations arbitrarily establish minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits. Additionally, Romania has instituted burdensome procedures for investigating import prices when the C.I.F. value falls below the minimum import price.

Therefore, on May 31, 2000, the United States requested consultations with Romania under certain WTO agreements regarding Romania's customs valuation practices. Romania's customs valuation regime utilizes unpublished arbitrary minimum import prices to supplant the valuation methodology established in Articles 1 through 7 of the CVA, and therefore appears to be inconsistent with that Agreement. Furthermore, if an importer's declared value falls below the set minimum price, a ''guarantee'' is required based on the difference between the declared value and the minimum price. The use of this guarantee operates as a rejection of the declared value in a manner inconsistent with Articles 1 through 7 of the CVA and, in practice, a refund is not given to importers that established the correctness of the declared value. The United States' consultation request also alleges that Romania's customs regime is inconsistent with general notes 1, 2, and 4 of Annex 1 of the CVA; Articles II, X, and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement on Textiles and Clothing.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submission to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–198, Romania Customs Valuation Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14512 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–197]

WTO Consultations Regarding Brazil Customs Valuation Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested WTO consultations with Brazil regarding its system for verification of the declared values of imported goods, such as textile products. Brazil uses minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below established minimum prices, and, as such, appears to violate provisions of the Agreement on Customs Valuation; the GATT 1994; the Agreement on Import Licensing Procedures; the Agreement on Textiles and Clothing; and the Agreement on Agriculture. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (''DSU''), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Brazil. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 31, 2000 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Brazil Customs Valuation Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On February 13, 1998, Brazil established under Decree No. 2.498/98 and other related statutes and regulations a system to verify the declared values of imported goods. In practice, however, Brazil utilizes this verification system—in conjunction with non-automatic import licensing procedures—to prohibit or restrict the import of products with declared values below the minimum prices. This situation appears inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation; general notes 1, 2, and 4 of Annex 1 of the Agreement on Customs Valuation; Articles II and XI of the GATT 1994; Articles 1 and 3 of the Agreement on Import Licensing Procedures; Articles 2 and 7 of the Agreement on Textiles and Clothing; and Article 4.2 of the Agreement on Agriculture.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–197, Brazil Customs Valuation Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14513 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Solicitation of Public Comments on Institutional Improvements to the World Trade Organization (WTO), Particularly With Respect to the Transparency of its Operations and Outreach to Civil Society

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is soliciting public comments on U.S. objectives and proposals for improving the functioning of the WTO, particularly with respect to its outreach activities and the transparency of its operations, and in light of the WTO's ongoing work program and mandated negotiations in agriculture and services. Attention is drawn to the solicitation of Public Comments for the Mandated Multilateral Trade Negotiations on Agriculture and Services in the WTO and Priorities for Future Market Access Negotiations on Non-Agricultural Goods, published on March 28, 2000 (Volume 65, Number 60). That notice called for public comments on general as well as specific negotiating objectives. The issues of outreach and transparency are on-going matters before the WTO and the subject of continuing consultations conducted under the auspices of the WTO General Council. It is also anticipated that, like other internation institutions, the WTO will need to continue to consider appropriate responses to the challenges as well as the benefits offered by ''globalization'' as its future agenda is fashioned. The TPSC, therefore, also welcomes comments on whether and how the WTO might undertake activities to ensure that the social, environmental and development dimensions of continued trade liberalization are adqquately addressed. Comments received will be considered by the Executive Branch in formulating U.S. positions for these discussions and deliberations.

DATES: Public comments are due by July 10, 2000.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Paul Moore, Office of WTO and Multilateral Affairs, at (202) 395–5097, or Karissa Kovner, Office of the Environment and Natural Resources, at (202) 395–6169. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: Information about the WTO can be obtained via the WTO website (*www.wto.org*) Attention is also drawn to the 2000 Trade Policy Agenda and 1999 Annual Report of the President of the United States on the Trade Agreements Program, which can be found on USTR's website (*www.ustr.gov*) via the ''What's New'' icon. Chapter 2 of the Report presents a report to the Congress assessing the first five years' operation of the WTO, the annexes to which contain substantial background information on the WTO, its organization and the work of its Councils and Committees. Also accessible via USTR's website are U.S. submissions made to the WTO General Council as part of the preparatory process for the third WTO Ministerial Conference in December 1999, including submissions covering agricultural, services and non-agcultural market access as well as trade and sustainable development, trade and core labor standards and WTO institutional issues (e.g., transparency and openness). Information about U.S. contributions to and participation in the WTO's 1999 High Level Meeting on Trade and the Environment can also be obtained via the ''What's New'' icon. Finally, the USTR home page includes a recent communication from USTR to the Chairman of the WTO General Council reiterating U.S. priorities for improving the internal and external transparency of the WTO and its subsidiary bodies.

The TPSC invites written comments from the public on the important institutional issues raised about the WTO in terms of its openness and accountability, including its outreach to citizens. The Administration has been active in seeking institutional improvements to the WTO, while preserving its intergovernmental nature. For example, the United States has consistently called for the WTO to build upon past progress by (i) expanding the range of WTO documents available to the public; (ii) strengthening the guidelines for consultations with non-governmental organizations (NGOs); (iii) enhancing the WTO's program of symposia and consultations on specific topics of mutual interest; (iv) expanding and improving the use of Internet facilities to reach more stakeholders in more creative ways; and (v) broadening the range of WTO meetings and events that would be open to the public. Last year, the United States specifically called upon the WTO membership to agree upon methods to permit the organizations of civil society (including businesses, labor organizations, agricultural producers, environmental groups, academic associations and others) to observe meetings, as appropriate, and share views as Member delegations develop policy. The United States has proposed updating the 1996 WTO General Council Decisions on Document Derestriction and Relations with NGOs as a near term opportunity for making progress in certain of these areas, but additional opportunities and progress should be pursued—including with respect to opening dispute settlement panel proceedings to public observation and clarifying procedures for acceptance of amicus curiae submissions from interested non-governmental parties.

In terms of dispute settlement, the United States has proposed that the WTO procedures include a mechanism to permit non-governmental stakeholders to present their written views on disputes, and that the WTO allow the public to observe WTO panel and appellate proceedings. The United States continues to urge other WTO Members to work with the United States to enhance the transparency of the WTO dispute settlement process, through changes in the working procedures applied in individual disputes, and through an ongoing assessment of the operation of the WTO Dispute Settlement Understanding.

The United States has taken many steps on its own to improve the transparency of the WTO dispute settlement process. USTR seeks public comment, through a **Federal Register** notice, on every dispute settlement proceeding where the United States is a party. USTR also makes its written submissions to panels and the WTO Appellate Body available to the public as soon as they are submitted. The United States routinely requests the parties to any WTO case (even cases in which it is not a party) to provide it with a copy of their submissions or non-confidential summaries for release to the public.

USTR makes WTO panel reports available to the public upon receipt, and the WTO makes WTO panel and Appellate Body reports available on the Internet for downloading the day after they are circulated in Geneva, and sometimes the same day. This is also true of other WTO documents regarding disputes. The consultation requests and panel requests in every dispute are circulated to all WTO Members in all three official languages (English, French and Spanish) as public documents, and immediately put on the WTO website. Any member of the public can access WTO documents through the Internet and follow the progress of WTO disputes on that website. In this way, members of the public can find out from these WTO documents that there will be a panel proceeding and what issues the panel will address, even before the panel is established.

Written Comments

Comments are welcome with as much specificity as the respondent can provide on the range of opportunities which should be sought for achieving greater transparency and openness as well as on the nature of achievements to be sought. The Administration is particularly interested in determining if there are additional mechanisms that can be utilized to ensure broader interaction with consumer and other parties interested in developments in the WTO and the trading system. This is part of a broader dialogue initiated by the Administration these issues. Submissions need not duplicate submissions provided in response to the March 28 solicitation regarding objectives for the mandated negotiations in agriculture and services and potential industrial market access negotiation.

Persons submitting written comments should provide twenty (20) copies no later than July 10, 2000 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, DC 20508. Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, Northwest, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidetnial'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked at the top and bottom of each page ''Public Version'' or ''Non-Confidential.''

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–14514 Filed 6–7–00; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–6950]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0614 and 2115–0545

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only

paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 10, 2000.

ADDRESSES: Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2000–6950 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [65 FR 10143 (February 25, 2000)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000–6950. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 2115–0614.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of bridges.

Form(s): N/A.

Abstract: The collection of information requires the owner of a bridge whose bridge the Coast Guard has found to be an unreasonable obstruction to navigation to prepare, and submit to the Coast Guard, general plans and specifications of that bridge.

Annual Estimated Burden Hours: The estimated burden is 120 hours annually.

2. *Title:* Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 2115–0545.

Type of Request: Extension of a currently approved collection.

Affected Public: Vessels operators or owners of vessels over 300 gross tons.

Forms: CG–5585, CG–5586, CG–5586–1, CG–5586–2, CG–5586–3, CG–5586–4, CG–5586–5.

Abstract: The collection of information requires operators of vessels over 300 gross tons to submit to the Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of an oil spill or hazardous substance incident.

Annual Estimated Burden Hours: The estimated burden is 2,162 hours annually.

Dated: May 31, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–14505 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 30, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 10, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0012.

Form Number: PD F 1455.

Type of Review: Extension.

Title: Request by Fiduciary for Reissue of United States Savings Bonds/Notes.

Description: PD F 1455 is use by fiduciary to request distribution of U.S. Savings Bonds/Notes to the person(s) entitled.

Respondents: Individuals or households.

Estimated Number of Respondents: 72,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 36,000 hours.

OMB Number: 1535–0025.

Form Number: PD F 3360.

Type of Review: Extension.

Title: Request for Reissue of United States Savings Bonds/Notes in the Name of a Person or Persons Other Than the Owner (Including Legal Guardian, Custodian for a Minor Under a Statute, *etc.*).

Description: This form is used by the owner to request reissue of Savings Bonds/Notes in the name of another person.

Respondents: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 8,350 hours.

OMB Number: 1535–0032.

Form Number: PD F 3565.

Type of Review: Extension.

Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds Without Administration of Deceased Owner's Estate.

Description: This form is used by heirs of deceased owners of Retirement Plan and/or Individual Retirement bonds to request disposition when no beneficiaries are designated.

Respondents: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 17 hours.

OMB Number: 1535–0055.

Form Number: PD F 1050.

Type of Review: Extension.

Title: Creditor's Consent to Disposition of United States Securities and Related Checks Without Administration of Deceased Owner's Estate.

Description: This form is used to obtain creditor's consent to dispose of Savings Bonds/Notes in Settlement of a deceased owner's estate without administration.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 300 hours.

OMB Number: 1535–0084.

Form Number: PD F 5263, PD F 5263–1, PD F 5374 and PD F 5374–1.

Type of Review: Extension.

Title: Order for Series EE U.S. Savings Bonds (PD F 5263); Order for Series EE U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5263–1); Series I Order for U.S. Savings Bonds (PD F 5374); and Series I Order for U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5374–1).

Description: These forms are completed by the purchaser to issue United States Savings Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 10,000,000.

Estimated Burden Hours Per Respondent: 5 minutes per form.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 830,000 hours.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Type of Review: Extension.

Title: Certificate of Ownership of United States Bearer Securities.

Description: PD F 1071 is used to establish ownership and support of a request for payment.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

OMB Number: 1535–0126.

Form Number: PD F 3871.

Type of Review: Extension.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company tax and Loss Bonds.

Description: PD F 3871 is submitted by companies engaged in the business of writing mortgage guaranty insurance for the purpose of purchasing ''Tax and Loss'' bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 37.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 20 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–14410 Filed 6–7–00; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

June 1, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 10, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A and 4461–B.

Type of Review: Extension.

Title: Application for Approval of Master or Prototype Defined Contribution Plan (4461); Application for Approval of Master or Prototype Defined Benefit Plan (4461–A); and Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor (4461–B).

Description: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
4461	43 hr., 17 min	6 hr., 44 min	8 hr., 40 min	16 min.
4461–A	42 hr., 34 min	6 hr., 2 min	7 hr., 55 min	16 min.
4461–B	5 hr., 59 min	52 min	1 hr., 56 min	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 109,388 hours.

OMB Number: 1545–1418.

Regulation Project Number: REG–119227–97 Final and Temporary).

Type of Review: Extension.

Title: Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax.

Description: The regulation finalizes proposed and temporary regulations relating to the tax on kerosene, the refund for certain aviation fuel producers, and the registration rules for certain truck dealers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 346,080.

Estimated Burden Hours Per Respondent/Recordkeeper: 17 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 97,583 hours.

OMB Number: 1545–1504.

Form Number: IRS Form 911.

Type of Review: Extension.

Title: Application for Taxpayer Assistance Order (ATAO).

Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 93,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 34,960 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–14411 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Evaluation of and Request for Comments Regarding the Reconciliation Prototype

AGENCY: Customs Service, Treasury.

ACTION: General notice: Solicitation of comments from prototype participants.

SUMMARY: This document requests comments, via participation in a voluntary survey, on the Reconciliation Prototype for the purpose of evaluation and possible revision or expansion of the prototype.

DATES: Surveys must be received by July 10, 2000.

ADDRESSES: For those able to use the electronic survey format, the survey form is available at *http://www.customs.gov/recon.* Electronic survey responses should be emailed to: *Recon.help@customs.treas.gov.* For those without access to the internet, contact the following for a hard copy of the survey: U.S. Customs Service, 1300 Pennsylvania Ave., NW, Room 5.2A, Washington, DC 20229–0001, ATTN: Mr. Don Luther or Ms. Shari McCann, Reconciliation Team. Hard copy survey responses should be faxed to the Headquarters Reconciliation Team at (202) 927–1096.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann at (202) 927–1106 or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION: Customs announced and explained the Automated Commercial System (ACS) Prototype Test of Reconciliation in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Changes and clarifications to the prototype were announced in **Federal Register** documents published on August 18, 1998 (63 FR 44303), July 21, 1999 (64 FR 39187), and December 29, 1999 (64 FR 73121). Additional information regarding the Reconciliation Prototype can be found at *http://www.customs.gov/recon.*

The **Federal Register** notice of February 6, 1998, entitled ''Revised National Customs Automation Program Test Regarding Reconciliation,'' provided for evaluation of the prototype and strongly encouraged that participants participate in the evaluation process. It set forth various evaluation methods, including the use of questionnaires (surveys). Customs has prepared a survey form that is available at *http://www.customs.gov/recon.* For those without access to the internet, a survey can be obtained by contacting the following for a hard copy: U.S. Customs Service, 1300 Pennsylvania Ave., NW, Room 5.2A, Washington, DC 20229–0001, ATTN: Mr. Don Luther or Ms. Shari McCann, Reconciliation Team.

This notice requests comments from participants through the survey. Participants should email electronic survey responses to the following address by July 10, 2000: *Recon.help@customs.treas.gov.* Hard copy survey responses should be faxed to the Headquarters Reconciliation Team at (202) 927–1096. Survey responses will be compiled and used to evaluate the prototype. Results of the survey evaluation will be published in the **Federal Register**, along with any changes or modifications made to the prototype as suggested by the evaluation.

Dated: June 5, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–14509 Filed 6–7–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–15]

Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretation; extension of delayed effective date.

SUMMARY: On March 14, 2000, Customs published as T.D. 00–15 a notice setting forth a final interpretation stating that Customs would no longer rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. The notice prescribed a delayed effective date of June 12, 2000, for the final interpretation. The effective date was applicable to pipe fittings and flanges produced in the United States from imported forgings except for those which were the subject of a ruling subject to the procedure specified in 19 U.S.C. 1625. This document advises the public that the delayed effective date period for pipe fittings and flanges is being extended by an additional 90 days.

DATES: This extension is effective June 8, 2000. T.D. 00–15 is applicable to pipe fittings and flanges on or after September 11, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2000, Customs published in the **Federal Register** (65 FR 13827) T.D. 00–15 a notice setting forth a final interpretation that adopted a previously published proposal to the effect that Customs would no longer rely on the producers' good to consumers' good test of *Midwood Industries Inc.* v. *United States,* 313 F.Supp. 951 (Cust. Ct. 1970), in determining whether a substantial transformation of an imported good has occurred for purposes of making a country of origin determination under the Customs

marking statute (section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304)).

The preamble portion of T.D. 00–15 contained a discussion of the public comments solicited in response to the published proposal, including comments on whether a delayed effective date for the final Customs interpretation should be employed, consistent with the principle set forth in *National Juice Products Association* v. *United States,* 628 F.Supp. 978 (CIT 1986). One commenter argued in favor of a one-year delayed effective date period on the basis that the change proposed by Customs would be drastic for pipe fitting and flange producers because it would require the purchase and installation of new machinery. In response, Customs first noted that when the marking rules were adopted, importations from NAFTA countries became subject to a marking requirement and those importers were able to make these changes in far less than a one-year period. Although Customs specifically rejected the suggested one-year delay as not being necessary based on prior experience with other changes in country of origin marking regimes, Customs nevertheless agreed that a delayed effective date period would be appropriate. Accordingly, Customs stated in T.D. 00–15 that although Customs would require that all pipe fittings and flanges produced in the United States from imported forgings be marked with the country of origin of the imported forging, Customs would make the change effective 90 days after publication of the notice in the **Federal Register**, except in the case of a ruling subject to the procedure specified in 19 U.S.C. 1625. The final interpretation set forth in T.D. 00–15 therefore was published with a delayed effective date of June 12, 2000.

Customs has received a request on behalf of several companies seeking a further delay in the effective date of the notice. The request claims that these companies would suffer irreparable harm if the June 12, 2000, effective date set forth in T.D. 00–15 were not extended, because they are unable to comply with the marking requirements by that date. Customs believes based on this representation that it would be reasonable in the case of pipe fittings and flanges to provide up to 6 months from the March 14, 2000, publication of the final interpretation for producers and importers to conform to the new standard. Accordingly, Customs is modifying the effective date set forth in T.D. 00–15 in order to extend the delayed effective date period by an additional 90 days.

Extension of Delayed Effective Date Period

Based on the above, in T.D. 00–15 published in the **Federal Register** on March 14, 2000, at 65 FR 13827, under the Effective Date caption the date ''June 12, 2000'' is revised to read ''September 11, 2000''.

Approved: June 2, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–14466 Filed 6–7–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–W, Estimated Tax for Corporations.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax for Corporations.

OMB Number: 1545–0975.

Form Number: 1120–W.

Abstract: Under section 6655 of the Internal Revenue Code, a corporation with an income tax liability of $500 or more must make four required installments of estimated tax during the tax year or be subject to a penalty for failure to pay estimated income tax. Form 1120–W is used by corporations to compute their estimated income tax and the amount of each required installment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 11 hrs., 1 min.

Estimated Total Annual Burden Hours: 9,910,661.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14515 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 99–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14516 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–QFT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–QFT, U.S. Income Tax Return for Qualified Funeral Trusts.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U. S. Income Tax Return for Qualified Funeral Trusts.

OMB Number: 1545–1593.

Form Number: 1041–QFT

Abstract: Internal Revenue Code section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Form 1041–QFT is used for this purpose. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 218,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14517 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act

DATE/TIME: Thursday—June 15, 2000 (4 p.m.–9:00 p.m.), Friday—June 16, 2000 (9 a.m.–6 p.m.), Saturday—June 17, 2000 (9 a.m.–12 noon).

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: June 2000 Board Meeting; Approval of Minutes of the Ninety-Fourth Meeting (March 16, 2000) of the Board of Directors; Chairman's Report; President's Report; Review and Discussion of Individual Grants and Fellowships; Review Essay Finalists and Select Winners; Committee Reports; Discuss Research & Studies Project Reports; Review Fellowship Policies; Review Plans for Education and Training Programs; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: May 31, 2000.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 00–14575 Filed 6–5–00; 4:59 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, Subsection 1521, will be held on July 11th through 13th, 2000. The meeting will be held at VA Central Office, 810 Vermont Avenue NW, Room 430, Washington, DC 20420. On July 11th and 12th, the meeting will convent at 9:00 a.m. and adjourn at 4:00 p.m. On July 13th, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA sponsored programs of rehabilitation. In addition, VACOR will conduct an internal business meeting focusing on a review of past activities and the development of future initiatives.

On July 11th, the meeting will begin with opening remarks and an overview of VACOR activities (including the introduction of new members) by the new VACOR Chairman, Mr. Richard K. Pimentel. Schedule permitting, the Honorable Togo D. West, Jr., Secretary of Veterans Affairs, will address VACOR and present certificates of appointment to its new members. Following the Secretary's presentation, Mr. James Adams, Deputy Assistant General Counsel, will brief members on the Federal regulations covering ethical standards for members as well as assist in the completion of required Financial Disclosure Forms. The afternoon session will consist of a review of the VACOR mandate and charter.

On July 12, Mr. Julius Williams, Director of Vocational Rehabilitation and Employment Service (VR&E), along with selected program staff members, will present an update of new VR&E Program initiatives installed with VR&E during the past year. During the afternoon of the 12th, Dr. Mindy L. Aisen, Director of Rehabilitation Research and Development Service, will present a program report on VA rehabilitation research projects entitled, ''What We Do Today Impacts On Tommorrow's Rehabilitation Decisions'' Honorable Dennis Duffy, Assistant Secretary for Planning and Analysis, will conclude the day's program with a review of the background and research developed in support of the new VA publication, ''The Changing Veteran Population: 1990–2020.''

The final day of the meeting, July 13, will consist of a review of past unfinished business, the generation and formulation of recommendations for needed program changes, and a discussion of future meeting sites and potential agenda topics.

All meetings will be open to the public. Oral statements will be heard at the July 13 morning meeting. If additional information is needed, please contact Mr. Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273–7436.

Dated: June 1, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–14375 Filed 6–7–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 111

Thursday, June 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the White River Minimum Flow Study, Arkansas and Missouri

Correction

In notice document 00–13345 appearing on page 34453 in the issue of Tuesday, May 30, 2000, make the following corrections:

1. In the second column, in the **SUPPLEMENTARY INFORMATION** section, in the third paragraph, in the sixth line, ''Norfok'' should read ''Norfork''.

2. In the same column, in the fourth paragraph, in the ninth line,''dish'' should read ''fish''.

[FR Doc. C0–13345 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Western Area Power Administration

2005 Resource Pool

Correction

In notice document 00–13967, beginning on page 35630, in the issue of Monday, June 5, 2000, make the following corrections:

1. On page 35631, in the table, under the heading, 500 MW (MW), in the second line, ''1.100'' should read ''1.105''.

2. On page 35631, in the table, under the heading 1000 MW (MW), in the second line, ''52.210'' should read ''2.210''.

[FR Doc. C0–13967 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M-0311]

Agency Information Collection Activities; Proposed Collection; Comment Request

Correction

In notice document 00–13340 beginning on page 34196 in the issue of Friday, May 26, 2000, make the following correction:

On page 34196, in the second column, in the **DATES** section,''July 25, 2002'' should read ''July 25, 2000''.

[FR Doc. C0–13340 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 8, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Southwestern Toad; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AG15

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Southwestern Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the arroyo southwestern toad *(Bufo microscaphus californicus)* pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 193,600 hectares (478,400 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until August 7, 2000. Two public hearings have been scheduled for June 27, 2000, and June 29, 2000, see locations below.

ADDRESSES:

1. Comments: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

a. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003.

b. You may hand-deliver written comments to our Ventura Office, at the address given above.

c. You may send comments by electronic mail (e-mail) to fw1artoch@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [*RIN number*]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Office at phone number 805/644–1766.

2. Public hearings: Two public hearings are scheduled. Both public hearings will be held from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m. Public hearing dates and locations are:

a. Tuesday, June 27, 2000, at the Hyatt Valencia, 24500 Town Center Drive, Valencia, California.

b. Thursday, June 29, 2000, at the Temecula Embassy Suites, 29345 Rancho California Road, Temecula, California.

3. Review of data: Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California, or at the Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California (telephone 760/431–9440).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958). For information about Los Angeles and San Bernardino Counties, and Riverside, Orange, and San Diego Counties, contact the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The following discussion is adapted from the final recovery plan for the arroyo toad (Service 1999), which contains additional details and is available from the addresses above. The arroyo southwestern toad *(Bufo microscaphus californicus)* is one of three members of the southwestern toad *(B. microscaphus)* complex, in the family of true toads, Bufonidae. The taxonomy of the complex has been examined recently by Gergus (1998). Based on his genetic studies, the arroyo toad should be considered a separate species, *Bufo microscaphus californicus*.

The arroyo toad is a small (adults: snout-urostyle (body) length 55 to 82 millimeters (mm) (2.2 to 3.2 inches (in.)), dark-spotted toad of the family Bufonidae, with females larger than males. Adult arroyo toads have a light-olive green or gray to tan dorsum (back) with dark spots and warty skin. The venter (underside) is white or buff and without dark blotches or spots. A light-colored, V-shaped stripe crosses the head and eyelids, and the anterior portion of the oval parotoid glands (just behind the eyes) are pale. There is usually a light area on each side of the sacral (pelvic) hump and in the middle of the back. The arroyo toad generally does not have a middorsal stripe, but if one is present, it extends only partway along the back.

The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently quite dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Natural climatic variations as well as other random events, such as fires and floods, coupled with the species' specialized habitat requirements, lead to annual fluctuations in arroyo toad populations. Human alterations of habitat can have unpredictable effects on arroyo toad populations. As a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs, flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, many arroyo toad populations have been reduced in size or extirpated (eliminated) due to extensive habitat loss from the 1920s into the 1990s. The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, and habitat degradation from introduced plant species, caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California (Jennings and Hayes 1994).

Because relatively little was known about this animal, and it was often confused with the California toad *(Bufo boreas halophilus)*, which is very common in the same region, detailed studies of the natural history of the arroyo toad were not conducted until the 1980s and 1990s. The arroyo toad exhibits breeding habitat specialization that favors shallow pools and open sand and gravel channels along low-gradient reaches of medium to large-sized streams (Service 1999). These streams can have either intermittent or perennial streamflow and typically experience

periodic flooding that scours vegetation and replenishes fine sediments. In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more sporadically distributed. Populations in smaller drainages are likely to be much smaller and at greater risk of extirpation than those on larger streams and in larger habitat patches (Service 1999).

Arroyo toads also require and spend most of their adult life in upland habitats. Individual toads have been observed as far as 2 kilometers (km) (1.2 miles (mi)) from the streams where they breed, but are most commonly found within 0.5 km (0.3 mi) of those streams (Service 1999; Griffin *et al.* 1999; Dan C. Holland, Camp Pendleton Amphibian and Reptile Survey, Fallbrook, California, unpublished data). Arroyo toads typically burrow underground during periods of inactivity and thus tend to utilize upland habitats that have sandy, friable (readily crumbled) soils. Although the upland habitat use patterns of this species are poorly understood, activity probably is concentrated in the alluvial flats (areas created when sediments from the stream are deposited) and sandy terraces found in valley bottoms (Service 1999; Griffin *et al.* 1999; Ramirez 2000; D.C. Holland, unpubl. data).

Habitat Characteristics and Ecological Considerations

Arroyo toads have specialized requirements for breeding habitats. Specifically, they require shallow, slow-moving streams, and riparian (areas near a source of water) habitats that are disturbed naturally on a regular basis, primarily by flooding. Periodic flooding helps maintain areas of open, nonvegetated sandy stream channels and terraces. Throughout their range, arroyo toads are found in foothill canyons and intermountain valleys where medium- to large-sized streams and rivers are bordered closely by low hills, riverbed gradients are low, and the surface stream flows frequently pool or are intermittent for at least a few months of the year. South of the Santa Clara River, Los Angeles County, they also occur on a few desert slopes and on the coastal plain.

For breeding, adult arroyo toads use open sites such as overflow pools, old flood channels, and pools on streams of first to sixth order. Rivers and streams are classified by order. The order refers to how many branches or tributaries a stream has. The smallest unbranched tributary in a watershed is considered an order of one. A channel formed by the confluence of two such tributaries is designated an order of two. In general, the higher the order number, the larger the watershed, and the greater the channel dimensions. Such habitats rarely have closed canopies over the lower banks of the stream channel due to regular flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development. Episodic (temporary) flooding is critical to keep the low stream terraces relatively vegetation-free and the soils friable enough for juvenile and adult toads to create burrows. Pools less than 30 centimeters (cm) (12 in.) deep with clear water, flow rates less than 5 cm per second (0.2 foot (ft) per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding.

Areas that are used by juveniles consist primarily of sand or fine gravel bars with varying amounts of large gravel or cobble with adjacent stable sandy terraces and streamside flats. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth (Service 1999).

The adjacent sandy terraces, which are used by subadults and adults for foraging and burrowing, may be sparsely to heavily vegetated with brush and trees such as mulefat (*Baccharis* spp.), California sycamore (*Platanus racemosa*), cottonwoods (*Populus* spp.), coast live oak (*Quercus agrifolia*), and willow (*Salix* spp.). The understory of stream terraces may consist of scattered short grasses, herbs, and leaf litter, with patches of bare or disturbed soil, or have no vegetation at all. Substantial areas of fine sand, into which adult toads burrow, must be present, but can be interspersed with gravel or cobble deposits.

Upland habitats used by arroyo toads during the nonbreeding season include alluvial scrub, coastal sage scrub, chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and oak woodland. When foraging, subadult and adult arroyo toads often are found around the driplines of oak trees. These areas often lack vegetation, yet have appropriate levels of prey. When active at night, toads often can be observed near ant trails feeding on passing ants, beetles, and other prey.

Males call from the streams during the breeding period, which is generally from February to early July, although it can be extended in some years, depending on weather conditions. Males may remain at or near the breeding pools for several weeks and are particularly susceptible to predation at this time. Females apparently move to the breeding pools in the streams for only short time periods, in order to soak in the water and to breed (Griffin *et al.* 1999; Nancy Sandburg, Santa Barbara, California, pers. comm. 1999). Amplexus (mating embrace of the female by the male) and egg-laying generally occur at the site where the male was calling. Female arroyo toads apparently release their entire clutch of 2,000 to 10,000 eggs as a single breeding effort and probably are unable to produce a second clutch during the mating season. If conditions are unsuitable, females may not obtain sufficient food for egg production and will forgo breeding during that year. The eggs are laid on substrates of sand, gravel, cobble, or mud generally located away from vegetation in the shallow margins of the pool. High water flows will wash the eggs out of the pools, breaking up the egg strands and killing the developing embryos. Silt eroding into the streams from road crossings, adjacent roads, overgrazing, or mining activities can cover and suffocate the eggs.

Embryos usually hatch in 4 to 6 days at water temperatures of 12 to 16 degrees Celsius (54 to 59 degrees Fahrenheit). Larvae may take 8 to 14 days to become free-swimming, depending on the water temperature. They are particularly susceptible to the effects of high water flows during this time period, and heavy rains or untimely releases of water from dams can kill thousands of tadpoles very quickly. The larval period for arroyo toads lasts about 65 to 85 days, depending on water temperatures. Metamorphosis may occur at any time between April and the beginning of September, depending on the time of breeding, weather, and water quality. Peak metamorphosis occurs from the end of June to mid-July in the northern part of the toad's range and from late April to mid-May in southern California. For several days before metamorphosis, arroyo toad larvae cease feeding and aggregate in shallow water along the edges of gravel or sand bars, often under or along stranded algal mats. The metamorphosing and newly metamorphosed toads are extremely susceptible to predation, habitat disturbance, and activities in the streams during this period, as they cannot escape (Service 1999).

Juvenile arroyo toads remain in the saturated substrate at the edges of breeding pools for 1 to 3 weeks. They are active during the day and often exposed on the barren sand because they are too small to burrow into the

substrate. During this period, many toads are lost due to predation unless they can find some cover, such as cobble, algal mats, or pieces of debris, under which to hide. As the toads mature, they move further from the pools onto sand and gravel bars. Crushing of toads by humans and livestock can be a substantial source of mortality at this stage (Service 1999).

As the toads grow, they begin to dig shallow burrows in fine sand, and switch to a night-time activity pattern, when they forage for ants and beetles. Suitable sandy habitat can be highly localized resulting in dense concentrations of juvenile toads. If the substrate is not friable enough, juvenile toads often disperse farther away from the breeding pool into nearby stands of willows and mulefat. Most toads will move into willows or other vegetation as they grow, and as the stream dries naturally. Removal of native vegetation, in addition to increasing erosion into the streams, can leave small toads at risk of dehydration and death.

Male arroyo toads usually reach adulthood in 2 years. Females become sexually mature in 2 to 3 years, when they attain lengths greater than 54 mm (2.1 in.). However, males may reach adulthood at 1 year if conditions are favorable. We have little data on lifespan; based on age-size distributions, many individuals live only about 5 years. Longevity may vary with local conditions. Recapture rates of marked individuals from one breeding season to the next range from 15 to 50 percent.

Little is known of the seasonal and annual movements or physiological ecology of adults, but data suggest that many subadults and some adult males move along streams as much as 0.8 km (0.5 mi) and over 1.0 km (0.6 mi) in a few cases during a single breeding season (Griffin *et al.* 1999; Ramirez 2000). Dispersal movements may be over 8 km (5 mi) (U.S. Forest Service (Forest Service) 1999). Amount of rainfall, availability of surface water, width of streamside terraces and floodplains, vegetative cover, and topography can all influence the habitat available to arroyo toads and the distances they will move from the streambed (Griffin *et al.* 1999; Ramirez 2000). In San Diego County, Griffin *et al.* (1999) found that the female adult arroyo toads they radiotracked moved an average maximum distance of 135 meters (m) (443 feet (ft)) and a maximum of more than 300 m (984 ft) perpendicularly from streams, while males moved an average maximum of 73 m (240 ft) from the streams. Males along a coastal stream with a broad floodplain moved an average maximum of 92 m (302 ft) from the streams, while those in a narrower canyon moved only 23 m (75 ft) from the streambed (Griffin *et al.* 1999). Ramirez (2000) recorded a maximum distance from the stream of 37 m (121 ft) in one desert slope stream with a very narrow floodplain, and 145 m (476 ft) in another desert slope system with a broader floodplain. Extended movement away from streams may be facilitated by microclimates wherein lower temperatures and high humidity on foggy days in the spring and summer create moist substrates in upland habitats where adult arroyo toads can survive (Service 1999). We do not have enough data to accurately characterize overwintering activities and habitat use in all of the systems that arroyo toads inhabit.

Several land use activities may affect the hydrology of arroyo toad stream habitats and destroy or severely modify the dynamic nature of the riparian systems upon which arroyo toads depend for reproduction, development, and survival. Arroyo toad breeding habitat is created and maintained by the fluctuating hydrological, geological, and ecological processes operating in riparian ecosystems and the adjacent uplands. These riparian/wash habitats as well as adjacent upland habitats are essential for this species' survival. Periodic flooding that modifies stream channels, redistributes channel sediments and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad. Human activities that affect water quality, influence the amount and timing of nonflood flows or frequency and intensity of floods, affect riparian plant communities, or alter sedimentation dynamics can reduce or eliminate the suitability of stream channels for arroyo toad breeding habitat. Degradation or loss of surrounding riparian and upland habitats reduces and eliminates foraging and overwintering habitat. The introduction of nonnative plant and animal species can reduce the quality of all habitats used by arroyo toads, lead to detrimental levels of competition and predation, or reduce the availability of toad food. Run-off from roads can decrease habitat quality for arroyo toads, and roads provide access for humans, domestic animals, and invasive species that can lead to additional habitat degradation.

The effects of such activities and factors may not become apparent until many years later when the habitat finally becomes sufficiently degraded that arroyo toads can no longer reproduce and survive. Combined with the normal climatic fluctuations in the arroyo toad's range, which can include consecutive years of extremely high or low rainfall, human impacts can cause temporary or permanent extirpations of toads from some areas. Human activities that may cause adverse impacts to arroyo toads include urbanization and agriculture within and adjacent to riparian habitats, the use of pesticides and herbicides within or adjacent to arroyo toad habitat, dam building and the resulting reservoirs, water flow manipulations, sand and gravel mining, suction dredge mining, road placement across and within stream terraces, livestock grazing, off-highway vehicle use of roads and stream channels, the placement of campgrounds and other recreational facilities in arroyo toad habitat (especially on stream terraces), and the use of stream channels and terraces for recreational activities.

Previous Federal Actions

We first included the arroyo southwestern toad as a Category 2 candidate species in the September 18, 1985, Notice of Review of Candidate Species (50 FR 37958). It was included under the same category in subsequent notices on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). We were petitioned to list the arroyo toad under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), on December 30, 1992, and we published a proposed rule on August 3, 1993 (58 FR 41231). The arroyo toad was listed as endangered on December 16, 1994 (59 FR 64859). The designation of critical habitat was determined to be not prudent due to threats of vandalism and collection. A draft recovery plan for the arroyo southwestern toad was made available for public comment on May 6, 1998 (63 FR 25062), and we published the final recovery plan in September 1999.

At the time of listing, we concluded that designation of critical habitat for the arroyo toad was not prudent because such designation would not benefit the species. We were concerned that critical habitat designation would likely increase the degree of threat from vandalism, collection, or other human-induced impacts. We were aware of at least one instance of the apparent collection of a group of breeding males that had occurred during the listing process, following the publication of information regarding an ongoing scientific study. During the development of the final recovery plan, concern was raised about collecting activities on some public lands (Service 1999). However, we have determined that instances of vandalism have not

increased since the listing of the arroyo toad, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas are also identified in the recovery plans as the focus of our recovery efforts for the arroyo toad.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife,* CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Absent the settlement agreement, the processing of this proposed rule does not conform with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. We are processing this proposed rule in compliance with the above-mentioned settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, ''jeopardize the continued existence'' (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

This critical habitat designation identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection. All of the proposed critical habitat areas are considered essential to the conservation of the arroyo toad as described in the final recovery plan. The proposed critical habitat units contain a mosaic of habitats that provide breeding, foraging, sheltering, and living spaces for arroyo toads, as well as migration and dispersal corridors. Each critical habitat unit currently may not contain all of the primary constituent elements, but could develop them in the future. Some of the habitat in the proposed units could be improved through habitat rehabilitation or improved management (*e.g.,* removal of nonnative species or restoration of more natural streamflow regimes).

Methods

In determining areas that are essential to conserve the arroyo toad, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the arroyo toad undertaken by the local, state, Tribal, and Federal agencies operating within the species' range since its listing in 1994, and the identified steps necessary for recovery

outlined in the final Recovery Plan for the Arroyo Southwestern Toad (Service 1999).

We have also reviewed available information that pertains to the habitat requirements of this species, including material received since completion of the recovery plan. This material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; habitat evaluation models developed for and data submitted by the Los Padres, Angeles, San Bernardino, and Cleveland National Forests; habitat evaluation models for the San Diego County Multiple Species Conservation Program (MSCP), the North San Diego County Multiple Habitat Conservation Program (MHCP), and the North County Subarea of the MSCP for Unincorporated San Diego County; and a habitat capability model developed by Barto (1999) for San Diego County.

The areas we are proposing to designate as critical habitat currently provide some or all of those habitat components essential for the primary biological needs of the arroyo toad as defined by the primary constituent elements. Additionally, section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat.

Relationship to Mexico

We are not aware of any existing national level regulatory mechanism in Mexico that would protect the arroyo toad or its habitat, although new legislation for wildlife is pending in Mexico and Mexico has laws that could provide protection for rare species, there are enforcement challenges. If specific protections were available and enforceable in Mexico, for this species the portion of the range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of this species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Due to the complex life history and dispersal capabilities of the toads, and the dynamic nature of the environment in which they are found, all of the primary constituent elements may not be found in or adjacent to every stream reach and associated upland habitats proposed for critical habitat. It is important to provide for dispersal and migration corridors, as well as allowing room for expansion of the populations. Habitat rehabilitation efforts, as well as changes in current management activities, may be necessary in some areas in order to attain an optimal distribution of the primary constituent elements in each critical habitat unit.

The primary constituent elements of critical habitat for the arroyo toad include rivers and streams with a hydrologic regime that supplies sufficient flowing water of suitable quality at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained to provide for the needs of all life stages of the toad; upland habitats of sufficient width and quality (i.e., with areas of loose, sandy soil where toads can burrow underground) to provide foraging and living areas for subadult and adult arroyo toads (loose, sandy soils are typically most prevalent on alluvial terraces and valley bottomlands and occur primarily, but not exclusively, within 1.5 km (0.9 mi) of the streamcourse and less than 25 m (80 ft) in elevation above the adjacent stream channel); few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of areas that contain suitable habitat; and undisturbed habitats. Primary constituent elements, or components thereof, are found in all of the areas proposed for critical habitat.

Arroyo toads are not distributed uniformly throughout the critical habitat units. Arroyo toad breeding habitat is patchily distributed along the stream courses, and the same may be true of appropriate upland habitat. Some areas are suitable only for migration and dispersal between breeding and foraging habitats or to additional breeding pools that will accommodate expanding populations. The areas within the proposed units contain some or all of the primary constituent elements. Areas within the proposed critical habitat that may not have toads present at a given point in time may be capable of supporting the constituent elements because habitat conditions can change rapidly in response to flows and other factors, such as the development and shifting of sand and gravel bars, and creation and disappearance of pools. Terrace and upland habitat characteristics and suitability are dynamic and may change as a result of rainfall, earthquakes, fires, and other natural events.

Criteria Used To Identify Critical Habitat

The final recovery plan (Service 1999) for the arroyo toad identified the specific recovery needs of the species and serves as a starting point for identifying areas essential to the conservation of the toad. Those drainage basins identified in the final recovery plan as areas that should be maintained or rehabilitated in order to achieve arroyo toad recovery are generally reflected in this proposed critical habitat designation. The designation of critical habitat is one of several tools available for implementing the recovery strategy for the toad.

The recovery strategy for the arroyo toad focuses on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads throughout the historic range of

the species in California, and minimizing or eliminating impacts and threats to arroyo toad populations. Self-sustaining populations are those documented as having successful recruitment (i.e., inclusion of newly matured individuals into the breeding population) equal to 20 percent or more of the average number of breeding adults in 7 of 10 years of average to above average rainfall amounts with normal rainfall patterns. The level of recruitment is based on the currently available information, which indicates that arroyo toads may live for only about 5 years, and that losses of overwintering adults can be high. Having 20 percent or greater recruitment in 7 of 10 good rainfall years should provide a sufficient population base to maintain the population through adverse conditions such as during drought years or high flow years, or following fires.

Self-sustaining populations should require little or no direct human assistance such as captive breeding or rearing, or translocation of arroyo toads between sites. Protection and management of areas on a watershed basis is the most effective means of achieving such distributions of habitat. Areas should be large enough to allow a dynamic spatial and temporal distribution of suitable breeding, foraging, dispersal, and migration habitats in the event of random natural or human-related events such as fires, floods, and droughts.

Arroyo toads survive in areas that are ecologically and geographically distinct from one another, and the threats in those areas differ. To better address the recovery needs of the arroyo toad in each of these areas, we identified three recovery units, the Northern, Southern, and Desert, that reflect the ecological and geographic separations, and cover the known and historic range of the species. We are proposing some critical habitat in each of the recovery units to identify for the public and land managers those distinct ecological environments in which the toad is found that are essential to its recovery, and to enable land managers to make management decisions that may help stabilize and expand the populations in these units to preserve the species' full genetic diversity. The recovery units as identified in the final recovery plan are provided for reference in Table 1.

TABLE 1. RECOVERY UNITS FOR THE ARROYO TOAD.

Northern Unit:
San Antonio River, Monterey County
Sisquoc River and tributaries, Santa Barbara County
Upper Santa Ynez River Basin (Indian, Mono, Agua Caliente), Santa Barbara County
Sespe Creek., Ventura County
Piru Creek (Upper and Lower), Ventura and Los Angeles counties
Upper Santa Clara River Basin, Los Angeles County
Upper Los Angeles Basin: (Big Tujunga, tributaries, Arroyo Seco), Los Angeles County
Southern Unit:
Santiago Creek, Orange County
San Jacinto and Bautista Creek, Riverside County
San Juan basin and Trabuco Creeks, Orange and Riverside counties
San Mateo and San Onofre Creek Basins, San Diego and Orange counties
Lower Santa Margarita basin (De Luz, Roblar, and Sandia Creeks), San Diego County
Upper Santa Margarita Basin (Temecula Creek, Arroyo Seco), Riverside and San Diego Counties
Lower and Middle San Luis Rey Basin (below Lake Henshaw), San Diego County
Upper San Luis Rey basin (above Lake Henshaw), San Diego County
Santa Ysabel Creek, San Diego County
San Diego basin (including San Vicente Creek), San Diego County
Sweetwater River Basin (including Viejas, Peterson Creeks), San Diego County
Cottonwood Creek Basin, San Diego County
Desert Recovery Unit:
Little Rock Creek, Los Angeles County
Upper Mojave River Basin (Mojave, Deep, Horsethief, Little Horsethief), San Bernardino County
Whitewater River Basin, Riverside County.

In an effort to map areas essential to the conservation of the species, we used data on known arroyo toad locations, focusing specifically on those areas identified in the recovery plan as essential for the stabilization and reclassification of the species. We then used spatial data on stream gradient to better determine the extent of suitable breeding habitat in these areas. Stream segments containing suitable stream gradient are often patchily distributed and interspersed with higher gradient segments. These interspersed high-gradient segments were included in the mapped essential stream reaches because of their proximity to suitable breeding habitat and their importance in facilitating movement between breeding sites.

GIS-based modeling was then used to identify upland areas within a 25-m (80-ft) elevation range of each essential stream reach and no more than 1.5 km (0.9 mi) away from the stream. This technique was effective at capturing alluvial areas associated with river valleys without extending appreciably up the adjacent hillsides. Thus, the width of the upland component of critical habitat varies based on topography. The habitat is wide in broad alluvial valleys and narrow in places where streams run through constricted canyons or between surrounding hills.

To provide a legal description of the proposed critical habitat units, a 1-km^2 (0.62 mi^2) Universal Transverse Mercator (UTM) grid was overlaid on each essential stream reach and its surrounding upland habitat area (as defined by the GIS-based modeling described above). The proposed critical habitat units represent all 1-km^2 (0.62 mi^2) UTM grid squares that contain portions of an essential stream segment or upland habitat area. Defining critical habitat unit boundaries at a 1-km^2 (0.62 mi^2) scale resolution does result in the inclusion of some areas that potentially lack the primary constituent elements necessary for arroyo toads.

To identify proposed critical habitat units, we first examined those lands under Federal jurisdiction. Those lands include areas managed by the Department of Defense (DOD), the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), the Army Corps of Engineers (Army Corps), and the U.S. Fish and Wildlife Service (Service). We also considered the existing status of non-Federal and private lands in designating areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for arroyo toads under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not being proposed for inclusion in critical habitat as discussed in section 3(5) of the Act.

We considered, and are proposing, portions of the Pala, Rincon, Capitan Grande, Sycuan, Viejas, La Posta, and Soboba Indian Reservations because we believe that riparian and adjoining upland areas on Tribal lands may be essential to the continued existence of arroyo toads. However, the short

amount of time allowed under the settlement agreement approved by the court to propose critical habitat precluded us from adequately coordinating with the respective Tribes. Subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for the arroyo toad. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweighs the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for arroyo toad conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 2. Proposed critical habitat includes arroyo toad habitat throughout the species' range in the United States (*i.e.,* Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino, Orange, and San Diego Counties, California). Lands proposed are under private, local agency, county, State, Tribal, and Federal ownership. Lands proposed as critical habitat have been divided into 22 Critical Habitat Units. Brief descriptions of each unit, and reasons for proposing them as critical habitat, are presented below. The units are generally based on geographically distinct river basins. In several instances, a river basin has been broken into two or more units based on human or natural landscape features that effectively separate portions of the basin (*e.g.,* a large reservoir or gorge).

Jennings and Hayes (1994) estimate that arroyo toads have lost up to 75 percent of their historic habitat. Although the linear measure of historically occupied streams may not be four times what is currently occupied, it is clear from museum records and data on extant populations that the habitats capable of supporting large numbers of arroyo toads have decreased dramatically in the last 100 years. The reaches that typically support or historically supported the highest densities of toads are those in the lower and middle portions of river basins, typically associated with third order or larger streams. Many of those reaches have been lost to urban development, intensive agriculture, and reservoirs.

Arroyo toads now occur as isolated subpopulations on the middle and upper reaches of tributaries of many large rivers. They probably occurred on these creeks downstream to the confluences with the mainstems. If so, and if arroyo toads used the mainstems for breeding or dispersal, all of the arroyo toads in a single basin would have constituted a single metapopulation. The isolation of subpopulations on the tributaries can lead to inbreeding and genetic instability, making them more susceptible to losses from disease or other problems. Losses of genetic variability associated with inbreeding can make it more difficult for a population to survive when environmental conditions change, as associated with long-term climatic changes or fluctuations (*e.g.,* ice ages, global warming). When populations in isolated reaches are greatly reduced or lost due to natural or human-related impacts, including catastrophic fires or floods, the loss of habitat continuity and the greater distances between subpopulations will make it more difficult for arroyo toads to recolonize those fragmented habitats (see *e.g.,* Barto 1999).

Northern Recovery Unit

The following seven critical habitat units are located in the Northern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Most of the lands are Federal, and management needs are being addressed through the section 7 consultation process and the development of management plans and conservation strategies.

Unit 1: San Antonio River, Monterey County

Unit 1 consists of the San Antonio River and adjacent uplands, from the junction of Forest Creek downstream to San Antonio Reservoir. The unit encompasses approximately 9,100 ha (22,600 ac), 98 percent of which is on the Fort Hunter Liggett Military Reservation. This is the northernmost known occurrence of arroyo toads and is approximately 160 km (100 mi) north of the nearest documented extant population. The protection and recovery of this population are essential to maintain the complete genetic variability of the species and the full range of ecological settings within which it is found.

Unit 2: Sisquoc River, Santa Barbara County

Unit 2 consists of the Sisquoc River and adjacent uplands, from Sycamore Campground downstream to its confluence with the Santa Maria River. The unit encompasses approximately 11,700 ha (28,900 ac), of which 67 percent is private land and 33 percent is within the Los Padres National Forest. Upper stretches of the river are within the National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on private lands. This long, unregulated stream is occupied arroyo toad habitat and is one of the few remaining major rivers in southern California with a natural flow regime.

Unit 3: Upper Santa Ynez River Basin, Santa Barbara County

Unit 3 is located upstream of Gibraltar Reservoir and incorporates portions of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit encompasses approximately 5,700 ha (14,100 ac) within the Los Padres National Forest, with over 90 percent on National Forest lands and the remainder in private inholdings. Proposed portions of the upper Santa Ynez River watershed extend from Jameson Reservoir down to Gibraltar Reservoir. Indian Creek basin is proposed from the Buckthorn Creek confluence down to the Mono Debris Dam. Mono Creek is proposed from the first unnamed stream below The Narrows to its confluence with the Santa Ynez River. A substantial and well-studied arroyo toad population occurs in this area (Sweet 1992, 1993). It is likely the remnants of a much larger population that historically extended downstream below what is now Lake

Cachuma and upstream into the area occupied by Jameson Reservoir.

Unit 4: Sespe Creek, Ventura County

Unit 4 includes Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 1,075 m (3,530 ft)) downstream to the confluence with Alder Creek. The unit encompasses approximately 5,800 ha (14,300 ac), of which 96 percent is on the Los Padres National Forest and the remainder is in private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999) along an undammed stream in a watershed that is predominately National Forest land. In all likelihood, arroyo toad populations in units 4, 5, and 6 historically were part of a large Santa Clara River Basin metapopulation. Substantive barriers to toad movement now exist between these units, including dams, agriculture, and urban development.

Unit 5: Piru Creek, Ventura and Los Angeles Counties

Unit 5 includes Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir (Subunit A), and from Piru Gorge downstream to Lake Piru (Subunit B). Subunit B also includes Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The unit encompasses approximately 7,800 ha (19,300 ac), 95 percent of which is within the Los Padres and Angeles National Forests, with the remaining on private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999).

Unit 6: Upper Santa Clara River Basin, Los Angeles County

Unit 6 includes portions of Castaic Creek, San Francisquito Creek, the upper Santa Clara River, and adjacent uplands. The unit encompasses approximately 13,900 ha (34,300 ac), of which 77 percent is private land and 23 percent is within the Angeles National Forest. The proposed portion of Castaic Creek extends from Cienega Spring downstream to Castaic Lake (Subunit A). A portion of Fish Creek above the confluence with Castaic Creek is also included in Subunit A. Arroyo toads occur below Castaic Lake to the confluence of the Santa Clara River (Subunit B). The upper Santa Clara River is proposed from Bee Canyon downstream to the confluence with Castaic Creek (Subunit B). San Francisquito Creek is proposed from Bee Canyon (a different Bee Canyon) to the confluence with the Santa Clara River (Subunit B). San Francisquito Creek offers an excellent opportunity for expanding the Upper Santa Clara arroyo toad population with appropriate management of nonnative plants and habitat rehabilitation.

Unit 7: Upper Los Angeles River Basin, Los Angeles County

Unit 7 includes portions of Big Tujunga, Mill, Alder, and Arroyo Seco creeks, and adjacent uplands. The unit encompasses approximately 8,700 ha (21,500 ac), of which 68 percent is within the Angeles National Forest and 32 percent is private land. Big Tujunga Creek is proposed from Big Tujunga Dam downstream to Hansen Lake (Subunit A) (excluding Big Tujunga Reservoir). Big Tujunga Creek upstream from Big Tujunga Lake to 2 km (1.2 mi) above the confluence with Alder Creek, Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek are proposed (Subunit B). Arroyo Seco is proposed from the Long Canyon confluence downstream to Devil's Gate Reservoir (Subunit C). Arroyo toads occupy each of these drainages. Big Tujunga Creek below the reservoir is an area with high potential for expanding toad numbers through careful management of land use activities and water releases from the dam.

Southern Recovery Unit

The following 12 critical habitat units are located in the Southern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Arroyo toads probably occurred in and along the coastal plain portions of all the streams in this unit, but are now found on the coastal plain only in units 8, 10, 11, and 12. The latter two units are largely encompassed by Camp Pendleton Marine Corps Base.

Unit 8: Santiago Creek, Orange County

Unit 8 is centered around the confluence of Santiago, Black Star, and Baker creeks, just above Irvine Lake. The unit encompasses approximately 1,200 ha (3,000 ac), 95 percent of which is private land and 5 percent is within the Cleveland National Forest. Black Star Creek is proposed from near the southwest corner of Section 30 (T4S, R7W) downstream to Santiago Creek. An approximately 3 km (1.9 mi) stretch of lower Baker Canyon is proposed. Portions of the Orange County Central/Coastal Natural Community Conservation Planning Act of 1991 (NCCP)/HCP planning area fall within the unit boundaries, but areas where take has been authorized are not being proposed for critical habitat. The current status of arroyo toads in this unit is poorly known, but there are historic records from the 1970s and high-quality habitat still exists in the area. The unit is important for arroyo toad recovery, as it is the northernmost remaining habitat in Orange County and supports the only remaining population within the lower Santa Ana River Basin.

Unit 9: San Jacinto River and Bautista Creek, Riverside County

Unit 9 includes portions of the San Jacinto River and Bautista Creek and adjacent uplands, several miles east of the town of Hemet. The unit encompasses approximately 5,370 ha (13,300 ac), of which 62 percent is private land and 24 percent is within the San Bernardino National Forest. The San Jacinto River is proposed from the Sand Canyon confluence downstream to just below the confluence with Indian Creek. The lower 1 km (0.6 mi) of Indian Creek is also included. Bautista Creek is proposed from near the middle of section 20 (T6S, R2E) downstream to near the middle of section 21 (T5S, R1E), at the point where the levee starts. The current status of arroyo toads in this unit is poorly known, but there are historic records from the 1970s and high quality habitat still exists in the area. It is an important area for recovery, being the only remaining area in the San Jacinto River Basin capable of supporting a substantial population.

Approximately 330 ha (815 ac) of the Soboba Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along lower Indian Creek and the San Jacinto River are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Soboba Tribe, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 10: San Juan and Trabuco Creeks, Orange and Riverside Counties

Unit 10 includes portions of San Juan Creek, Bell Canyon, Trabuco Creek, and adjacent uplands. The unit encompasses approximately 8,600 ha (21,300 ac), of which 59 percent is private land, 21 percent is Orange County park land (*i.e.*, Caspers Wilderness Park and O'Neil Regional Park), and 20 percent is on the Cleveland National Forest. The proposed portion of San Juan Creek extends from the bottom of Decker Canyon downstream to Interstate 5 (Subunit A). The proposed portion of Bell Canyon extends from just below

Crow Canyon downstream to the confluence with San Juan Creek (Subunit A). An approximately 8 km (5 mi) stretch of Trabuco Creek is proposed, extending downstream from Falls Canyon (Subunit B). San Juan Creek supports a large arroyo toad population, which is concentrated within Caspers Wilderness Park and private lands downstream. Trabuco Creek is occupied by arroyo toads, but there is little additional information on their distribution and abundance in this drainage. Although habitat has been degraded in the far downstream portions of San Juan Creek, there is still high potential for restoration and recovery in this area.

Unit 11: San Mateo and San Onofre Basins, San Diego and Orange Counties

Unit 11 includes portions of San Mateo, San Onofre, Christianitos, Talega, Gabino, and La Paz creeks, and adjacent uplands. The unit encompasses approximately 11,200 ha (27,600 ac), of which 78 percent is within the Camp Pendleton Marine Corps Base and 20 percent is on private land. The proposed portion of San Mateo Creek extends from Devils Canyon downstream to Interstate 5. The proposed portion of San Onofre Creek extends approximately 16 km (10 mi) upstream from Interstate 5 and includes portions of Jardine Canyon. Christianitos Creek is proposed from just above Gabino Creek downstream to the confluence with San Mateo Creek. An approximately 5 km (3.1 mi) stretch of Gabino Creek upstream from its confluence with Christianitos Creek is proposed, including about 1 km (0.6 mi) of La Paz Creek. An approximately 7 km (4.4 mi) stretch of Talega Creek upstream from its confluence with Christianitos Creek is also proposed. This unit supports a large number of arroyo toads (D.C. Holland, unpubl. data) and one of the few remaining populations on the coastal plain.

Unit 12: Lower Santa Margarita River, San Diego County

Unit 12 includes the Santa Margarita River and adjacent uplands, from the lower end of Temecula Canyon to Interstate 5. It also includes De Luz Creek from the town of De Luz to the confluence with the Santa Margarita River and approximately 2.5 km (1.6 mi) of Roblar Creek above its confluence with the Santa Margarita River. The unit encompasses approximately 9,800 ha (24,200 ac), of which 74 percent is within either the Camp Pendleton Marine Corps Base or the Fallbrook Naval Weapons Station and 25 percent is on private land. The arroyo toad population within this unit is large (D.C. Holland, unpubl. data) and one of the few remaining on the coastal plain.

Unit 13: Upper Santa Margarita River Basin, Riverside and San Diego Counties

Unit 13 is located above Vail Lake and includes portions of Temecula Creek, Wilson Creek, Arroyo Seco Creek, and adjacent uplands. The unit encompasses approximately 9,800 ha (24,200 ac), of which 78 percent is private land and 18 percent is within the Cleveland National Forest. Temecula Creek is proposed from Dodge Valley downstream to Vail Lake. Wilson Creek is proposed from Lancaster Valley down to Vail Lake, and the Arroyo Seco segment extends from Crosley Homestead down to Vail Lake. The broad, flat alluvial valleys found in this unit contain high-quality habitat for arroyo toads, and the species occurs in each of the proposed drainages. It is the largest and highest quality area of suitable arroyo toad habitat in Riverside County.

Unit 14: Lower and Middle San Luis Rey River Basin, San Diego County

Unit 14 includes portions of the San Luis Rey River below Lake Henshaw and adjacent uplands, and includes the lower portion of Keys Creek. The unit encompasses approximately 13,400 ha (33,100 ac), of which 77 percent is private land and 17 percent is Tribal land. The San Luis Rey River is proposed from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the city of Oceanside. Approximately 2.7 km (1.7 mi) of Keys Creek upstream from the confluence with the San Luis Rey is also proposed. This long, low-elevation (all below 305 m (1,000 ft) in elevation) unit, situated in a broad, flat valley, is prime occupied habitat for arroyo toads. Approximately 1,365 ha (3,375 ac) of the Pala Indian Reservation and 920 ha (2,275 ac) of the Rincon Indian Reservation are included in this unit. Within these reservations, riparian and associated upland habitats along the San Luis Rey River, Pala Creek, and other tributary streams are considered essential for the conservation of the arroyo toad.

The San Luis Rey River provides important high quality habitat for the arroyo toad. However, intensive urbanization and agriculture near the coast, and dams and water diversions in the upper end, have greatly reduced habitat quality in the upper and lower portions of this drainage, leaving only the middle stretch of the river with any remaining high quality, occupied toad habitat. Approximately 19 percent of the identified remaining suitable habitat along the San Luis Rey is on Tribal land (13 percent on the Pala and 6 percent on the Rincon). The Pala Reservation is in the middle of the San Luis Rey critical habitat unit. If habitat on the reservation is lost, the remaining population would be highly fragmented and vulnerable to extirpation. Also, land uses on the stream terrace (primarily agricultural fields) have been more intensive on the private lands, particularly in the lower end of the unit. Thus, the Tribal lands actually support a greater percentage of high quality upland habitat. Based on the outcome of discussions with the Pala and Rincon Indian Tribes, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 15: Upper San Luis Rey Basin, San Diego County

Unit 15 includes the upper San Luis Rey River above Lake Henshaw, two of its headwater tributaries, and adjacent uplands. The unit encompasses approximately 7,400 ha (18,300 ac), of which 68 percent is private land and 32 percent is within the Cleveland National Forest. The upper San Luis Rey River is proposed from the Indian Flats area downstream to the upper end of Lake Henshaw (Subunit A). Agua Caliente Creek is proposed from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey (Subunit A). An approximately 2.5 km (1.6 mi) stretch of the West Fork of the San Luis Rey River is proposed where it runs through Barker Valley (Subunit B). Arroyo toads occur in each of these drainages, with the largest concentration found along Agua Caliente Creek. This unit contains an important assemblage of several small, disjunct, high-elevation populations and one large, core population in an area where in-stream and/or overland dispersal between populations is probably still possible.

Unit 16: Santa Ysabel Creek, San Diego County

Unit 16 includes portions of Santa Ysabel Creek and adjacent uplands, and includes portions of Santa Maria Creek, Guejito Creek, and Temescal Creek (Pamo Valley). The unit encompasses approximately 9,500 ha (23,500 ac), of which 76 percent is private land and 20 percent is within the Cleveland National Forest. Santa Ysabel Creek is proposed from Sutherland Reservoir downstream to the western boundary of the Cleveland National Forest near Boden Canyon (which is the eastern boundary of the San Diego MSCP area) (Subunit A). Approximately 7 km (4.3 mi) of Temescal Creek is proposed from the

northern edge of Pamo Valley to the confluence with Santa Ysabel Creek (Subunit A). Approximately 12 km (7.5 mi) of Guejito Creek is proposed from the 610 m (2,000 ft) elevation contour downstream to the San Diego MSCP boundary near San Pasqual Valley (Subunit B). Approximately 10 km (6 mi) of Santa Maria Creek is proposed from the west side of Ramona to the San Diego MSCP boundary near San Pasqual Valley (Subunit C). Arroyo toads occur in each of these drainages, with a particularly substantial concentration in Pamo Valley. This unit provides an important linkage to a substantial arroyo toad population in San Pasqual Valley that occurs within the San Diego MSCP area.

Unit 17: San Diego River/San Vicente Creek, San Diego County

Unit 17 includes portions of the San Diego River and San Vicente Creek and adjacent uplands. The unit encompasses approximately 5,100 ha (12,600 ac), of which 65 percent is private land and 22 percent is within the Cleveland National Forest. Subunit A includes the San Diego River from Ritchie Creek downstream to the upper edge of El Capitan Reservoir (including approximately 1 km (0.6 mi) of lower Cedar Creek) and San Vicente Creek from the eastern end of San Diego Country Estates downstream to where the creek crosses Wildcat Canyon Road (the MSCP area boundary). Subunit B extends from El Capitan Reservoir to El Monte County Park. Subunit C extends from approximately 2 km (1.2 mi) below El Monte County Park downstream to the confluence with San Vicente Creek. The upper San Diego River and San Vicente Creek are both occupied by arroyo toads. This unit also provides an important linkage to populations occurring within the San Diego MSCP area. Approximately 360 ha (900 ac) of the Capitan Grande Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along the upper San Diego River above El Capitan Lake are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Barona and Viejas Indian Tribes (which jointly govern the Capitan Grande Reservation), and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule. Approximately 190 acres of the Barona Indian Reservation south of San Vicente Creek are also included in this unit. These acres are not considered to be high-quality arroyo toad habitat; they lie within the unit boundary because of the spatial scale at which these units were mapped. Thus, Tribal lands on the Barona Indian Reservation are not considered essential to conserve the toad and are not being proposed for critical habitat. Because of the short time-line associated with this proposal, we were unable to accurately remove this area from the proposed critical habitat boundaries.

Unit 18: Sweetwater River Basin, San Diego County

Unit 18 includes portions of the Sweetwater River, Peterson Canyon, Viejas Creek, and adjacent uplands. The unit encompasses approximately 11,410 ha (28,200 ac), of which 52 percent is private land, 22 percent is on California State Park land, 17 percent is within the Cleveland National Forest, and 6 percent is on the San Diego National Wildlife Refuge. Three disjunct portions of the Sweetwater River are proposed: from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the San Diego MSCP area boundary (Subunit A), an approximately 1-km (0.6-mi) segment immediately above Loveland Reservoir that is outside the MSCP area boundary (Subunit B), and from immediately below Loveland Dam downstream to the upper edge of Sweetwater Reservoir (Subunit C). Peterson Canyon is proposed from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir (Subunit A). Viejas Creek is proposed from the western end of Viejas Valley downstream to the Congressional boundary of the Cleveland National Forest (which is the eastern boundary of the San Diego MSCP area) (Subunit A). All of the drainages included in this unit support arroyo toads. The unit provides an important linkage to populations on the lower Sweetwater River, which occur within the San Diego MSCP area. Approximately 185 ha (460 ac) of the Sycuan Indian Reservation and 100 ha (250 ac) of the Viejas Indian Reservation are included in this unit. Within the reservations, riparian and associated upland habitats along Viejas Creek (Viejas Reservation) and the lower part of Sycuan Creek (Sycuan Reservation) are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Viejas and Sycuan Indian Tribes, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 19: Cottonwood Creek Basin, San Diego County

Unit 19 includes portions of Cottonwood Creek, adjacent uplands, and portions of the following tributaries: Potrero Creek, Pine Valley Creek, Scove Canyon, Morena Creek, La Posta Creek, and Kitchen Creek. The unit, which is the largest proposed, encompasses approximately 18,000 ha (44,500 ac), of which 54 percent is within the Cleveland National Forest and 34 percent is private land. Two disjunct portions of Cottonwood Creek are proposed: From Buckman Springs (near Interstate 8) downstream to Morena Reservoir including approximately 13 km (8.1 mi) of La Posta Creek, 6 km (3.7 mi) of Morena Creek, and 2.5 km (1.6 mi) of Kitchen Creek (Subunit A). Subunit B extends from approximately 4 km (2.5 mi) below Morena Reservoir downstream to State Highway 94 (excluding Barrett Reservoir) and Potrero Creek from approximately the 752 m (2,466 ft) elevation benchmark downstream to the confluence with Cottonwood Creek. Two disjunct portions of Pine Valley Creek are proposed: From the north edge of section 12 (T15S, R4E) downstream to approximately 1 km (0.6 mi) south of Interstate 8 including approximately 4 km (2.5 mi) of Scove Canyon and 1 km (0.6 mi) of Noble Creek (Subunit C) and from the Nelson Canyon confluence downstream to Barrett Reservoir (Subunit D). Approximately 170 ha (425 ac) of the La Posta Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along La Posta Creek are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the La Posta Tribe, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule. This unit encompasses a large number of distinct arroyo toad occurrences in an area where in-stream and/or overland dispersal between populations is probably still possible. It also provides an important linkage to populations occurring within the San Diego MSCP area.

Desert Recovery Unit

The following four critical habitat units are in the Desert Recovery Unit as described in the final recovery plan. Each of these units is isolated from each other and from any other units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. Sufficient habitat needs to be secured and managed so that threats are

reduced and each population can increase in size.

Unit 20: Little Rock Creek, Los Angeles County

Unit 20 includes approximately 5 km (3.1 mi) of Little Rock Creek below Little Rock Reservoir (Subunit A) and from the South Fork confluence downstream to Little Rock Reservoir (Subunit B). Also included in Subunit B is an approximately 1.5 km (0.9 mi) segment of Santiago Creek upstream of the confluence with Little Rock Creek and adjacent uplands. The unit encompasses approximately 3,000 ha (7,400 ac), of which 79 percent is within the Angeles National Forest and 20 percent is private land. A substantial arroyo toad population occurs in this unit, in which the management of recreational activities has recently changed. Studies are currently under way to better determine the distribution of the population along the creek and to assess upland habitat use (Ramirez 2000).

Unit 21: Upper Mojave River Basin, San Bernardino County

Unit 21 includes portions of the Mojave River, the West Fork of the Mojave River, Horsethief and Little Horsethief creeks, Deep Creek, and adjacent uplands. The unit encompasses approximately 14,200 ha (35,100 ac), of which 26 percent is within the San Bernardino National Forest, 56 percent is private land, and 9 percent is U.S. Army Corps of Engineers-managed land associated with the flood control reservoir. Two separate segments of the Mojave River are proposed: (1) From Mojave River Forks Dam downstream approximately 4 km (2.5 mi) and (2) from approximately 2 km (1.2 mi) southeast of the Upper Narrows (section 14, T5N, R4W) downstream to approximately 6 km (3.7 mi) below the Lower Narrows (section 13, T6N, R5W). The West Fork is proposed from near the 1462 m (3,613 ft) elevation benchmark downstream to the confluence with Deep Creek (excluding Silverwood Lake). Deep Creek is proposed from near Devil's Hole to the confluence with the West Fork. Horsethief Canyon is proposed from Little Horsethief Creek to the confluence with the West Fork of the Mojave River. Little Horsethief Creek is proposed from approximately the western edge of section 28 (T3N, R5W) downstream to the confluence with Horsethief Creek. Summit Valley, through which Horsethief Creek flows, to and downstream of the confluence with the West Fork, is a broad, flat, alluvial valley that supports large numbers of arroyo toads (Ramirez 1999). It is probably the largest concentration of arroyo toads on the desert side of the mountains.

Unit 22: Whitewater River, Riverside County

Unit 22 includes portions of the Whitewater River and adjacent uplands, from near Red Dome downstream to one-quarter mile south of Interstate 10. The unit encompasses approximately 2,400 ha (5,900 ac), of which 56 percent is BLM land and 44 percent is private land. The current status of arroyo toads in this unit is poorly known, but recent sightings have occurred and high-quality habitat still exists in the area.

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

County	Forest service	BLM	FWS	Military	State/Local	Tribal	Private	Total
Monterey	0	0	0	8,908 ha (22,013 ac).	0	0	218 ha (539 ac) ..	9,126 ha (22,552 ac)
San Luis Obispo	0	0	0	0	0	0	253 ha (625 ac) ..	253 ha (625 ac)
Santa Barbara	9,008 ha (22,260 ac).	0	0	0	0	0	8,120 ha (20,066 ac).	17,128 ha (42,326 ac)
Ventura	10,575 ha (26,130 ac).	0	0	0	0	0	546 ha (1,350 ac)	11,121 ha (27,480 ac)
Los Angeles	13,914 ha (34,382 ac).	58 ha (143 ac)	0	0	58 ha (143 ac)	0	14,050 ha (34,719 ac).	28,080 ha (69,387 ac)
San Bernardino	3,725 ha (9,204 ac).	496 ha (1,225 ac)	0	1,221 ha (3,017 ac).	816 ha (2,016 ac)	0	7,943 ha (19,627 ac).	14,200 ha (35,089 ac)
Riverside	3,132 ha (7,738 ac).	1,949 ha (4,817 ac).	0	0	103 ha (255 ac) ..	330 ha (815 ac) ..	10,085 ha (24,920 ac).	15,599 ha (38,545 ac)
Orange	1,178 ha (2,910 ac).	0	0	51 ha (125 ac)	1,854 ha (4,581 ac).	0	8,431 ha (20,833 ac).	11,514 ha (28,449 ac)
San Diego	18,062 ha (44,631 ac).	1,424 ha (3,519ac).	723 ha (1,787 ac)	15,922 ha (39,344 ac).	4,436 ha (10,960 ac).	3,100 ha (7,660 ac).	42,924 ha (106,066 ac).	86,591 ha (213,963 ac)
Total	59,594 ha (147,255 ac).	3,927 ha (9,704 ac).	723 ha (1,787 ac)	26,103 ha (64,499 ac).	7,267 ha (17,955 ac).	3,430 ha (8,475 ac).	92,572 ha (228,745 ac).	193,616 ha (478,419 ac)

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminish the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the arroyo toad or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e. g., Federal Highway Administration or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the arroyo toad. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the arroyo toad is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, DOD, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Fort Hunter Liggett, Camp Pendleton, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service (INS);

(8) Licensing of construction of communication sites by the Federal Communications Commission, and;

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

Relationship to Habitat Conservation Plans

A number of habitat conservation planning efforts have been completed within the range of the arroyo toad. Principal among these are the NCCP efforts in San Diego and Orange counties. The San Diego MSCP, and its approved subarea plans, provide measures to conserve known populations of the arroyo toad within Santa Ysabel Creek in San Pasqual Valley, San Vicente Creek above San Vicente Reservoir, Sweetwater River, Otay River, and Cottonwood Creek in Marron Valley. Area-specific management directives for MSCP subarea plans must address the conservation of the arroyo toad by protecting and maintaining sufficient, suitable low-gradient sandy stream habitat to meet breeding requirements, preserving sheltering and foraging habitats within 1 km (0.6 mi) of occupied breeding habitat within designated preserve lands, controlling nonnative predators, and controlling human impacts within designated preserves. Incidental take of arroyo toads is authorized through the MSCP, but only for certain upland areas outside of U.S. Army Corps of Engineers jurisdiction.

All lands within the MSCP planning areas considered essential to the conservation of the arroyo toad were identified as preserve areas and are managed for the benefit of the arroyo toad under the terms of the MSCP. Therefore, with one exception, we have determined that non-Federal lands within MSCP planning areas that have an approved plan and an executed implementation agreement, approved as of the date of this rule, do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat. The exception concerns the reach of the Sweetwater River between Loveland and Sweetwater Reservoirs that is within the County of San Diego's MSCP plan. This area is affected by activities (*e.g.,* reservoir water transfers) that are outside the authority of the approved County's MSCP plan. Therefore, we have included this limited reach of the Sweetwater River as critical habitat.

The arroyo toad has been identified as a ''conditionally covered'' species by the Orange County Central/Coastal Subregion NCCP/HCP. ''Conditional coverage'' allows projects to proceed within the Central/Coastal subregion that will impact ''smaller populations (except for the lower Limestone Creek population), reintroduced populations, or populations that have expanded due to NCCP reserve management'' (pg. 94, Orange County Central/Coastal NCCP/HCP IA, Section 8.3.2). However, ''habitat that supports a major arroyo toad population that plays an essential role in the distribution of the arroyo toad in the subregion is not covered'' (pg. 94, Orange County Central/Coastal NCCP/HCP IA, Section 8.3.2). We are not proposing designation of critical habitat in the Orange County Central/Coastal NCCP/HCP planning area where take has been authorized.

Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the arroyo toad, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the arroyo toad. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.,* counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify lands essential for the long-term conservation of the arroyo toad and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the arroyo toad and in areas we propose as critical habitat. These HCPs, which will incorporate appropriate adaptive management, should provide for the conservation of the species. Furthermore, we will be doing intra-service consultation on the impacts of these HCPs on designated critical habitat and determining whether it would destroy or adversely modify critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the arroyo toad should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (*see* Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura or Carlsbad Fish and Wildlife Offices (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion

will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for the arroyo toad as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the distribution of the arroyo toad, the amount and distribution of its habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the arroyo toad, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal and private lands within the boundaries of any existing HCP and subarea plan with an executed Implementation Agreement and permit for arroyo toads approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat for the toad. We believe that, since an existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the arroyo toad, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate as critical habitat reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the arroyo toad is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the arroyo toad in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the arroyo toad, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following, or other approaches, for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the arroyo toad:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the arroyo toad, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish the final determination by January 1, 2001, we have scheduled two public hearings. The hearings are scheduled to be held in Valencia, California, on June 27, 2000, and in Temecula, California, on June 29, 2000. Written comments submitted during the comment period are considered to be of equal weight as comments presented at a public hearing. For additional information on public hearings, see the **ADDRESSES** section.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event of large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the hearings are published in the **ADDRESSES** section of this **Federal Register** notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The arroyo toad was listed as an endangered species in 1994. In fiscal years 1994 through 1999, the Ventura and Carlsbad Fish and Wildlife Offices conducted 27 and 55, respectively, formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the arroyo toad.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 3). Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

TABLE 3.—IMPACTS OF ARROYO TOAD LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Removing, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation that the Federal Government carries out.	None.

TABLE 3.—IMPACTS OF ARROYO TOAD LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private Activities Potentially Affected [4].	Removing, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the arroyo toad as an endangered species (December 16, 1994 (59 FR 64859) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the arroyo toad since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 2 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, Tribal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, Department of Defense, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Fort Hunter Liggett, Camp Pendleton, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(8) Licensing of construction of communication sites by the Federal Communications Commission, and;

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

Many of the activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of occupied areas as critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (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. Small governments will be affected only to the extent that any

programs having Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(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. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency action. The rule will not increase or decrease the current restrictions on private property concerning take of the arroyo toad. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the arroyo toad.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the arroyo toad with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the arroyo toad imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

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. We propose to designate critical habitat in accordance with the provisions of the Act, and will hold public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the arroyo toad.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require Office of Management and Budget approval under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 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).

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 understand that we must coordinate with federally recognized Tribes on a Government-to-Government basis.

We determined that certain Tribal lands are essential for the conservation of the arroyo toad because they support essential populations and habitat, and activities conducted or planned on those lands may adversely affect the conservation of the arroyo toad. Therefore, we are considering designating critical habitat for the arroyo toad on Tribal lands. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat according to section 4(b)(2) of the Act. However, we cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Due to the short amount of time allowed under the settlement agreement for preparing this rule, we have not yet consulted with the affected Tribes, but we will do so before making a final decision on critical habitat.

References Cited

Barto, W.S. 1999. Predicting potential habitat for the arroyo toad (*Bufo microscaphus californicus*) in San Diego County using a habitat suitability model and digital terrain data. Unpublished Masters thesis, San Diego State University. vii + 135 pp.

Gergus, E.W.A. 1998. Systematics of the *Bufo microscaphus* complex: allozyme evidence. Herpetologica 54(3): 317–325.

Griffin, P.C., T.J. Case, and R.N. Fisher. 1999. Radio telemetry study of *Bufo californicus,* arroyo toad movement patterns and habitat preferences. Contract report to California Department of Transportation Southern Biology Pool. v + 66 pp.

Jennings, M.R., and M.P. Hayes. 1994. Amphibian and reptile species of special concern in California. Final report to the California Department of Fish and Game, Inland Fisheries Division, Rancho Cordova, California. Contract 8023. iii + 255 pp.

Ramirez, R. S., Jr. 2000. Arroyo toad (*Bufo californicus*) radio telemetry study, Little Rock Creek, Los Angeles County, California. Interim Report. Prepared for U.S.D.A. Forest Service, Angeles National Forest, Arcadia, California. 62 + v pp., plus appendix.

U.S. Fish and Wildlife Service. 1999. Arroyo southwestern toad (*Bufo microscaphus californicus*) recovery plan. U.S. Fish and Wildlife Service, Portland, Oregon. vi + 119 pp.

U.S. Forest Service. 1999. Untitled, unpublished document regarding arroyo toad findings on Piru Creek. Los Padres National Forest, Mt. Pinos Ranger District. 4 pp.

Author(s)

The primary authors of this proposed rule are Grace McLaughlin (Ventura) and John Stephenson (Carlsbad) (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 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.

2. In § 17.11(h) revise the entry for ''Toad, arroyo southwestern'' under ''AMPHIBIANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Toad, arroyo (= arroyo south-western).	*Bufo microscaphus californicus*.	U.S.A. (CA), Mexico	Entire	E	568	17.95(d)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(d) by adding critical habitat for the arroyo southwestern toad (*Bufo microscaphus californicus*), in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) Amphibians.

* * * * *

Arroyo southwestern toad (*Bufo microscaphus californicus*)

1. Critical habitat units are depicted for Monterey, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego counties, California, on the maps below.

2. Critical habitat includes stream and river courses, riparian habitats, and terrace and upland habitats up to 25 m (80 ft) elevation above the stream course and within 1.5 km (0.9 mi) from the stream course.

3. Within these areas, primary constituent elements for the arroyo toad include a hydrologic regime that supplies sufficient flowing water of suitable quality at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained to provide for the needs of all life stages of the toad; upland habitats of sufficient width and quality (*i.e.*, with areas of loose, sandy soil where toads can burrow underground) to provide foraging and living areas for subadult and adult arroyo toads (loose, sandy soils are typically most prevalent on alluvial terraces and valley bottomlands and occur primarily, but not exclusively, within 1.5 km (0.9 mi) of the streamcourse and less than 25 m (80 ft) in elevation above the adjacent stream channel); few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of unoccupied areas that contain suitable habitat; and habitats free of, or with limited levels of, land use activities that substantially reconfigure stream channels, remove or impede the deposition of sand and gravel deposits, compact soils, or crush individual toads (see maps labeled Index 1 and Index 2 for overview of proposed critical habitat).

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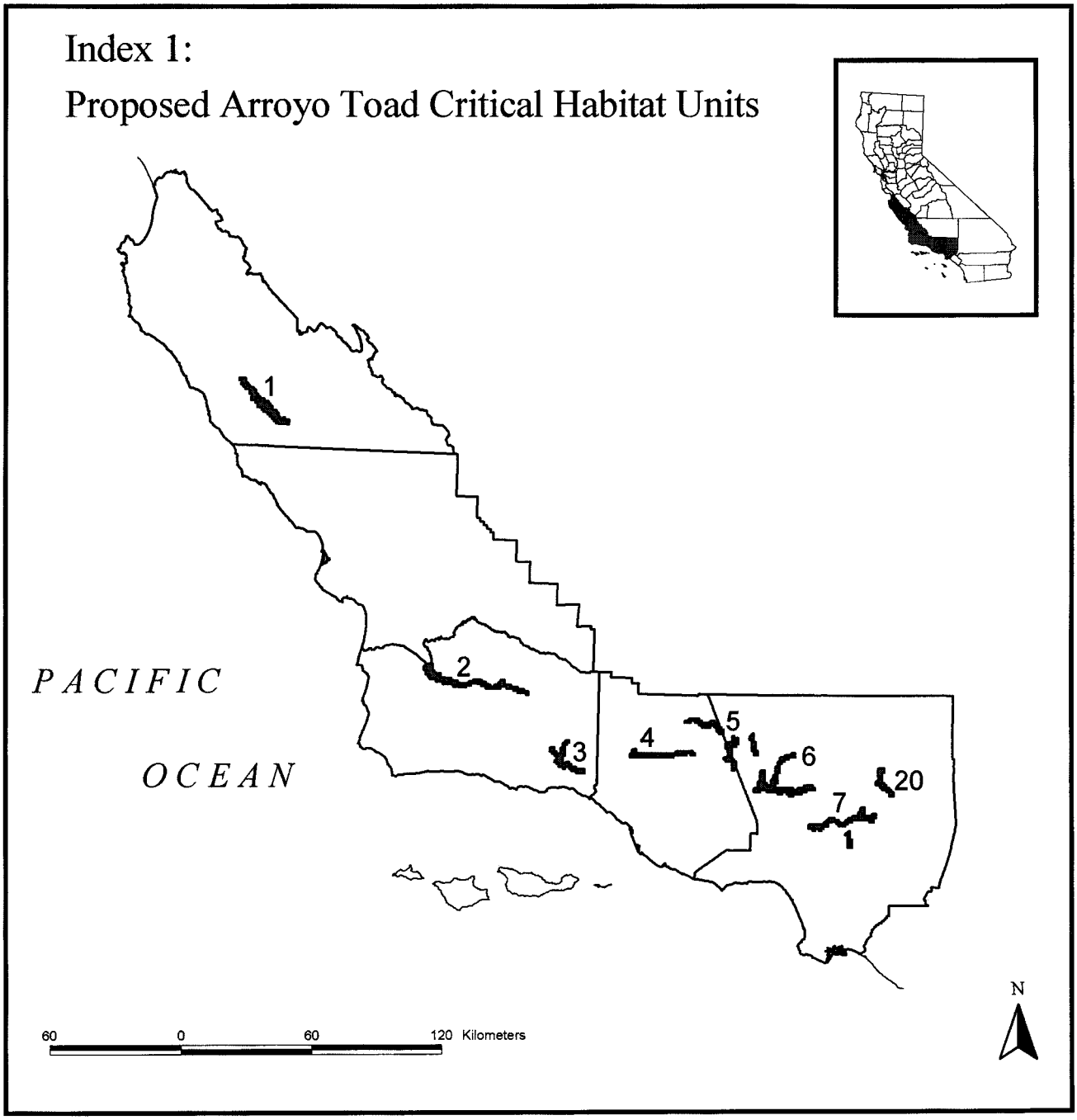
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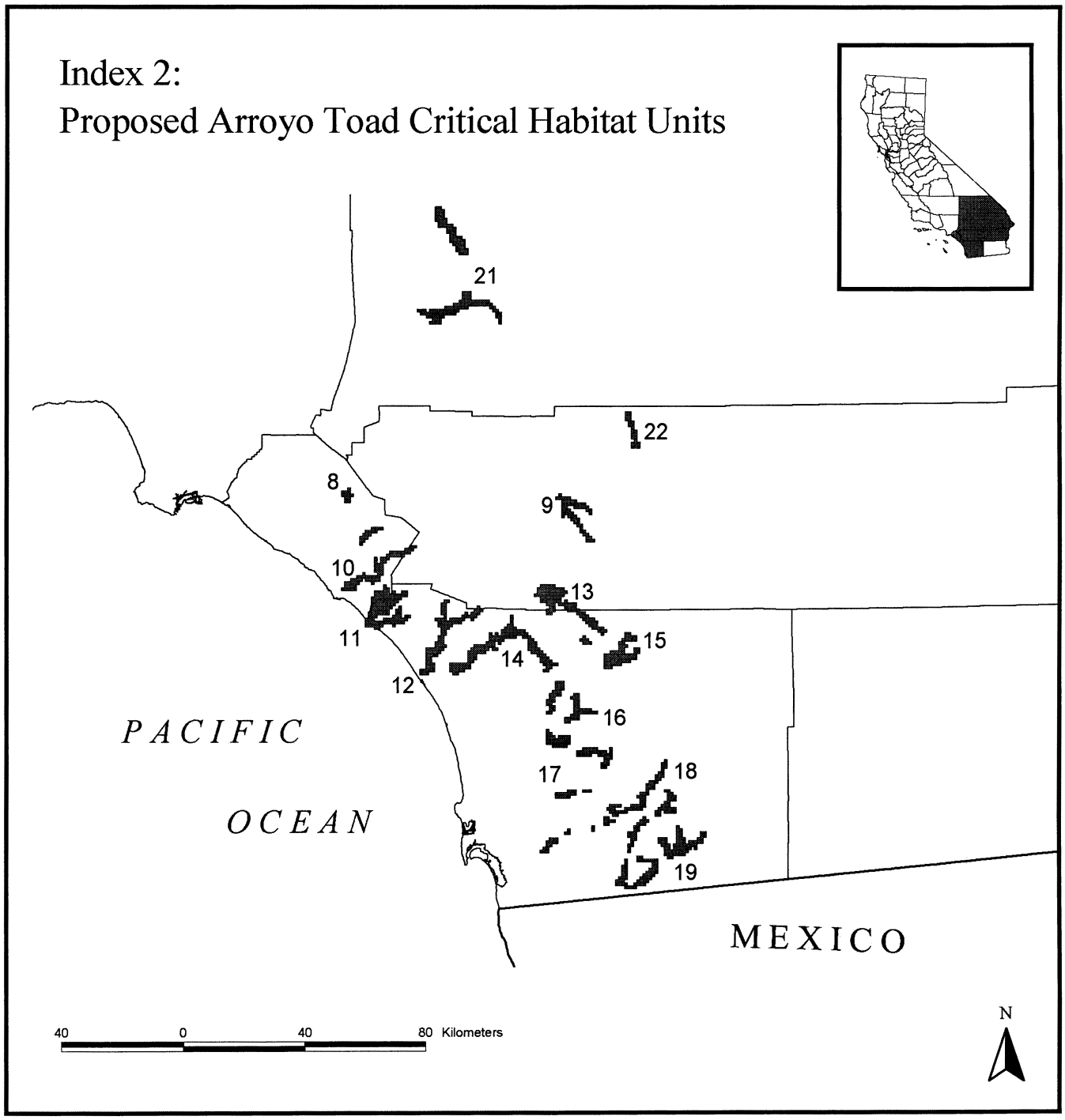
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Proposed Arroyo Toad Critical Habitat Units
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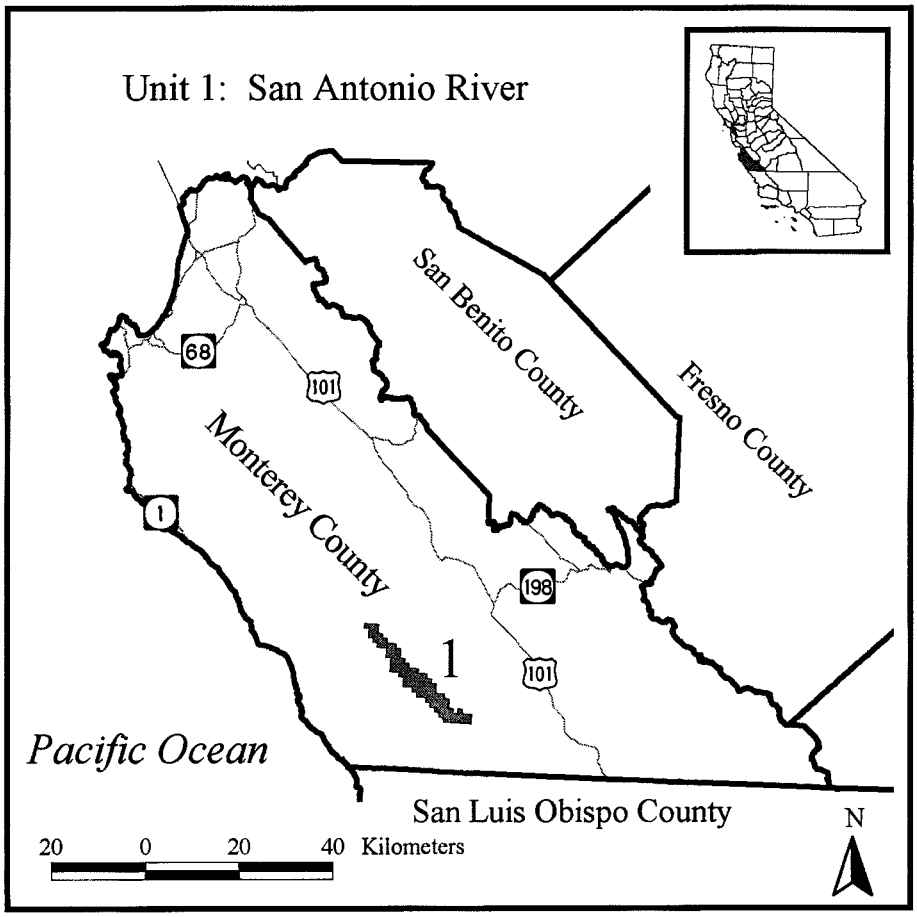

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Map Unit 1: San Antonio River, Monterey County, California. From USGS 1:24,000 quadrangle maps Bear Canyon, Cosio Knob, Alder Peak, Jolon, and Williams Hill. In UTM Zone 10, the lands, primarily on Fort Hunter Liggett Military Reservation, bounded by the following UTM NAD27 coordinates (E,N): 651000, 3993000; 654000, 3993000; 654000, 3991000; 655000, 3991000; 655000, 3990000; 656000, 3990000; 656000, 3989000; 658000, 3989000; 658000, 3988000; 659000, 3988000; 659000, 3986000; 660000, 3986000; 660000, 3985000; 661000, 3985000; 661000, 3984000; 663000, 3984000; 663000, 3983000; 665000, 3983000; 665000, 3982000; 666000, 3982000; 666000, 3981000; 667000, 3981000; 667000, 3979000; 669000, 3979000; 669000, 3978000; 670000, 3978000; 670000, 3976000; 671000, 3976000; 671000, 3975000; 672000, 3975000; 672000, 3976000; 673000, 3976000; 673000, 3975000; 675000, 3975000; 675000, 3973000; 669000, 3973000; 669000, 3974000; 668000, 3974000; 668000, 3975000; 667000, 3975000; 667000, 3976000; 666000, 3976000; 666000, 3977000; 665000, 3977000; 665000, 3978000; 663000, 3978000; 663000, 3979000; 662000, 3979000; 662000, 3980000; 660000, 3980000; 660000, 3982000; 659000, 3982000; 659000, 3983000; 657000, 3983000; 657000, 3986000; 656000, 3986000; 656000, 3988000; 654000, 3988000; 654000, 3989000; 653000, 3989000; 653000, 3990000; 652000, 3990000; 652000, 3992000; 651000, 3992000; 651000, 3993000.

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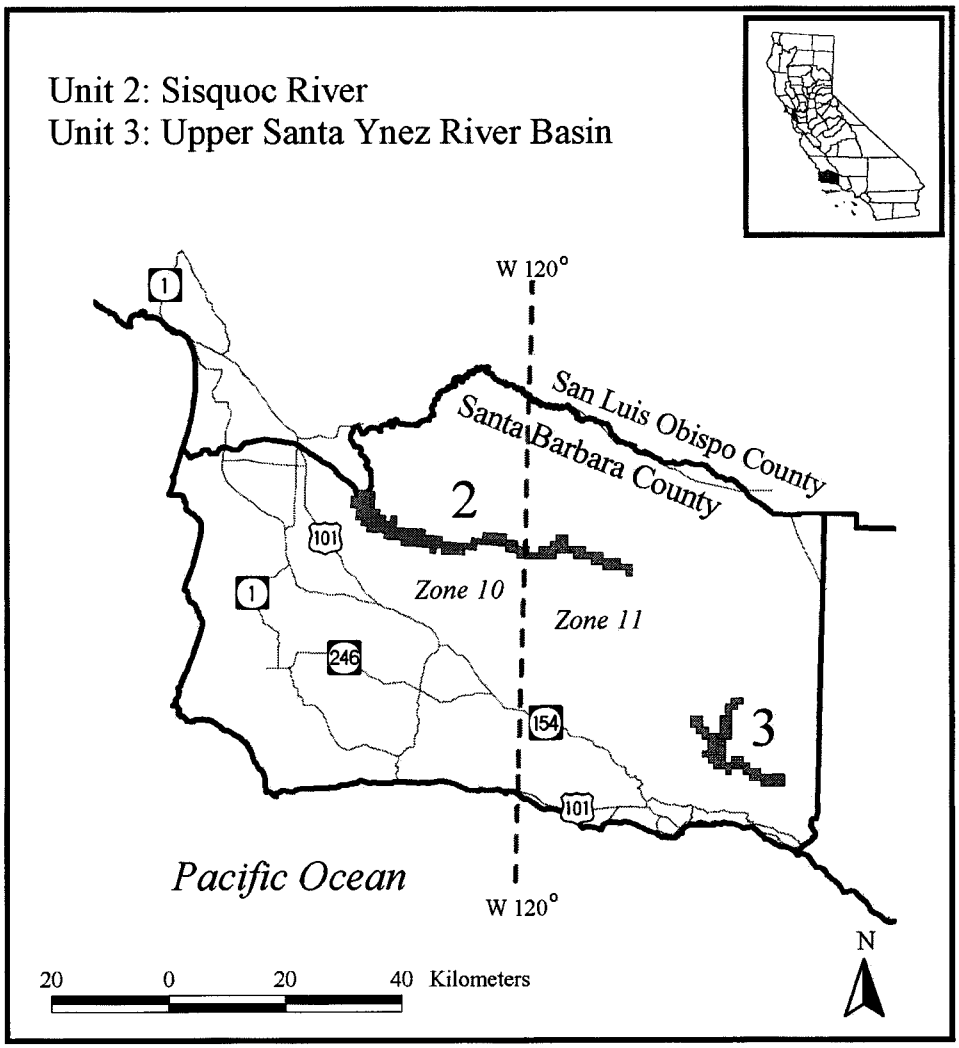

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Map Unit 2; Sisquoc River, Santa Barbara and San Luis Obispo counties, California. From USGS 1:24,000 quadrangle maps Twitchell Dam, Sisquoc, Foxen Canyon, Zaca Lake, Bald Mtn., and Hurricane Deck. In UTM Zone 10, the lands bounded by the following UTM NAD27 coordinates (E,N): 748000, 3867000; 748000, 3864000; 749000, 3864000; 749000, 3863000; 750000, 3863000; 750000, 3862000; 751000, 3862000; 751000, 3863000; 752000, 3863000; 752000, 3861000; 757000, 3861000; 757000, 3860000; 760000, 3860000; 760000, 3859000; 765000, 3859000; 765000, 3860000; 767000, 3860000; 767000, 3861000; 771000, 3861000; 771000, 3860000; 773000, 3860000; 773000, 3859000; 775000, 3859000; 775000, 3857000; 773000, 3857000; 773000, 3858000; 771000, 3858000; 771000, 3859000; 766000, 3859000; 766000, 3858000; 764000, 3858000; 764000, 3857000; 760000, 3857000; 760000, 3858000; 759000, 3858000; 759000, 3857000; 758000, 3857000; 758000, 3858000; 753000, 3858000; 753000, 3859000; 750000, 3859000; 750000, 3860000; 747000, 3860000; 747000, 3861000; 746000, 3861000; 746000, 3862000; 745000, 3862000; 745000, 3864000; 744000, 3864000; 744000, 3866000; 745000, 3866000; 745000, 3867000. In UTM zone 11, the lands bounded by the following UTM NAD83 coordinates (E,N): 231000, 3861000; 233000, 3861000; 233000, 3859000; 236000, 3859000; 236000, 3858000; 239000, 3858000; 239000, 3857000; 242000, 3857000; 242000, 3856000; 244000, 3856000; 244000, 3854000; 243000, 3854000; 243000, 3855000; 239000, 3855000; 239000, 3856000; 237000, 3856000; 237000, 3857000; 234000, 3857000; 234000, 3858000; 231000, 3858000; 231000, 3857000; 225000, 3857000; 225000, 3858000; 228000, 3858000; 228000, 3859000; 230000, 3859000; 230000, 3860000; 231000, 3860000; 231000, 3861000.

All remaining critical habitat units are in UTM zone 11, North American Datum 1927 (NAD27).

Map Unit 3; Upper Santa Ynez River Basin, Santa Barbara County, California. From USGS 1:24,000 quadrangle maps Little Pine Mtn., Hildreth Peak, and Carpinteria, the lands bounded by the following UTM coordinates (E,N): 261000,3833000; 263000,3833000; 263000,3832000; 262000,3832000; 262000,3831000; 261000,3831000; 261000,3826000; 260000,3826000; 260000,3822000; 261000,3822000; 261000,3823000; 263000,3823000; 263000,3822000; 264000,3822000; 264000,3821000; 266000,3821000; 266000,3820000; 270000,3820000; 270000,3818000; 266000,3818000; 266000,3819000; 264000,3819000; 264000,3820000; 263000,3820000; 263000,3821000; 261000,3821000; 261000,3820000; 260000,3820000; 260000,3821000; 258000,3821000; 258000,3822000; 257000,3822000; 257000,3823000; 256000,3823000; 256000,3824000; 257000,3824000;

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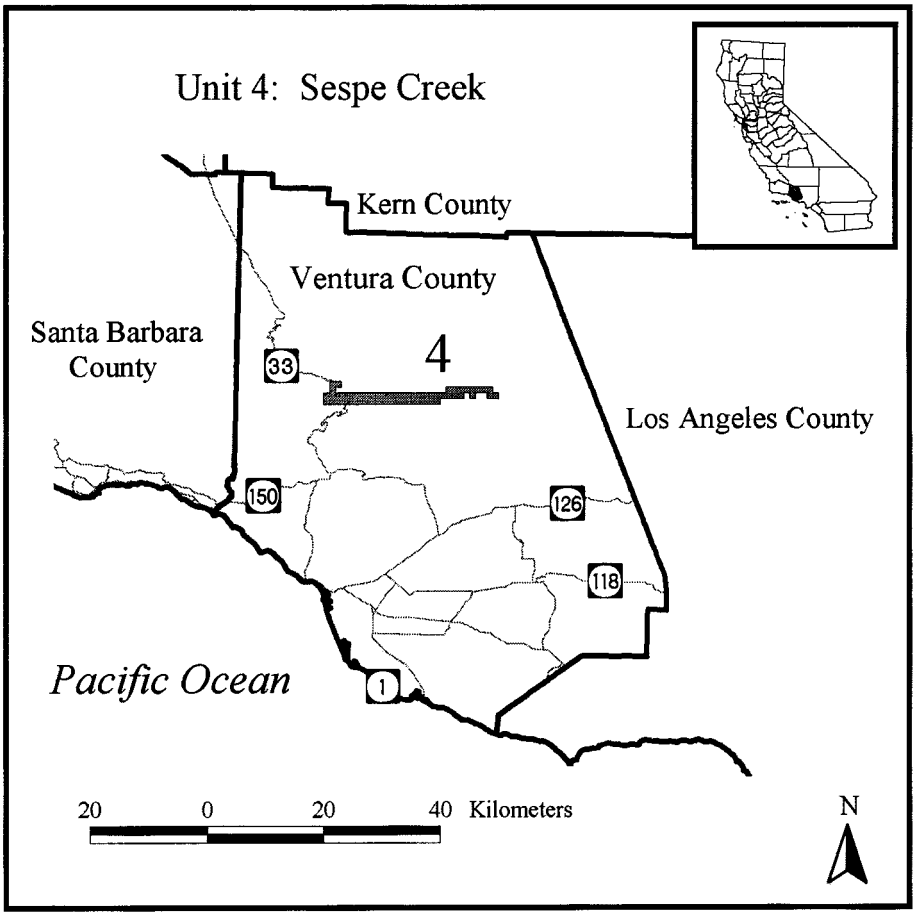

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Map Unit 4; Sespe Creek, Ventura County, California. From USGS 1:24,000 quadrangle maps Wheeler Springs, Lion Canyon, Topatopa Mts., and Devil's Heart Peak, the lands bounded by the following UTM coordinates (E,N): 292000,38290; 294000,3829000; 294000,3828000; 293000,3828000; 293000,3827000; 312000,3827000; 312000,3828000; 320000,3828000; 320000,3827000; 321000,3827000; 321000,3826000; 319000,3826000; 319000,3827000; 317000,3827000; 317000,3826000; 316000,3826000; 316000,3827000; 315000,3827000; 315000,3826000; 311000,3826000; 311000,3825000; 291000,3825000; 291000,3827000; 292000,3827000; 292000,3829000.

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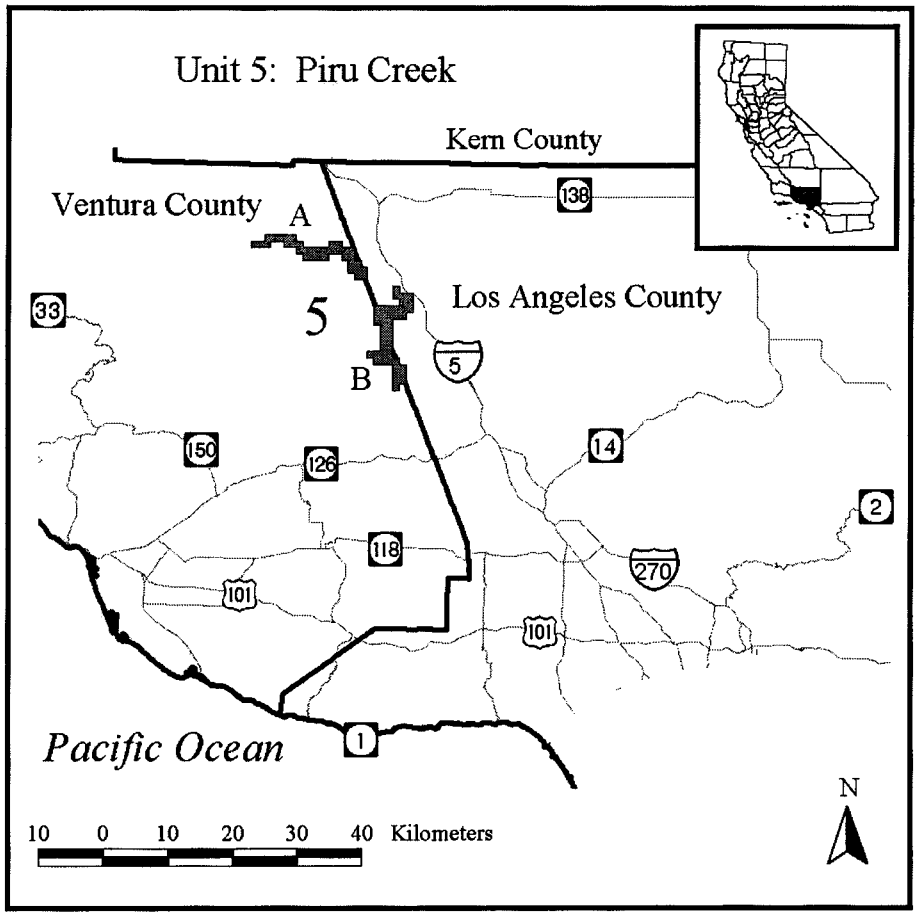

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Map Unit 5; Piru Creek, Ventura and Los Angeles counties, California. Unit 5A: From USGS 1:24,000 quadrangle maps Lockwood Valley, Alamo Mtn., and Black Mtn., the lands upstream of Pyramid Lake bounded by the following UTM coordinates (E,N): 318000,3843000; 323000,3843000; 323000,3842000; 324000,3842000; 324000,3841000; 328000,3841000; 328000,3842000; 330000,3842000; 330000,3841000; 332000,3841000; 332000,3839000; 333000,3839000; 333000,3838000; 334000,3838000; 334000,3836000; 332000,3836000; 332000,3837000; 331000,3837000; 331000,3839000; 330000,3839000; 330000,3840000; 328000,3840000; 328000,3839000; 324000,3839000; 324000,3840000; 323000,3840000; 323000,3841000; 321000,3841000; 321000,3842000; 319000,3842000; 319000,3841000; 316000,3841000; 316000,3842000; 318000,3842000; 318000,3843000. Unit 5B: From USGS 1:24,000 quadrangle maps Black Mtn., Liebre Mtn., Whitaker Peak, and Cobblestone Mtn, the lands between Pyramid Lake and Lake Piru bounded by the following UTM coordinates (E,N): 338000,3835000; 339000,3835000; 339000,3834000; 341000,3834000; 341000,3831000; 340000,3831000; 340000,3830000; 338000,3830000; 338000,3824000; 339000,3824000; 339000,3823000; 340000,3823000; 340000,3820000; 339000,3820000; 339000,3819000; 338000,3819000; 338000,3823000; 335000,3823000; 335000,3824000; 334000,3824000; 334000,3825000; 336000,3825000; 336000,3829000; 335000,3829000; 335000,3832000; 339000,3832000; 339000,3833000; 338000,3833000; 338000,3835000.

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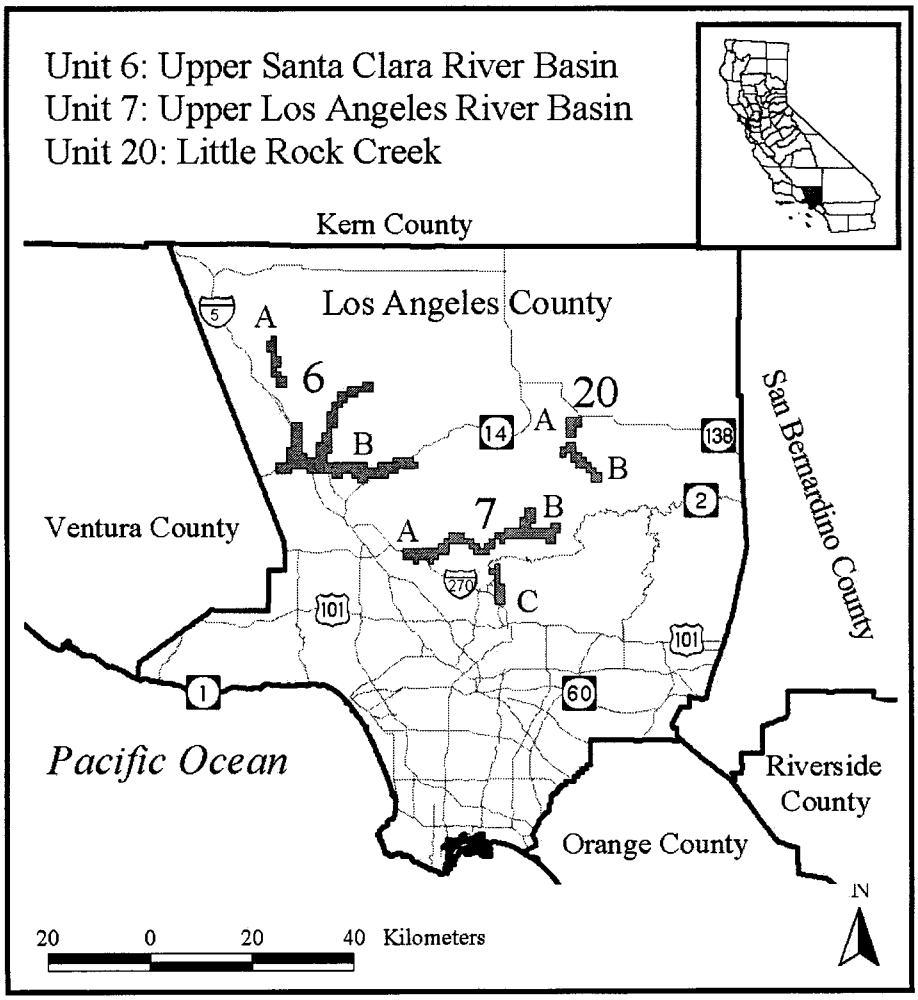

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Map Unit 6; Upper Santa Clara River basin, Los Angeles County, California. Unit 6a: From USGS 1:24,000 quadrangle maps Liebre Mtn. and Whitaker Peak, the lands, upstream of Castaic Lake, bounded by the following UTM coordinates (E,N): 347000,3836000; 348000,3836000; 348000,3832000; 349000,3832000; 349000,3830000; 348000,3830000; 348000,3829000; 349000,3829000; 349000,3828000; 350000,3828000; 350000,3826000; 348000,3826000; 348000,3828000; 347000,3828000; 347000,3833000; 346000,3833000; 346000,3835000; 347000,3835000; 347000,3836000. Unit 6b: From USGS 1:24,000 quadrangle maps Warm Springs Mtn., Green Valley, Val Verde, Newhall, Mint Mtn. and Agua Dulce, the lands bounded by the following UTM coordinates (E,N): 365000,3827000; 367000,3827000; 367000,3825000; 364000,3825000; 364000,3824000; 362000,3824000; 362000,3823000; 361000,3823000; 361000,3822000; 360000,3822000; 360000,3818000; 359000,3818000; 359000,3813000; 358000,3813000; 358000,3811000; 366000,3811000; 366000,3810000; 368000,3810000; 368000,3811000; 371000,3811000; 371000,3812000; 375000,3812000; 375000,3811000; 376000,3811000; 376000,3810000; 372000,3810000; 372000,3809000; 370000,3809000; 370000,3808000; 366000,3808000; 366000,3807000; 364000,3807000; 364000,3808000; 363000,3808000; 363000,3809000; 361000,3809000; 361000,3808000; 359000,3808000; 359000,3809000; 354000,3809000; 354000,3810000; 351000,3810000; 351000,3809000; 348000,3809000; 348000,3811000; 350000,3811000; 350000,3814000; 351000,3814000; 351000,3819000; 353000,3819000; 353000,3813000; 354000,3813000; 354000,3812000; 356000,3812000; 356000,3815000; 357000,3815000; 357000,3817000; 358000,3817000; 358000,3821000; 359000,3821000; 359000,3823000; 360000,3823000; 360000,3825000; 362000,3825000; 362000,3826000; 365000,3826000; 365000,3827000.

Map Unit 7; Upper Los Angeles River basin, Los Angeles County, California. Unit 7a: From USGS 1:24,000 quadrangle maps San Fernando, Sunland and Condor Peak, the lands in the Big Tujunga Creek basin bounded by the following UTM coordinates (E,N): 382000,3797000; 385000,3797000; 385000,3796000; 387000,3796000; 387000,3795000; 388000,3795000; 388000,3794000; 389000,3794000; 389000,3795000; 390000,3795000; 390000,3796000; 391000,3796000; 391000,3794000; 390000,3794000; 390000,3793000; 387000,3793000; 387000,3794000; 386000,3794000; 386000,3795000; 382000,3795000; 382000,3793000; 380000,3793000; 380000,3792000; 379000,3792000; 379000,3791000; 378000,3791000; 378000,3792000; 376000,3792000; 376000,3791000; 375000,3791000; 375000,3792000; 373000,3792000; 373000,3794000; 380000,3794000; 380000,3795000; 381000,3795000; 381000,3796000; 382000,3796000;

382000,3797000. Unit 7b: From USGS 1:24,000 quadrangle maps Condor Peak and Chilao Flat, the lands bounded by the following UTM coordinates (E,N): 397000,3802000; 399000,3802000; 399000,3799000; 398000,3799000; 398000,3798000; 402000,3798000; 402000,3799000; 404000,3799000; 404000,3797000; 403000,3797000; 403000,3795000; 401000,3795000; 401000,3796000; 393000,3796000; 393000,3795000; 392000,3795000; 392000,3796000; 391000,3796000; 391000,3797000; 393000,3797000; 393000,3798000; 396000,3798000; 396000,3800000; 397000,3800000; 397000,3802000. Unit 7c: From USGS 1:24,000 quadrangle maps Condor Peak and Pasadena, the lands bounded by the following UTM coordinates (E,N): 391000,3791000; 392000,3791000; 392000,3787000; 393000,3787000; 393000,3783000; 391000,3783000; 391000,3789000; 390000,3789000; 390000,3790000; 391000,3790000; 391000,3791000

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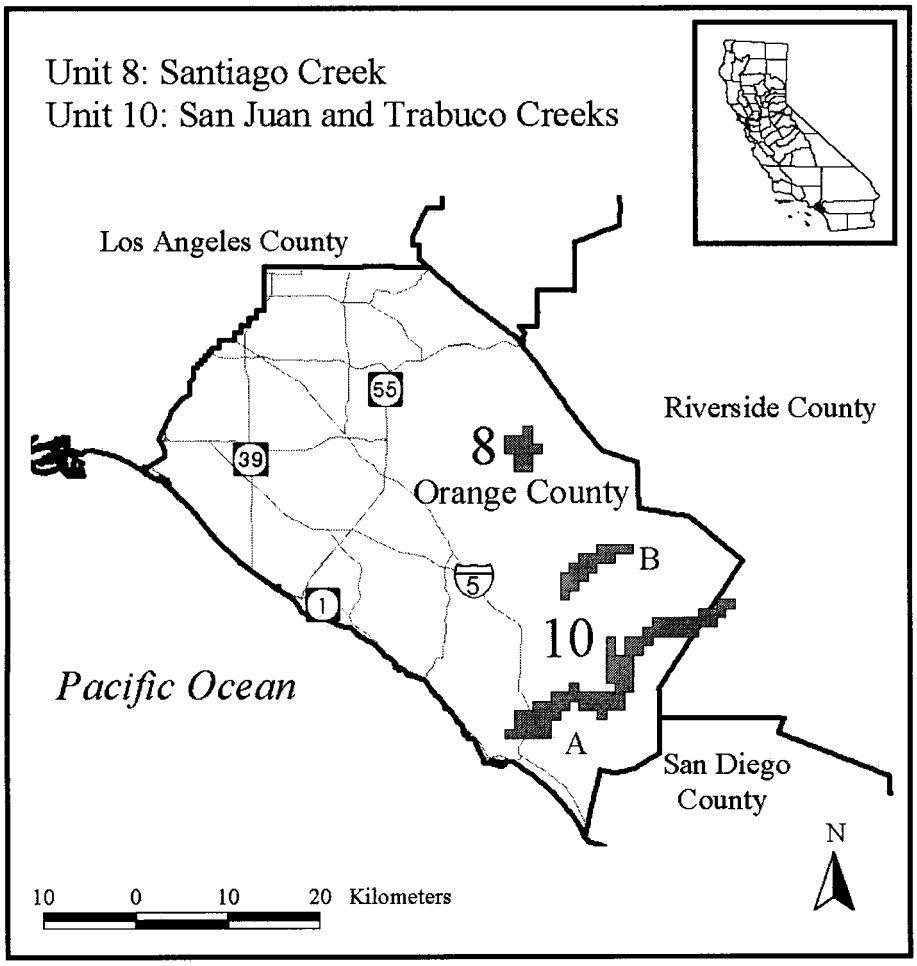

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Map Unit 8; Santiago Creek, Orange County. From USGS 1:24,000 quadrangle maps Black Star Canyon and El Toro, the lands bounded by the following UTM coordinates (E,N): 438000,3739000; 439000,3739000; 439000,3737000; 440000,3737000; 440000,3736000; 439000,3736000; 439000,3734000; 437000,3734000; 437000,3736000; 436000,3736000; 436000,3738000; 438000,3738000; 438000,3739000.

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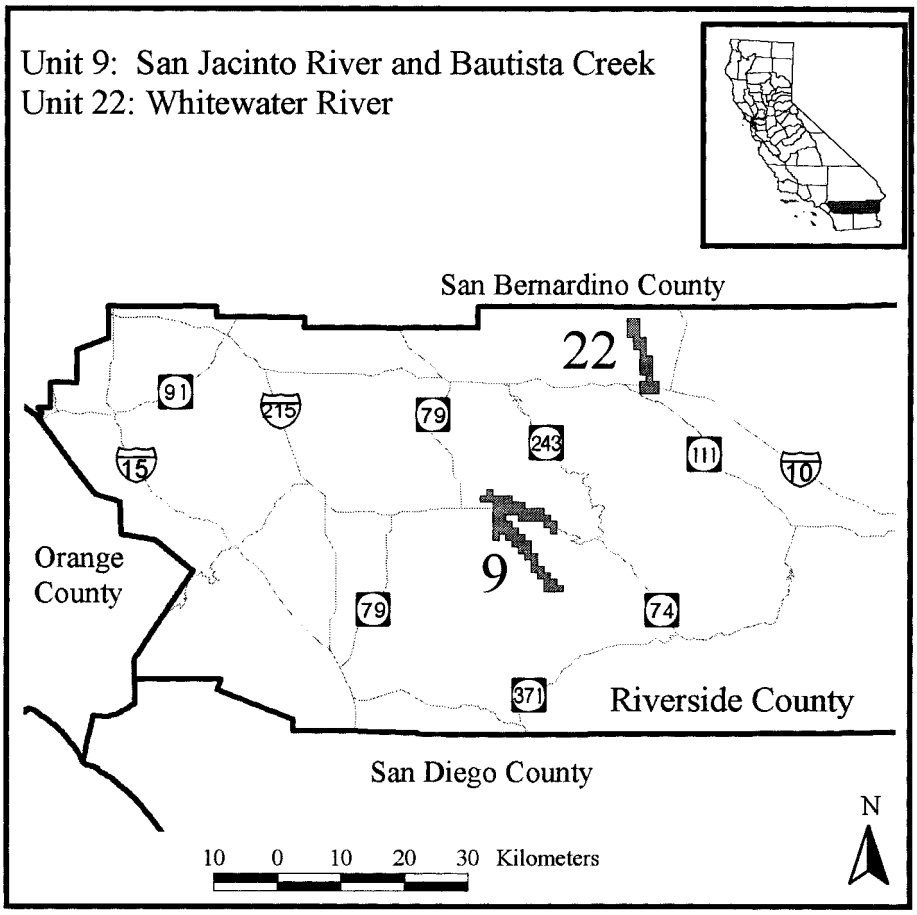

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Map Unit 9; San Jacinto River and Bautista Creek, Riverside County. From USGS 1:24,000 quadrangle maps San Jacinto, Lake Fulmor, Hemet and Blackburn Canyon, the lands bounded by the following UTM coordinates (E,N): 508000,3737000; 509000,3737000; 509000,3736000; 512000,3736000; 512000,3735000; 514000,3735000; 514000,3734000; 517000,3734000; 517000,3733000; 518000,3733000; 518000,3732000; 519000,3732000; 519000,3730000; 518000,3730000; 518000,3731000; 517000,3731000; 517000,3732000; 513000,3732000; 513000,3733000; 511000,3733000; 511000,3732000; 512000,3732000; 512000,3731000; 513000,3731000; 513000,3730000; 514000,3730000; 514000,3729000; 515000,3729000; 515000,3727000; 516000,3727000; 516000,3725000; 517000,3725000; 517000,3724000; 518000,3724000; 518000,3723000; 519000,3723000; 519000,3722000; 520000,3722000; 520000,3721000; 517000,3721000; 517000,3723000; 516000,3723000; 516000,3724000; 515000,3724000; 515000,3726000; 514000,3726000; 514000,3727000; 513000,3727000; 513000,3728000; 512000,3728000; 512000,3729000; 511000,3729000; 511000,3730000; 510000,3730000; 510000,3729000; 509000,3729000; 509000,3735000; 507000,3735000; 507000,3736000; 508000,3736000; 508000,3737000.

Map Unit 10; San Juan and Trabuco Creeks, Orange and Riverside counties, California.

Unit 10a: From USGS 1:24,000 quadrangle maps Dana Point, San Juan Capistrano, Canada Gobernadora and Sitton Peak, the lands bounded by the following UTM coordinates (E,N): 459000,3720000; 461000,3720000; 461000,3719000; 460000,3719000; 460000,3718000; 459000,3718000; 459000,3717000; 457000,3717000; 457000,3716000; 452000,3716000; 452000,3715000; 451000,3715000; 451000,3714000; 450000,3714000; 450000,3710000; 449000,3710000; 449000,3708000; 447000,3708000; 447000,3707000; 446000,3707000; 446000,3708000; 444000,3708000; 444000,3709000; 443000,3709000; 443000,3708000; 442000,3708000; 442000,3707000; 441000,3707000; 441000,3705000; 436000,3705000; 436000,3706000; 437000,3706000; 437000,3708000; 439000,3708000; 439000,3709000; 441000,3709000; 441000,3710000; 443000,3710000; 443000,3711000; 444000,3711000; 444000,3710000; 448000,3710000; 448000,3711000; 447000,3711000; 447000,3716000; 448000,3716000; 448000,3714000; 449000,3714000; 449000,3716000; 451000,3716000; 451000,3717000; 452000,3717000; 452000,3718000; 457000,3718000; 457000,3719000; 459000,3719000; 459000,3720000.

Unit 10b: From USGS 1:24,000 quadrangle maps Santiago Peak and Canada Gobernadora, the lands bounded by the following UTM coordinates (E,N): 446000,3726000; 450000,3726000; 450000,3725000; 448000,3725000; 448000,3724000; 446000,3724000; 446000,3723000; 445000,3723000; 445000,3722000; 444000,3722000; 444000,3721000; 443000,3721000; 443000,3720000; 442000,3720000; 442000,3723000; 443000,3723000; 443000,3724000; 444000,3724000; 444000,3725000; 446000,3725000; 446000,3726000.

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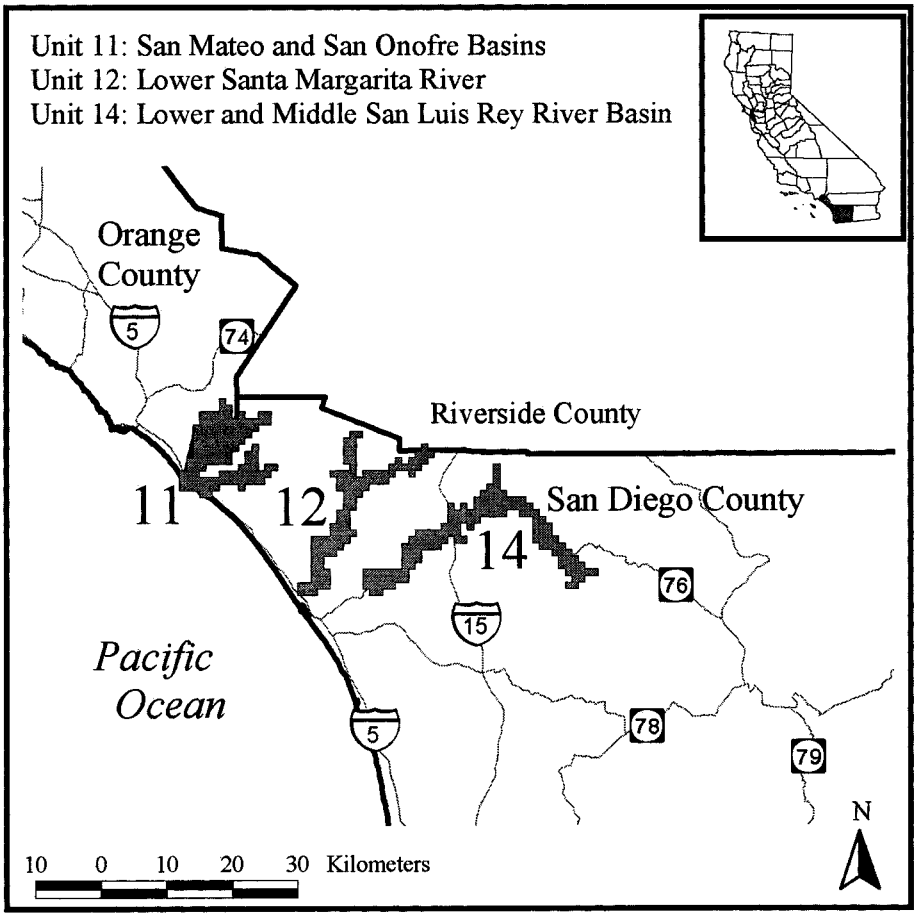

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Map Unit 11; San Mateo and San Onofre Basins, Orange and Riverside counties, California. From USGS 1:24,000 quadrangle maps San Clemente, Margarita Peak, Canada Gobernadora and San Onofre Bluff, the lands bounded by the following UTM coordinates (E,N): 450000,3707000; 451000,3707000; 451000,3706000; 452000,3706000; 452000,3704000; 453000,3704000; 453000,3705000; 454000,3705000; 454000,3704000; 456000,3704000; 456000,3705000; 458000,3705000; 458000,3703000; 456000,3703000; 456000,3702000; 455000,3702000; 455000,3701000; 454000,3701000; 454000,3700000; 453000,3700000; 453000,3699000; 452000,3699000; 452000,3697000; 448000,3697000; 448000,3696000; 447000,3696000; 447000,3695000; 450000,3695000; 450000,3696000; 453000,3696000; 453000,3697000; 454000,3697000; 454000,3699000; 455000,3699000; 455000,3700000; 456000,3700000; 456000,3696000; 457000,3696000; 457000,3697000; 459000,3697000; 459000,3696000; 458000,3696000; 458000,3695000; 457000,3695000; 457000,3694000; 454000,3694000; 454000,3693000; 453000,3693000; 453000,3694000; 450000,3694000; 450000,3693000; 449000,3693000; 449000,3692000; 447000,3692000; 447000,3693000; 444000,3693000; 444000,3696000; 445000,3696000; 445000,3698000; 446000,3698000; 446000,3703000; 447000,3703000; 447000,3705000; 450000,3705000; 450000,3707000.

Map Unit 12; Lower Santa Margarita Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Fallbrook, Temecula, Morro Hill, Las Pulgas Canyon, Oceanside and San Luis Rey, the lands bounded by the following UTM coordinates (E,N): 470000,3702000; 472000,3702000; 472000,3701000; 471000,3701000; 471000,3695000; 472000,3695000; 472000,3696000; 476000,3696000; 476000,3697000; 477000,3697000; 477000,3698000; 478000,3698000; 478000,3697000; 479000,3697000; 479000,3698000; 480000,3698000; 480000,3699000; 481000,3699000; 481000,3700000; 482000,3700000; 482000,3699000; 483000,3699000; 483000,3698000; 482000,3698000; 482000,3697000; 481000,3697000; 481000,3696000; 480000,3696000; 480000,3695000; 479000,3695000; 479000,3696000; 477000,3696000; 477000,3695000; 476000,3695000; 476000,3694000; 473000,3694000; 473000,3693000; 472000,3693000; 472000,3692000; 471000,3692000; 471000,3690000; 470000,3690000; 470000,3687000; 471000,3687000; 471000,3686000; 470000,3686000; 470000,3685000; 469000,3685000; 469000,3684000; 468000,3684000; 468000,3683000; 466000,3683000; 466000,3681000; 467000,3681000; 467000,3678000; 465000,3678000; 465000,3677000; 462000,3677000; 462000,3679000; 464000,3679000; 464000,3686000; 467000,3686000; 467000,3688000; 468000,3688000; 468000,3690000; 469000,3690000; 469000,3693000; 468000,3693000; 468000,3695000; 467000,3695000; 467000,3696000; 470000,3696000; 470000,3697000; 469000,3697000; 469000,3701000; 470000,3701000; 470000,3702000.

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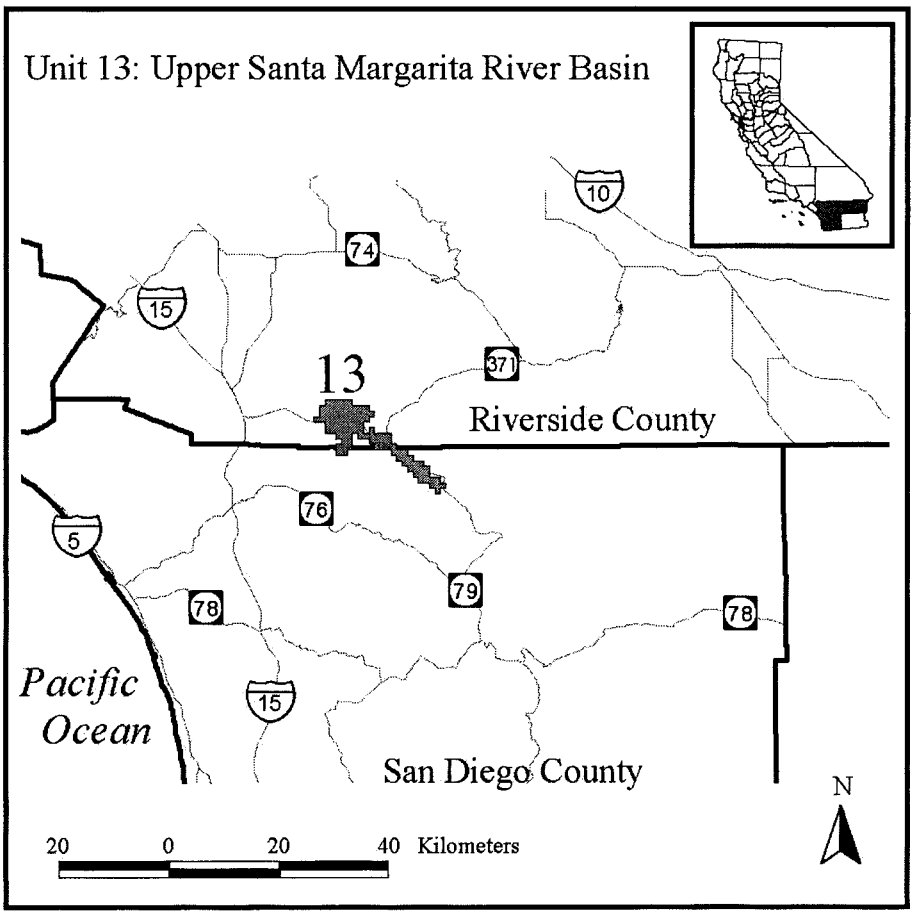

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Map Unit 13; Upper Santa Margarita Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Sage, Vail Lake, Aquanga, Palomar Observatory and Warner Springs, the lands bounded by the following UTM coordinates (E,N): 502000,3707000; 507000,3707000; 507000,3706000; 510000,3706000; 510000,3705000; 511000,3705000; 511000,3704000; 510000,3704000; 510000,3703000; 509000,3703000; 509000,3701000; 510000,3701000; 510000,3702000; 511000,3702000; 511000,3701000; 514000,3701000; 514000,3699000; 515000,3699000; 515000,3698000; 517000,3698000; 517000,3697000; 518000,3697000; 518000,3696000; 520000,3696000; 520000,3695000; 521000,3695000; 521000,3693000; 523000,3693000; 523000,3692000; 524000,3692000; 524000,3691000; 523000,3691000; 523000,3690000; 522000,3690000; 522000,3691000; 521000,3691000; 521000,3692000; 519000,3692000; 519000,3693000; 518000,3693000; 518000,3694000; 517000,3694000; 517000,3695000; 516000,3695000; 516000,3696000; 515000,3696000; 515000,3697000; 514000,3697000; 514000,3698000; 511000,3698000; 511000,3699000; 510000,3699000; 510000,3700000; 508000,3700000; 508000,3701000; 507000,3701000; 507000,3698000; 506000,3698000; 506000,3697000; 504000,3697000; 504000,3699000; 505000,3699000; 505000,3700000; 504000,3700000; 504000,3701000; 502000,3701000; 502000,3703000; 500000,3703000; 500000,3704000; 501000,3704000; 501000,3706000; 502000,3706000; 502000,3707000.

Map Unit 14; Lower and Middle San Luis Rey Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Pechanga, San Luis Rey, Morro Hill, Bonsall, Pala, Boucher Hill and Rodriguez Mtn., the lands bounded by the following UTM coordinates (E,N): 492000,3697000; 493000,3697000; 493000,3693000; 494000,3693000; 494000,3692000; 497000,3692000; 497000,3691000; 498000,3691000; 498000,3690000; 499000,3690000; 499000,3689000; 500000,3689000; 500000,3688000; 501000,3688000; 501000,3686000; 502000,3686000; 502000,3685000; 503000,3685000; 503000,3684000; 504000,3684000; 504000,3683000; 505000,3683000; 505000,3682000; 506000,3682000; 506000,3681000; 508000,3681000; 508000,3680000; 506000,3680000; 506000,3679000; 505000,3679000; 505000,3678000; 503000,3678000; 503000,3679000; 504000,3679000; 504000,3680000; 503000,3680000; 503000,3681000; 502000,3681000; 502000,3683000; 501000,3683000; 501000,3684000; 499000,3684000; 499000,3685000; 498000,3685000; 498000,3689000; 496000,3689000; 496000,3690000; 494000,3690000; 494000,3689000; 490000,3689000; 490000,3688000; 489000,3688000; 489000,3687000; 488000,3687000; 488000,3688000; 487000,3688000; 487000,3686000; 488000,3686000; 488000,3685000; 486000,3685000; 486000,3686000; 485000,3686000; 485000,3685000; 484000,3685000; 484000,3684000; 481000,3684000; 481000,3682000; 480000,3682000; 480000,3681000; 479000,3681000; 479000,3679000; 477000,3679000; 477000,3678000; 475000,3678000; 475000,3677000; 473000,3677000; 473000,3678000; 472000,3678000; 472000,3681000; 478000,3681000; 478000,3685000; 479000,3685000; 479000,3686000;

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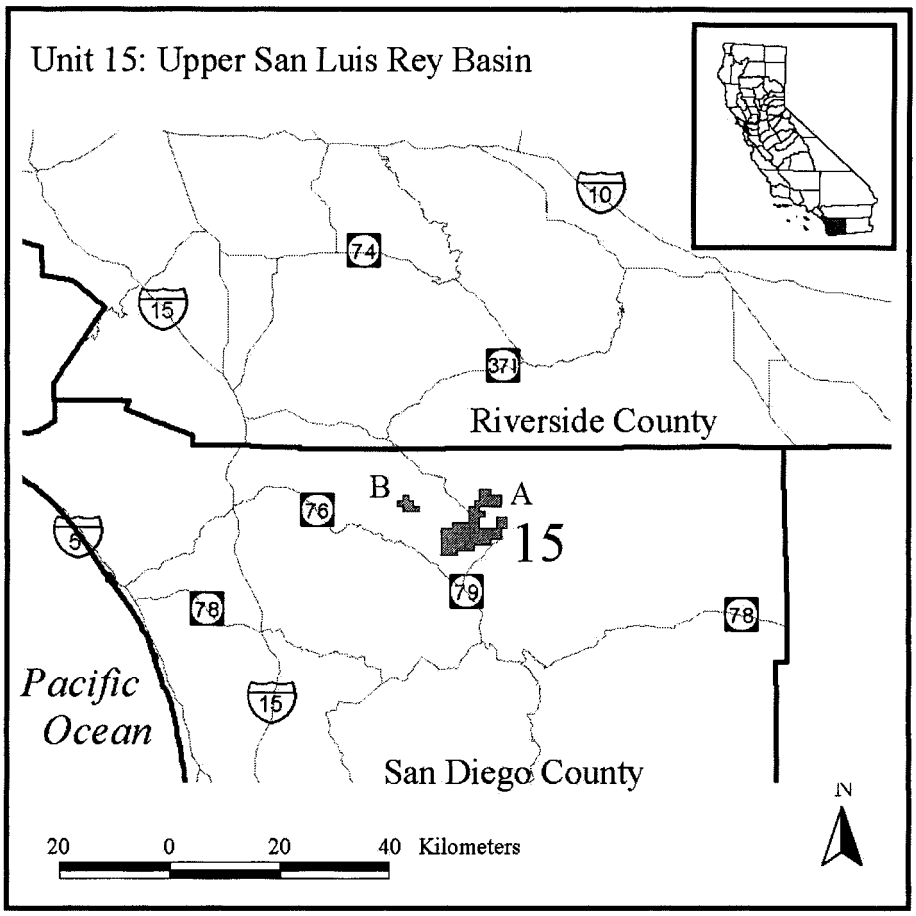

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Map Unit 15; Upper San Luis Rey Basin, San Diego County, California.

Unit 15a: From USGS 1:24,000 quadrangle maps Palomar Observatory, Warner Springs and Hot Springs Mtn., the lands bounded by the following UTM coordinates (E,N): 530000,3691000; 532000,3691000; 532000,3690000; 534000,3690000; 534000,3688000; 530000,3688000; 530000,3687000; 531000,3687000; 531000,3686000; 530000,3686000; 530000,3684000; 533000,3684000; 533000,3686000; 535000,3686000; 535000,3684000; 534000,3684000; 534000,3682000; 532000,3682000; 532000,3681000; 529000,3681000; 529000,3680000; 526000,3680000; 526000,3679000; 523000,3679000; 523000,3684000; 525000,3684000; 525000,3685000; 528000,3685000; 528000,3688000; 529000,3688000; 529000,3689000; 530000,3689000; 530000,3691000.

Unit 15b: From USGS 1:24,000 quadrangle map Palomar Observatory, the lands bounded by the following UTM coordinates (E,N): 516000,3690000; 517000,3690000; 517000,3689000; 518000,3689000; 518000,3688000; 519000,3688000; 519000,3687000; 516000,3687000; 516000,3688000; 515000,3688000; 515000,3689000; 516000,3689000; 516000,3690000.

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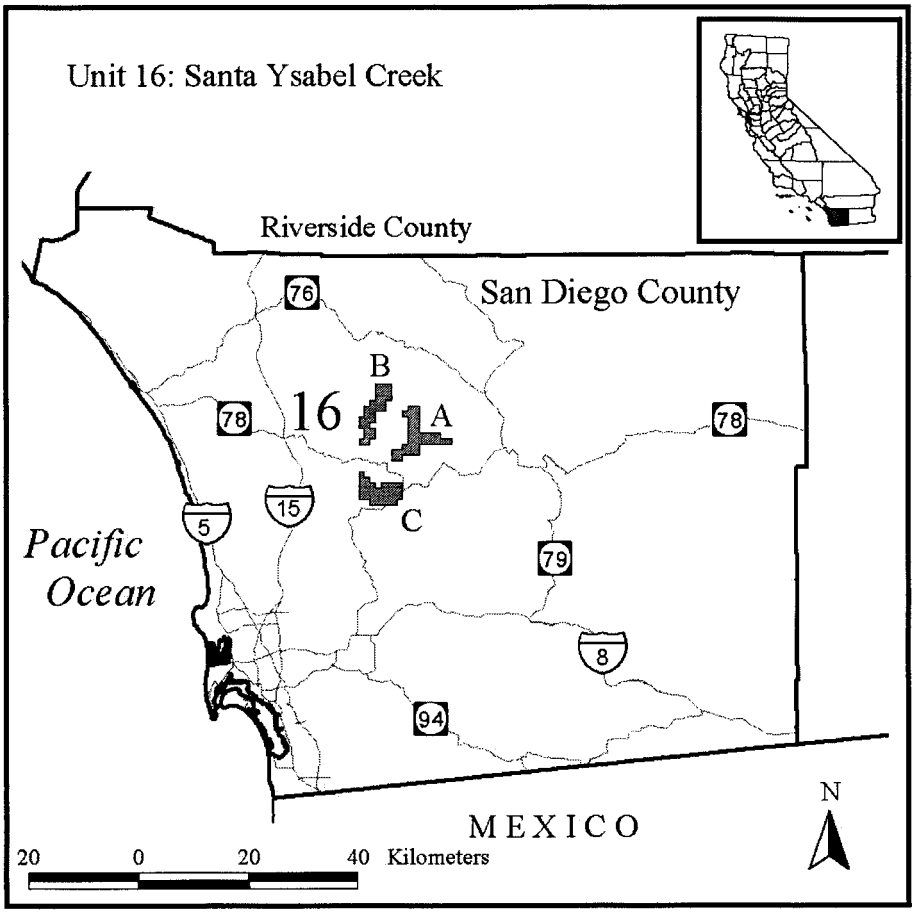

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Map Unit 16; Santa Ysabel Creek, San Diego County, California.

Unit 16a: From USGS 1:24,000 quadrangle maps Mesa Grande, Ramona and San Pasqual, the lands bounded by the following UTM coordinates (E,N): 513000,3671000; 515000,3671000; 515000,3666000; 519000,3666000; 519000,3665000; 521000,3665000; 521000,3664000; 515000,3664000; 515000,3662000; 512000,3662000; 512000,3661000; 510000,3661000; 510000,3663000; 512000,3663000; 512000,3664000; 513000,3664000; 513000,3669000; 512000,3669000; 512000,3670000; 513000,3670000; 513000,3671000.

Unit 16b: From USGS 1:24,000 quadrangle maps Rodriguez Mtn. and San Pasqual, the lands bounded by the following UTM coordinates (E,N): 507000,3675000; 510000,3675000; 510000,3672000; 509000,3672000; 509000,3670000; 507000,3670000; 507000,3668000; 506000,3668000; 506000,3667000; 507000,3667000; 507000,3665000; 506000,3665000; 506000,3664000; 504000,3664000; 504000,3665000; 505000,3665000; 505000,3667000; 504000,3667000; 504000,3669000; 505000,3669000; 505000,3671000; 506000,3671000; 506000,3672000; 507000,3672000; 507000,3675000.

Unit 16c: From USGS 1:24,000 quadrangle maps Ramona and San Pasqual, the lands bounded by the following UTM coordinates (E,N): 504000,3659000; 505000,3659000; 505000,3658000; 506000,3658000; 506000,3657000; 507000,3657000; 507000,3656000; 508000,3656000; 508000,3657000; 512000,3657000; 512000,3654000; 511000,3654000; 511000,3653000; 506000,3653000; 506000,3654000; 504000,3654000; 504000,3659000.

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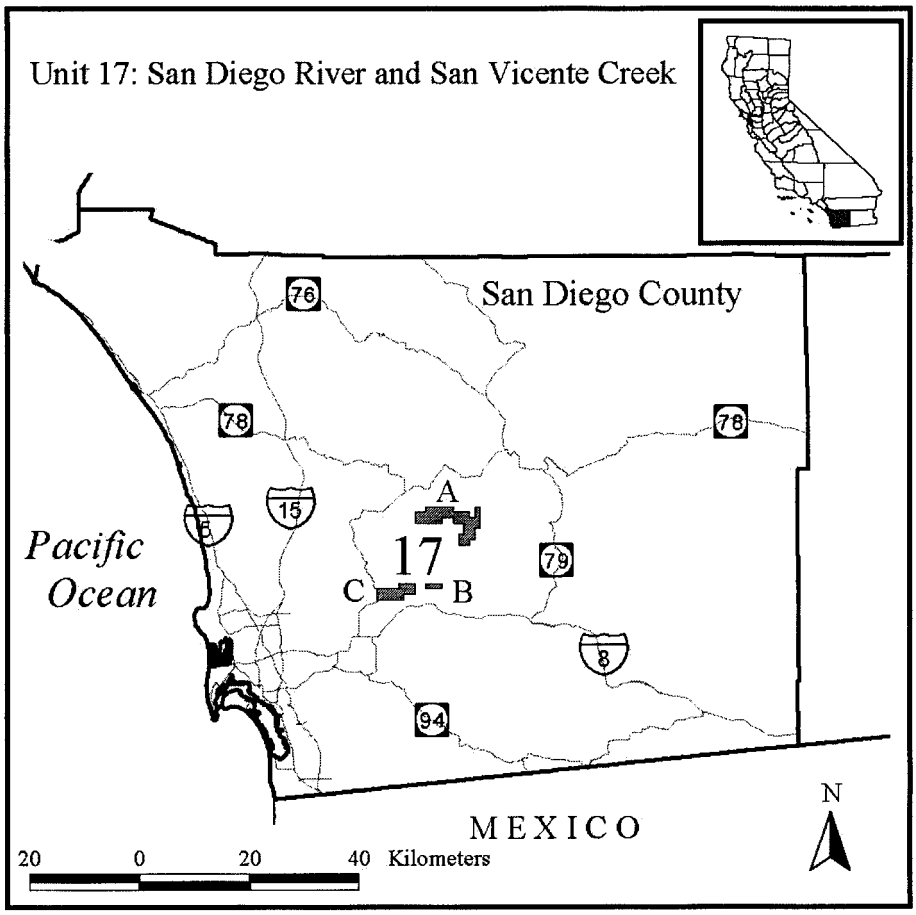

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Map Unit 17; San Diego River and San Vicente Creek, San Diego County, California.

Unit 17a: From USGS 1:24,000 quadrangle maps Ramona, El Cajon, Tule Springs and Santa Ysabel, the lands bounded by the following UTM coordinates (E,N): 516000,3653000; 521000,3653000; 521000,3652000; 524000,3652000; 524000,3651000; 525000,3651000; 525000,3653000; 526000,3653000; 526000,3649000; 525000,3649000; 525000,3647000; 524000,3647000; 524000,3646000; 522000,3646000; 522000,3648000; 523000,3648000; 523000,3650000; 521000,3650000; 521000,3651000; 519000,3651000; 519000,3650000; 514000,3650000; 514000,3652000; 516000,3652000; 516000,3653000.

Unit 17b: From USGS 1:24,000 quadrangle map El Cajon Mtn., the lands bounded by the following UTM coordinates (E,N): 516000,3639000; 519000,3639000; 519000,3638000; 516000,3638000; 516000,3639000.

Unit 17c: From USGS 1:24,000 quadrangle maps San Vicente Reservoir, El Cajon, Alpine and El Cajon Mtn., the lands bounded by the following UTM coordinates (E,N): 511000,3639000; 514000,3639000; 514000,3637000; 512000,3637000; 512000,3636000; 507000,3636000; 507000,3638000; 511000,3638000; 511000,3639000.

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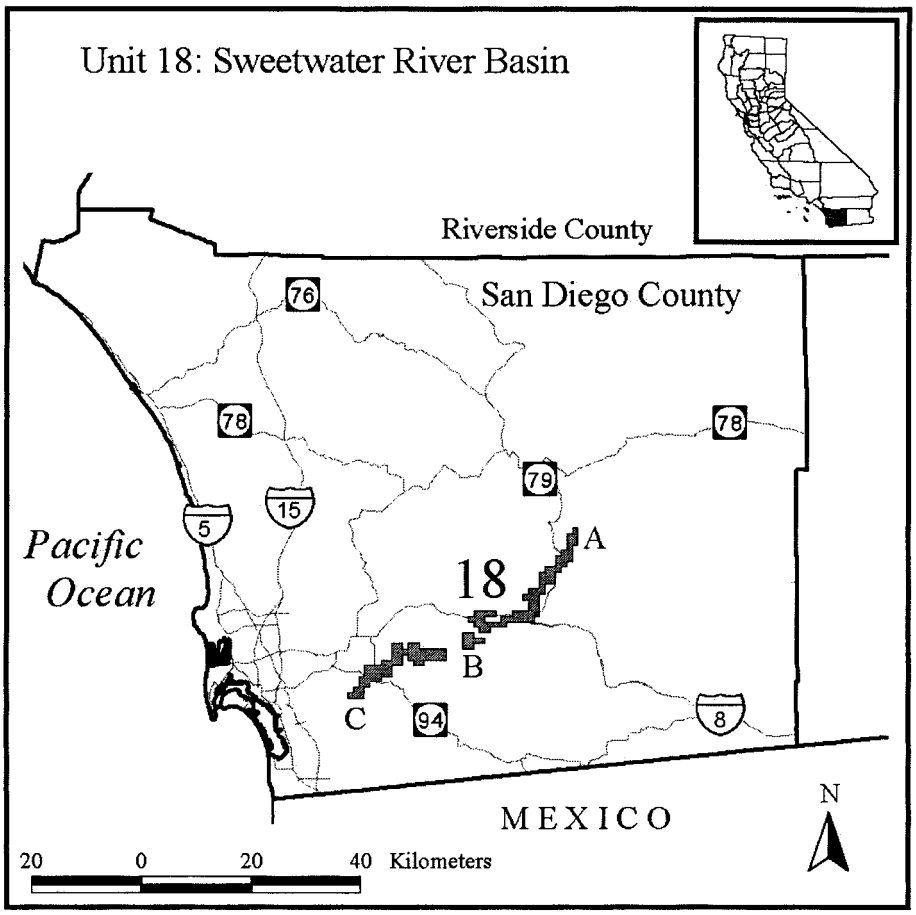

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Map Unit 18; Sweetwater River, San Diego County, California. Unit 18a: From USGS 1:24,000 quadrangle maps Viejas Mountain (1988), Descanso (1960), Tule Springs (1988), and Cuyamaca Peak (1960), California. The lands bounded by the following UTM coordinates (E, N): 543000,3649000; 544000,3649000; 544000,3646000; 543000,3646000; 543000,3643000; 542000,3643000; 542000,3642000; 541000,3642000; 541000,3641000; 540000,3641000; 540000,3639000; 538000,3639000; 538000,3637000; 537000,3637000; 537000,3633000; 536000,3633000; 536000,3632000; 531000,3632000; 531000,3631000; 528000,3631000; 528000,3630000; 526000,3630000; 526000,3631000; 525000,3631000; 525000,3632000; 524000,3632000; 524000,3633000; 525000,3633000; 525000,3634000; 529000,3634000; 529000,3633000; 527000,3633000; 527000,3632000; 530000,3632000; 530000,3633000; 532000,3633000; 532000,3634000; 535000,3634000; 535000,3636000; 534000,3636000; 534000,3637000; 535000,3637000; 535000,3638000; 537000,3638000; 537000,3641000; 538000,3641000; 538000,3642000; 540000,3642000; 540000,3644000; 541000,3644000; 541000,3645000; 542000,3645000; 542000,3648000; 543000,3648000; 543000,3649000.

Map Unit 18b: From USGS 1:24,000 quadrangle maps Viejas Mountain (1988), and Alpine (1982), California. The lands bounded by the following UTM coordinates (E, N): 523000,3630000; 525000,3630000; 525000,3629000; 527000,3629000; 527000,3628000; 525000,3628000; 525000,3627000; 523000,3627000; 523000,3630000.

Map Unit 18c: From USGS 1:24,000 quadrangle maps Jamul Mountains (1971), El Cajon (1967), and Alpine (1982), California. The lands bounded by the following UTM coordinates (E, N): 510000,3628000; 512000,3628000; 512000,3627000; 513000,3627000; 513000,3628000; 515000,3628000; 515000,3627000; 520000,3627000; 520000,3625000; 516000,3625000; 516000,3624000; 514000,3624000; 514000,3625000; 513000,3625000; 513000,3626000; 512000,3626000; 512000,3624000; 510000,3624000; 510000,3622000; 508000,3622000; 508000,3621000; 506000,3621000; 506000,3620000; 505000,3620000; 505000,3618000; 502000,3618000; 502000,3619000; 503000,3619000; 503000,3620000; 504000,3620000; 504000,3622000; 505000,3622000; 505000,3624000; 508000,3624000; 508000,3625000; 510000,3625000; 510000,3628000.

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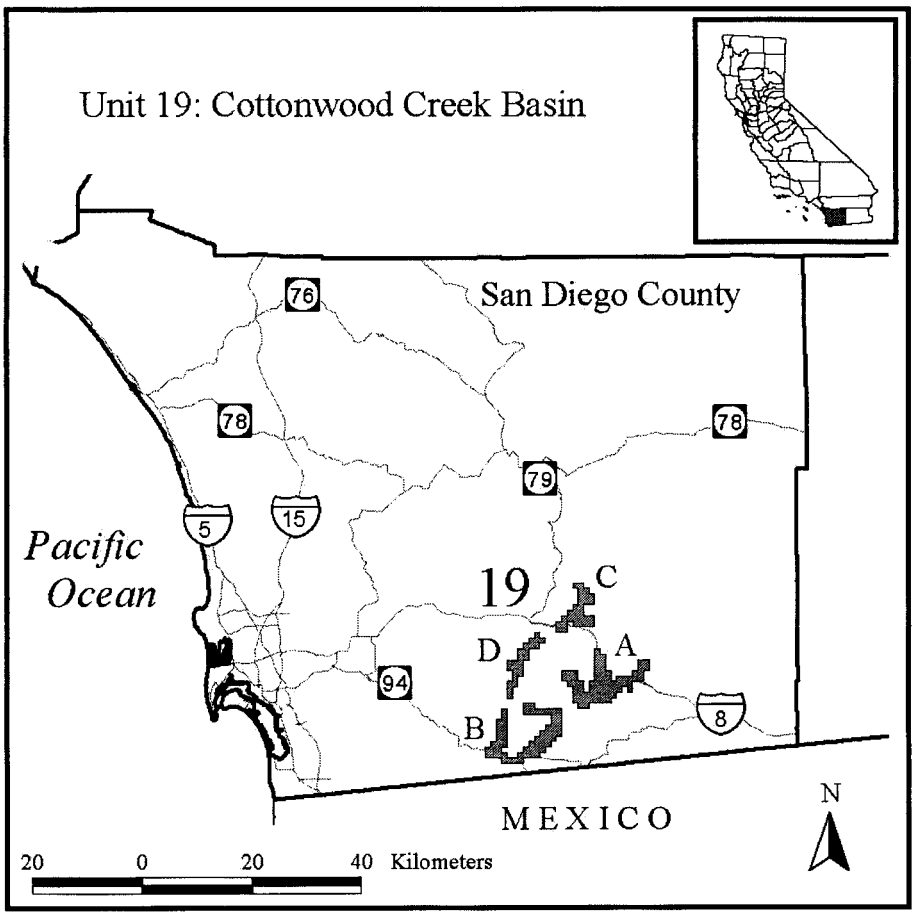

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Map Unit 19; Cottonwood-Tijuana Basin, San Diego County, California.

Unit 19a: From USGS 1:24,000 quadrangle maps Morena Reservoir, Cameron Corners and Mount Laguna, the lands bounded by the following UTM coordinates (E,N): 547000,3627000; 548000,3627000; 548000,3626000; 549000,3626000; 549000,3623000; 550000,3623000; 550000,3621000; 551000,3621000; 551000,3622000; 554000,3622000; 554000,3623000; 555000,3623000; 555000,3625000; 557000,3625000; 557000,3623000; 556000,3623000; 556000,3621000; 554000,3621000; 554000,3619000; 553000,3619000; 553000,3620000; 552000,3620000; 552000,3619000; 551000,3619000; 551000,3618000; 550000,3618000; 550000,3617000; 546000,3617000; 546000,3616000; 544000,3616000; 544000,3617000; 543000,3617000; 543000,3620000; 542000,3620000; 542000,3621000; 541000,3621000; 541000,3623000; 544000,3623000; 544000,3621000; 545000,3621000; 545000,3619000; 546000,3619000; 546000,3621000; 547000,3621000; 547000,3627000.

Unit 19b: From USGS 1:24,000 quadrangle maps Barrett Lake, Tecate, Potrero and Morena Reservoir, the lands bounded by the following UTM coordinates (E,N): 534000,3617000; 536000,3617000; 536000,3616000; 541000,3616000; 541000,3611000; 540000,3611000; 540000,3610000; 539000,3610000; 539000,3609000; 538000,3609000; 538000,3608000; 537000,3608000; 537000,3607000; 534000,3607000; 534000,3606000; 530000,3606000; 530000,3607000; 527000,3607000; 527000,3609000; 528000,3609000; 528000,3610000; 529000,3610000; 529000,3614000; 530000,3614000; 530000,3616000; 531000,3616000; 531000,3609000; 530000,3609000; 530000,3608000; 531000,3608000; 531000,3607000; 533000,3607000; 533000,3608000; 534000,3608000; 534000,3609000; 535000,3609000; 535000,3610000; 536000,3610000; 536000,3611000; 537000,3611000; 537000,3612000; 538000,3612000; 538000,3613000; 539000,3613000; 539000,3615000; 534000,3615000; 534000,3617000.

Unit 19c: From USGS 1:24,000 quadrangle maps Descanso, Cuyamaca Peak and Mount Laguna, the lands bounded by the following UTM coordinates (E,N): 543000,3639000; 545000,3639000; 545000,3638000; 546000,3638000; 546000,3637000; 547000,3637000; 547000,3635000; 545000,3635000; 545000,3633000; 547000,3633000; 547000,3631000; 543000,3631000; 543000,3632000; 542000,3632000; 542000,3630000; 540000,3630000; 540000,3632000; 541000,3632000; 541000,3633000; 542000,3633000; 542000,3634000; 543000,3634000; 543000,3635000; 544000,3635000; 544000,3638000; 543000,3638000; 543000,3639000.

Unit 19d: From USGS 1:24,000 quadrangle maps Barrett Lake, Viejas Mtn. and Descanso, the lands bounded by the following UTM coordinates (E,N): 536000,3630000; 537000,3630000; 537000,3629000; 538000,3629000; 538000,3628000; 537000,3628000; 537000,3627000; 535000,3627000; 535000,3625000; 534000,3625000; 534000,3622000; 533000,3622000; 533000,3620000; 532000,3620000; 532000,3618000; 531000,3618000; 531000,3621000; 532000,3621000; 532000,3623000; 531000,3623000; 531000,3625000; 533000,3625000; 533000,3627000; 534000,3627000;

534000,3628000; 535000,3628000; 535000,3629000; 536000,3629000; 536000,3630000.

Map Unit 20 (see map of Units 6, 7, and 20); Little Rock Creek, Los Angeles County, California. Unit 20a: From USGS 1:24,000 quadrangle maps Palmdale and Pacifico Mtn., the lands bounded by the following UTM coordinates (E,N): 405000,3820000; 408000,3820000; 408000,3818000; 407000,3818000; 407000,3816000; 405000,3816000; 405000,3820000.

Unit 20b: From USGS 1:24,000 quadrangle maps Pacifico Mtn. and Juniper Hills, the lands bounded by the following UTM coordinates (E,N): 405000,3815000; 407000,3815000; 407000,3813000; 408000,3813000; 408000,3812000; 409000,3812000; 409000,3811000; 410000,3811000; 410000,3810000; 411000,3810000; 411000,3809000; 412000,3809000; 412000,3807000; 410000,3807000; 410000,3809000; 409000,3809000; 409000,3810000; 407000,3810000; 407000,3811000; 406000,3811000; 406000,3813000; 405000,3813000; 405000,3812000; 404000,3812000; 404000,3814000; 405000,3814000; 405000,3815000.

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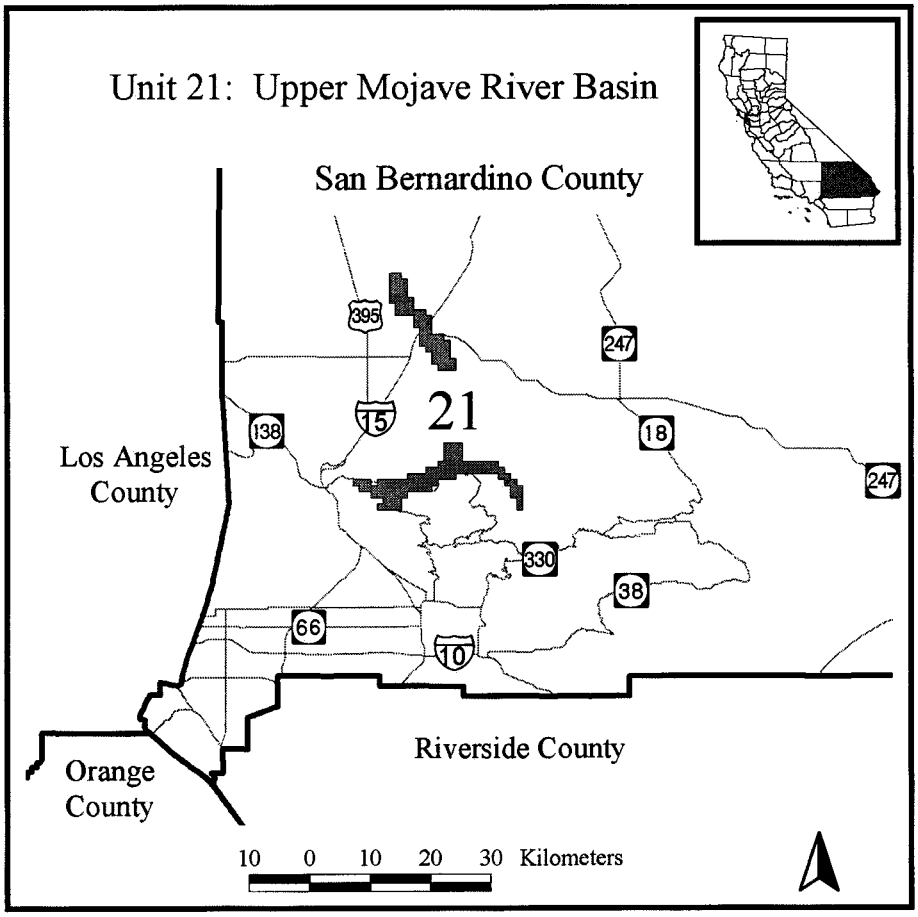

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Map Unit 21; Mojave River, San Bernardino County, California. Unit 21a: From USGS 1:24,000 quadrangle maps Cajon, Silverwood Lake, Hesperia, Apple Valley, Lake Arrowhead and Butler Peak, the lands bounded by the following UTM coordinates (E,N): 476000,3804000; 479000,3804000; 479000,3801000; 485000,3801000; 485000,3800000; 486000,3800000; 486000,3799000; 487000,3799000; 487000,3798000; 488000,3798000; 488000,3797000; 489000,3797000; 489000,3793000; 488000,3793000; 488000,3795000; 487000,3795000; 487000,3797000; 486000,3797000; 486000,3798000; 485000,3798000; 485000,3799000; 478000,3799000; 478000,3798000; 475000,3798000; 475000,3797000; 474000,3797000; 474000,3796000; 470000,3796000; 470000,3795000; 469000,3795000; 469000,3793000; 465000,3793000; 465000,3794000; 466000,3794000; 466000,3795000; 464000,3795000; 464000,3796000; 462000,3796000; 462000,3797000; 461000,3797000; 461000,3798000; 464000,3798000; 464000,3797000; 465000,3797000; 465000,3798000; 470000,3798000; 470000,3799000; 473000,3799000; 473000,3800000; 475000,3800000; 475000,3801000; 476000,3801000; 476000,3804000. Unit 21b: From USGS 1:24,000 quadrangle maps Victorville, Hesperia, Apple Valley North and Apple Valley South, the lands bounded by the following UTM coordinates (E,N): 467000,3832000; 469000,3832000; 469000,3831000; 470000,3831000; 470000,3828000; 471000,3828000; 471000,3826000; 473000,3826000; 473000,3825000; 474000,3825000; 474000,3822000; 476000,3822000; 476000,3821000; 477000,3821000; 477000,3818000; 478000,3818000; 478000,3816000; 475000,3816000; 475000,3817000; 474000,3817000; 474000,3819000; 473000,3819000; 473000,3820000; 472000,3820000; 472000,3823000; 471000,3823000; 471000,3825000; 468000,3825000; 468000,3827000; 467000,3827000; 467000,3832000.

Map Unit 22 (see map of Units 9 and 22); Whitewater River, Riverside

County, California. From USGS 1:24,000 quadrangle maps Catclaw Flat, White Water and Desert Hot Springs, the lands bounded by the following UTM coordinates (E,N): 530000,3764000; 532000,3764000; 532000,3761000; 533000,3761000; 533000,3758000; 534000,3758000; 534000,3754000; 535000,3754000; 535000,3752000; 532000,3752000; 532000,3754000; 533000,3754000; 533000,3755000; 532000,3755000; 532000,3759000; 531000,3759000; 531000,3761000; 530000,3761000; 530000,3764000.

* * * * *

Dated: May 25, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14085 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
June 8, 2000

Part III

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1400 et al.
Agricultural Disaster and Market Assistance; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1400, 1411, 1427, 1439, 1464, 1479

RIN 0560–AG14

Agricultural Disaster and Market Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and final rule.

SUMMARY: This rule implements agricultural disaster and market assistance provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 and the Omnibus Consolidated Appropriations Act, 2000. It will implement statutory provisions related to cottonseed market loss, a competitiveness program for extra long staple (ELS) cotton, warehouse-stored tobacco loss assistance, pasture recovery, oilseeds marketing loss, livestock disaster assistance for contract growers and emergency assistance for Harney County, Oregon. It will also define the base quality for upland cotton, finalize existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs and reorganize all of the Emergency Livestock Assistance regulations to remove obsolete regulations. Certain provisions of this rule will be implemented as interim rules and others as final rules. See **SUPPLEMENTARY INFORMATION** for details.

DATES: This rule is effective June 1, 2000, except for the amendments to § 1427.25, which is effective August 1, 2000.

Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

ADDRESSES: Comments on the regulations should be sent to: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0540, 1400 Independence Ave., SW, Washington, DC, 20250–0540, telephone (202)205–5851, or by e-mail to: tom__witzig@wdc.fsa.usda.gov. Comments can be inspected in Room 6734 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments on the information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom Witzig at the address above.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250–0540, Telephone: (202) 205-5851; e-mail: tom__witzig@wdc.fsa.wdc.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 824 of Pub. L. 106–78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106–78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553, or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, or the Paperwork Reduction Act. The provisions of this interim rule related to tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A and thus are issued as final and are effective immediately.

The provisions of this interim rule related to the Livestock Indemnity and the American Indian Livestock Feed Programs finalize regulations for which interim rules were previously issued and are thus issued as final. The public comments to those interim rules are addressed in the Background section of this rule.

The provisions of this interim rule related to 7 CFR 1400 and 7 CFR 1427.25 are simply technical amendments to clarify the existing regulations for consistent and efficient administration and are thus issued as final.

The provisions of this interim rule related to the reorganization of 7 CFR 1439, Emergency Livestock Assistance, simply remove obsolete regulations and are thus issued as final.

The provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment requirements, and are issued as interim rules, effective immediately, but public comments are requested and will be considered before the regulations are issued as final. Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loan Deficiency Payments—10.051; Production Flexibility Payments for Contract Commodities—10.055; Conservation Reserve Program—10.069, Disaster Reserve Assistance—10.452.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because

the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 824 of Pub. L. 106–78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106–78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of § 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This interim rule is considered a major rule for the purposes of SBREFA. However, the regulations for tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A of Pub. L. 106–78. These regulations affect the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay those provisions of this rule, as expressed in Pub. L. 106–78, they are issued as final and are effective immediately.

The provisions of this interim rule for cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment or the Congressional Review requirements. With respect to these items, for which public comment will be sought, it has been determined that the new regulations should be made effective immediately as in each one of the cases further delay in making benefits available would delay legislated emergency relief. In the case of the provision for extra long staple cotton, the rule merely codifies a statutory formula for relief. In the case of cottonseed payments, the rule will allow recovery in a timely manner for damages that have already been suffered, as will also be the case with the relief provide for Harney County producers. The new regulations, however, are flexible enough to allow the agency to suspend the new provisions for these three new programs in the event that cause for doing so should appear in the comments. In the meantime, however, should no such cause appear, making the regulations effective will allow the regulations to proceed to be used to provide what could be much needed and timely relief for the parties involved, just as relief for others has been provided through a number of other new programs provided for in recent legislation. Likewise, with respect to the Small Business Regulatory Enforcement Fairness Act (SBREFA), which allows for a pre-issuance Congressional review period for some rules, it has been determined that this rule should be made effective immediately on all of its provisions as a delay in implementing the rule would be impracticable and contrary to the public interest.

Paperwork Reduction Act

Section 824 of Pub. L. 106–78 requires that the regulations implementing the provisions of Subtitle A, Title VIII of Pub. L. 106–78 are to be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published. The provisions of this rule that are not mandated by Subtitle A are subject to the normal requirements of the Paperwork Reduction Act. Those provisions are cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon. Information Collection Packages and requests for emergency approval for those provisions have been submitted to OMB and are summarized as follows:.

Title: Emergency Assistance for Harney County, Oregon (7 CFR part 1478)

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection.

Abstract: Emergency Assistance for Harney County, Oregon is authorized under H.R. 3194, P.L. 106–113 (113 Stat. 1501). To determine benefits due to eligible producers requesting assistance in accordance with regulations, FSA proposes to use the CCC–454 (Flood Compensation Program). The CCC–454 will be used to document the verification of loss of production because of flooding in 1999.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per producer.

Respondents: Producers of Harney County, Oregon

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondents: 1

Estimated Total Annual Burden on Respondents: 80 hours

Copies of the information collection may be obtained from Helen Smith, USDA–FSA–PECD, 1400 Independence Avenue, S.W., STOP 0517, Washington, D.C. 20250–0515: Telephone (202) 720–7954 or e-mail *helen_smith@wdc.fsa.usda.gov.*

Title: Cottonseed Payment Program Application/Certification

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection.

Abstract: This new collection instrument is the application and certification form to be used by cotton gins to request payments under the Cottonseed Payment Program. The information requested will be used to determine the national payment rate and to compute individual program payment amounts for each applicant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 minutes per producer.

Respondents: Cotton Gins

Estimated Number of Respondents: 1,100

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 733 hours

Copies of the information collection may be obtained from Gene Rosera, USDA–FSA–PSD, 1400 Independence Avenue, S.W., STOP 0512, Washington, D.C. 20250: Telephone (202) 720–8481 or e-mail gene_rosera@wdc.fsa.usda.gov.

Title: ELS Cotton Competitiveness Payment Program

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection

Abstract: This collection will enroll Extra Long Staple (ELS) cotton exports and textile manufacturers in the ELS Cotton Competitiveness Payment Program and allow them to report their activity with respect to ELS cotton so that proper payments can be made to them. The ELS competitive payment program was authorized by the Consolidated Appropriations Act for

Fiscal Year 2000, Pub.L. 106–113, and was mandated to begin October 1, 1999. A method has been devised to determine each Tuesday whether a payment should be made during the following Wednesday-through-Tuesday week and rate per pound of any payment. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000. Clearance of CCC–1045A (ELS Cotton Exporter/Domestic User Agreement) would facilitate enrollment of the exporters and textile manufacturing firms who wish to participate.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 sminutes per respondent.

Respondents: Cotton Exports and Textile Manufacturers

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondents: 58

Estimated Total Annual Burden on Respondents: 780 hours

Copies of the information collection may be obtained from Wayne Bjorlie, USDA–FSA–EPAS, 1400 Independence Avenue, S.W., STOP 0515, Washington, D.C. 20250–0515: Telephone (202) 720–7954 or e-mail *wayne_bjorlie@wdc.fsa.usda.gov.*

Proposed topics for comments for each of the three information collections are: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom Witzig, USDA–FSA–ORAS, 1400 Independence Avenue, S.W., STOP 0540, Washington, D.C. 20250–0540: Telephone (202) 205–5851 or e-mail *tom_witzig@wdc.fsa.usda.gov.*

Background

This rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, (Pub. L. 106–78), and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113) related to agricultural disaster and market assistance for agricultural producers. It will also implement several other provisions of those and other Acts that are related to but not in themselves crop or market loss assistance provisions. Crop and market assistance provisions of the Acts that are being implemented are the Cottonseed Market Loss Assistance Program, the competitiveness program for ELS cotton, Warehouse-Stored Tobacco Loss Assistance, the Pasture Recovery Program, the Oilseeds Program, emergency assistance for Harney County, Oregon, and livestock assistance for contract growers. This rule will also finalize the existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs, reorganize 7 CFR 1439, Livestock Disaster Assistance, and make clarifying amendments to 7 CFR 1400. Descriptions of this rule's provisions follow.

1. 7 CFR Part 1400—Payment Limitation and Payment Eligibility

Amendments are being made to 7 CFR part 1400 to supplement and clarify the existing regulations for consistent and efficient administration. The revisions are not considered significant in that no additional requirements are imposed upon the producers and no additional responsibilities are placed on the Farm Service Agency or USDA to administer the provisions of this part. The table in § 1400.1(g) is being amended to include the applicable limitation on cost-share payments for conservation practices under the Environmental Quality Incentives Program (EQIP). Section 1400.2 is being amended to include the requirement that all necessary forms be submitted and applicable determinations made before any payments can be issued for the programs subject to this part. The section is further amended to include a provision for the review of the applicable forms and information submitted by producers for the determination of compliance with this part.

2. 7 CFR Part 1411—Oilseeds Program

Section 804 of Pub. L. 106–78 provides generally that the Secretary shall use $475 million of funds of the Commodity Credit Corporation (CCC) to make payments to producers of the 1999 crop of oilseeds who are eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). Section 804 further provides that a payment to producers on a farm under that section for an oilseed shall be equal to the product obtained by multiplying (1) the payment rate determined by the Secretary, by (2) the acreage of the producers on the farm for the oilseed, as determined under the statute, by (3) the producers' yield for the oilseed, as determined under the statute. With respect to acreage, the statute provided generally that the payment acreage of the producers on the farm for an oilseed shall be equal to the greater of (1) the number of acres planted to the oilseed by the producers on the farm during the 1997 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late), or (2) the number of acres planted to the oilseed by the producers on the farm during the 1998 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). As an exception, however, the statute provides that in the case of producers on a farm that planted acreage to an oilseed during the 1999 crop year but did not plant that oilseed in the 1997 or 1998 crop years, the acreage of such ''new'' producers for that oilseed shall be equal to the number of acres planted to the oilseed by the producers on the farm during the 1999 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). With respect to yield, the statute provides that in the case of soybeans, the yield of established eligible producers (those with 1999 production and production in 1997 or 1998) on a farm shall be equal to the greatest of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For other oilseeds the statute provides that the yield of established producers shall be equal to the greatest of (1) the average national yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For new producers, for all oilseeds, the statute provides that the yield will be the greater of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop

years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or (2) the actual yield of the producers on the farm for the 1999 crop. Finally, the statute provides that to the maximum extent available, the Secretary shall use data provided by the National Agricultural Statistics Service to carry out the new program.

As provided in the legislation, only those producers who planted an eligible oilseed for the 1999 crop year will be eligible for benefits under this program and no more than $475 million may be expended, subject further to such administrative deductions as may apply.

Benefits will be determined by multiplying the eligible producer's payment acreage times the applicable yield by the applicable payment rate. The final payment rate will be determined by the Secretary after the sign-up period, to allow the Secretary to establish a rate that will limit total payments to not more than the allocated amount. Because proration can only be made if all claims are made in a timely fashion, no late-filed applications will be permitted. Deadlines will be announced by press release and information about the program will be available at local Farm Service Agency offices.

If the producer is considered to be a ''new'' producer, the producer's qualifying acreage will be all acreage planted by the producer on all farms in which the producer has an interest for the 1999 crop, adjusted to reflect partial interests where there is more than one producer on the same acreage. If the producer is considered to be an ''established'' producer, the acreage, similarly adjusted for partial interests, will be the producer's highest acreage use in 1997 or 1998 at all locations for that oilseed. In all cases, however, for all oilseeds, the producer, in order to be eligible for payment, must have actually planted that particular oilseed for the 1999 crop year. Producers are eligible to receive payments on more than one oilseed so long as the producer shared in the production of each such oilseed for the 1999 crop year. A producer is considered to be a new producer of an oilseed if the producer shared in the production of the oilseed for the 1999 crop year, but did not share in the production of the oilseed on any farm for the 1998 or 1997 crop years. The producer is not considered to be a new producer of an oilseed if the producer shared in the production of an oilseed on any farm in which the producer had an interest in the 1999 crop year, and shared in the production of that specific oilseed in either or both of the 1998 or 1997 crop years. Acreage not planted to an oilseed crop, even if that acreage was approved as acreage for prevented-planting credit for some other purpose (that is, was acreage on which planting was prevented by circumstances beyond the producer's control, so called ''prevented-planting acreage'') does not qualify for any benefit calculation under this new program. That is, that acreage will not qualify the producer for a payment.

With respect to yields, the Secretary will announce average soybean yields for each county, and, for minor oilseeds, a national average yield will be announced. Producers may substitute actual yields for average yields and, if subject to a spot check, shall document oilseed disposition on FSA–658 for all planted acres for the year in question or by providing RMA documentation with proven yield information for all of the planted acres in question. All documentation must be approved by the county committee. New producers may receive an oilseed payment based on the higher of the applicable average yield of the control county for soybeans or national average yield for all other eligible oilseeds, or the producer's actual yield for all acreage for the 1999 crop year (if established to the county committee's satisfaction). An oilseed producer who is not a new producer may receive an oilseed payment based on the higher of the applicable average yield for the producer's control county, for soybeans or national average yield for all other eligible oilseeds, or the higher actual yield for all the producer's planted acreage of the oilseed for either the 1997 or 1998 crop year (regardless of which of those two years was used to set the qualifying acreage).

As provided for in the statute, producers are entitled to receive a payment amount equal to the result of multiplying the payment acreage, times the payment yield, times the final payment rate determined by the Secretary. All persons must meet all eligibility requirements and must, to receive payments, be in compliance with the provisions for highly-erodible land, wetland conservation, and with those regarding controlled substances that are found in 7 CFR part 12 and 7 CFR 718.11. Additionally, a producer who is determined to have intentionally misrepresented any fact affecting a program determination will not be entitled to oilseed payments and must refund all payments, plus interest, and be subject to such other remedies as may be allowed by law.

While the statute involved may be open to several interpretations on significant questions, these rules are intended to provide for an efficient administration of the program consistent with the provisions of the statute itself. Thus, for example, while the references in the legislation to producers ''on a farm'' could suggest that the program was to be interpreted as allowing producers to qualify separately farm-by-farm, rather than qualify on the basis of all farms in which they have an interest, such an interpretation would produce a windfall for some producers (at the expense of other producers) and would not seem to be consistent with the intent of the statute to have producers share in the program based on actual production levels. That is, while there are references in the statute to ''producers on the farm'' the statute does not itself specify that the calculation of production history will be limited to what the producer produced on a particular farm. There is a chance for a windfall with a different interpretation in that if a farmer produced soybeans for 1997 and 1998 on two different farms in rotation or otherwise, that farm would be able to receive a double benefit if the producer could qualify for benefits for each farm separately. Such a doubling of benefit would be to the detriment of other soybean producers who are to share in the finite amount of money available for the program, including those that maybe have grown an equal amount of soybeans in 1997 and 1998 but did so on the same ''farm.''

Also, with respect to yields for new producers of oilseeds other than soybeans, the statute does call for using a county average yield if the producer cannot prove a higher yield. However, because county data for these other oilseeds is limited, so as to raise doubts about its reliability, national average data will be considered to establish the county yield for these oilseeds unless there is adequate proof of a county yield to the contrary, as determined by the local county committee with State Committee approval.

Also, this rule contains a special rule with respect to powers of attorney. In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA form FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless within 14 days of the issuance of this regulation the person granting the power shall notify the local FSA office that the grantee of the power is not authorized to handle transactions for this program for the grantor. This will allow payments to be

made quickly and efficiently while also allowing a mechanism for the grantor of the power to make program decisions directly.

3. 7 CFR Part 1427—Cottonseed Payment and Extra Long Staple Cotton Competitiveness Payment Programs and Definition of Base Quality for Upland Cotton

A. Cottonseed Market Assistance

Section 104(a) of Pub. L. 106–113 provides authority for the Secretary to provide assistance to producers or first handlers of the 1999 crop of cottonseed. This authority is being used to implement a new program because of the continuing low prices of cottonseed that, in some cases, have been passed along to cotton producers in the form of increased ginning fees. Specifically, in Pub. L. 106–113, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 that were not otherwise needed to fully implement that section, the Secretary may use up to $4.7 million to carry out title IX of Pub. L. 106–78. Further, however, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 (excluding any funds authorized by to carry out title IX of Pub. L. 106–78) and under § 1111 of Pub. L. 105–277 not otherwise needed to fully implement those sections, the Secretary may provide assistance to producers or first-handlers for the 1999 crop of cottonseed. Both of those sections provided for market loss assistance through the making of supplemental payments to person with contracts under the Production Flexibility Contract program operated by the Department. Finally, in this respect the Congress provided that if any funds remained, the Secretary could use the funds to provide for a new program for extra long staple cotton, which is addressed later in this rule.

Consistent with the legislation, funding for the cottonseed program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Because outlays for this program will be limited to a fixed amount, all payments will be made only after the total eligible quantity of cottonseed can be determined from approved applications.

The major provisions of this program are as follows. CCC will announce an application period during which U.S. cotton gins may apply for cottonseed payments based on the number of bales of cotton and weight of lint ginned from the 1999 cotton crop.

At the close of the application period, based on the number of bales for which payment is requested, CCC will estimate the total national quantity of cottonseed for payment. The payment rate per ton of cottonseed and payments to applicants will then be determined based on total available program funds. The resulting payments to cotton gins will not be subject to any per-person payment limitation. Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers. The recourse for producers dissatisfied with the distribution by the gin will be to make use of whatever private civil remedies they may possess against the gin. This distribution has been settled upon in light of the impossibility of making timely, reasonable, and effective individual determinations for each gin and each bale of cotton as to how the effect of cottonseed prices was actually distributed. This is consistent with the precise wording of the statute, which appears to contemplate a distribution to gins alone. In that regard, the statute allows for payments to gins ''or'' producers, rather than to gins ''and'' producers.

B. Extra Long Staple Cotton Competitiveness Payment Program

As indicated above, Congress authorized the use of a particular source of funds for a cottonseed program and allowed any remaining funds to be used for a new program for extra long staple cotton. Specifically, within those limits, Congress provided for this new program by adding a new section, 136A, to the Agricultural Market Transition Act. That new section specifies that, within funding limits, notwithstanding any other provision of law, during the period beginning October 1, 1999, and ending July 31, 2003, the Secretary shall carry out a program to maintain and expand the domestic use of extra long staple cotton produced in the United States, to increase exports of extra long staple cotton produced in the United States, and to ensure that extra long staple cotton produced in the United States remains competitive in world markets. Under the program, the statute provides, the Secretary shall make payments available whenever (1) for a consecutive 4-week period, the world market price for the lowest priced competing growth of extra long staple cotton (adjusted to United States quality and location and for other factors affecting the competitiveness of such cotton), as determined by the Secretary, is below the prevailing United States price for a competing growth of extra long staple cotton; and (2) the lowest-priced competing growth of extra long staple cotton (adjusted to United States quality and location), as determined by the Secretary, is less than 134 percent of the loan rate for extra long staple cotton. Further, § 136 provides that the Secretary shall make payments available under this section to domestic users of extra long staple cotton produced in the United States and exporters of extra long staple cotton produced in the United States who enter into an agreement with CCC to participate in the program. Payments are, by the statute, to be based on the amount of the difference in the prices as determined for the last week of the qualifying period multiplied by the amount of documented purchases by domestic users and sales for export by exporters made in the week following such 4-week period. Finally, the statute provides payments shall be made through the issuance of cash or marketing certificates, at the option of eligible recipients of the payments. As set out in the statute and as implemented in the regulations provided for in this rule, the program is designed so that payments would trigger in response to a deterioration in the competitive position of U.S.-grown ELS cotton in relation to foreign ELS cotton growths. If non-U.S. prices move sufficiently lower, or if U.S. spot prices move sufficiently higher, payments to exporters of U.S.-grown ELS cotton would be triggered after four weeks during which the U.S. spot price for a specific quality of ELS cotton exceeds the lowest adjusted foreign price quotation for a comparable quality. Exporters then would receive the payment on every eligible bale shipped while the program is triggered. U.S. domestic mills also would receive the payment on every eligible bale of U.S.-grown ELS cotton opened during that time.

C. Definition of Base Quality for Upland Cotton

A base quality for upland cotton must be defined so that a bale of upland cotton showing any deviation from the base quality may be properly valued for purpose of determining a loan rate under the marketing assistance loan program for upland cotton. In an effort to improve the quality of American raw cotton for spinning, the cotton industry recommended a redefinition of base fiber strength and the introduction of the length uniformity percentage for

purposes of the marketing loan. The regulation at 7 CFR 1427.25 is being revised to conform to the schedule of loan premiums and discounts for the 2000 crop. Beginning August 1, 2000, the definition of base strength will be changed and a definition of base length uniformity will be introduced. The changes bring the regulation and the loan schedule back into balance, reestablishing the base quality at zero premium/discount so that no additional program cost will result.

4. 7 CFR Part 1439—Emergency Livestock Assistance

A. Pasture Recovery Program

Section 805 of Pub. L. 106–78 provides that the Secretary shall use $325 million of CCC funds to provide assistance directly to livestock and dairy producers, in a manner determined appropriate by the Secretary, to compensate the producers for economic losses incurred during 1999. Further, in § 825 of the same legislation Congress provided that of the funds provided in §§ 801 and 805 of that Act, no less than $200 million in assistance would be required to be made in the form of assistance to livestock producers for losses due to drought or other natural disasters. In § 801 of that Act, Congress, without limitation to particular kinds of production, authorized the use of $1.2 billion in Commodity Credit Corporation funds to make emergency financial assistance available to producers on farms that have incurred losses in a 1999 crop due to a disaster, as determined by the Secretary. Pub. L. 106–113 appropriated an additional $186 million to the sum provided for in § 801 of Pub. L. 106–113.

Pursuant to the authority contained in Pub. L. No. 106–78, new Livestock Indemnity and Livestock Assistance Programs for losses incurred during 1999 were provided for in an omnibus rule published on February 16, 2000 (65 FR 7942).

However, it has been further decided that additional relief should be provided for livestock interests under the authority contained in Pub. L. 106–78. To that end, this rule uses the authorities set forth above to provide for a new Pasture Recovery Program (PRP) that is to be included in 7 CFR part 1439 and will provide payments to owners and operators of pasture land on which livestock is normally grazed who suffered pasture losses due to drought during calendar year 1999. Eligible producers must agree to reestablish the forage crop and maintain the crop for three full years after the calendar year of installation. PRP payments will be authorized only in counties determined eligible for the most recent Livestock Assistance Program and approved for assistance for 1999 losses due to drought under the Emergency Conservation Program that is provided for in 7 CFR part 701. For the land to be eligible, it must be established pasture land on which livestock is normally grazed but that was so damaged or destroyed by drought or related conditions that seeding is required to reestablish a cover. Hayland and rangeland will not be eligible, nor will land operated by the Federal or a State Government or a political subdivisions of a State. To be an eligible recipient of program benefits, the applicant must be an owner or operator of eligible land damaged or destroyed in 1999 who normally grazes livestock on such land and such applicant must be the person who will restore and maintain the property for three full years after the calendar year of installation.

All conditions must be satisfied if a person is to be eligible for a PRP payment. For example, if an owner leases pasture land to an operator for grazing the operator's livestock, then the operator is eligible for a PRP payment only if the operator reestablishes the forage crop on the leased pasture land and has a lease and the equipment necessary to maintain the forage crop for one full year after the calendar year of installation. If an owner leases pasture land to an operator who normally grazes the operator's livestock but the owner agrees to reestablish the forage crop on the pasture land, then neither the operator nor the owner are eligible for PRP benefits because neither can meet all of the eligibility requirements. The owner is ineligible because the owner does not normally graze livestock on the pasture land, and the operator is ineligible because the operator did not reestablish the forage crop on the pasture land. Other restrictions will apply as well in the administration of the program. Among them, the land must be in a county that was approved for participation in the 1999 Livestock Assistance Program (LAP), which was provided for by a rule published on February 16, 2000, and that county must have had a 120-day payment period for purposes of the 1999 LAP. Further, the county in which the land is located must be a county that, based on 1999 drought-induced losses, was approved for participation in the Emergency Conservation Program (ECP) by virtue of an application submitted prior to March 1, 2000. The ECP is provided for in 7 CFR part 701.

This program will be subject to the general provisions for emergency livestock assistance programs found in what will now be Subpart A of part 1439. That subpart is republished in this rule. That subpart provides for limitations on payments that are effectively adopted in this rule by not exempting the PRP from those provisions. In addition limits on payments are provided in the rules themselves.

Accordingly, and in order to efficiently maximize the use of program funds for those farmers most in need of relief, this new program, like others in part 1439, will not be available to a person whose annual gross revenue is in excess of $2.5 million. Further, however, benefits are limited to $2,500 per ''person'' determined according to the ''person'' determination regulations at 7 CFR part 1400 applicable to a number of other USDA programs.

In order to receive payments, applicants will be required to certify that pasture land to be enrolled in the PRP was so damaged or destroyed by drought or related conditions during calendar year 1999 that seeding is required to reestablish the forage crop. State Farm Service Agency (FSA) committees will establish per-acre payment rates equal to 50 percent of the eligible area's average cost of reestablishing the approved forage crop on eligible pasture land not to exceed $75 per acre. The FSA Deputy Administrator for Farm Programs may approve higher per-acre payment rates not to exceed $125 per acre. In no case will per-acre payment rates exceed $125 per acre. Seeding and related fertilizing requirements will be required to be carried out according to standards for agronomic practices and applicable environmental laws and regulations. Payments may be issued upon certification by the participant that approved practices to reestablish the forage crop have been completed. Certifications are subject to spot check by FSA.

Signup periods for this new program will be announced by CCC, but are expected to be conducted no later than the spring 2000 planting season for affected regions. It is expected that all seeding will be required to be completed in calendar year 2000 by a date announced by CCC. Because this new program is operated under authority contained in Pub. L. 106–78, it is subject to the exemptions from rulemaking and from the Paperwork Reduction Act that are contained in Pub. L. 106–78.

B. Livestock Indemnity Program for Contract Growers

Title I of Pub. L. 106–113 provided an additional $10 million for the livestock assistance authorized by § 805 of Pub. L. 106–78 and specified that this additional amount could be used to provide assistance to persons who raise livestock owned by other persons so as to provide relief for income losses sustained with respect to such livestock during 1999, if the Secretary finds that such losses are the result of natural disasters. In order to make use of that authority, a new subpart for 7 CFR part 1439 is provided for in this rule that will establish regulations for such relief. The new Livestock Indemnity Program for Contract Growers (CG–LIP) would provide benefits to eligible livestock producers who, due to a natural disaster in calendar year 1999, sustained a loss of income handling livestock in which they did not have an ownership interest. The loss must have been suffered in an area that was the subject of a Presidential or Secretarial disaster declaration. Producers in contiguous counties that were not designated as a disaster area are not eligible for benefits. Eligible livestock for purposes of the program are beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when maintained on the same basis as beef cattle. Such livestock must have been handled pursuant to a contract between the producer and owner. Applications for benefits must be submitted at the local county FSA office by May 1, 2000, or such other date as established by CCC. Livestock producers must provide adequate proof of loss and of the corresponding reduction in income. Subject to the availability of funds, payments shall be made in an amount determined by multiplying the national payment rate for the livestock category as determined by CCC by the qualifying loss. If the claims exceed the allotted funds, claims may be prorated or otherwise adjusted to account for the limited funds. For the same reasons as for the new Pasture Recovery Program, the $2.5 million gross revenue test will apply, as will a $40,000 per-person payment limit. FSA may, as needed, reduce benefits to avoid duplication with other programs and may exclude those claimants who were related to, or affiliated with the owners of the livestock so as to limit the program to those contract producers who were truly separate from the owners of the livestock and thus did not benefit directly or indirectly from other livestock programs, which were owner-focused.

C. General Revision of 7 CFR Part 1439

This rule also finalizes other amendments recently made to part 1439. In a final rule published on March 19, 1999 (64 FR 13497), part 1439 was generally reorganized. Also, that rule provided for a new LAP program. Thereafter, an interim rule was published on August 31, 1999 (64 FR 47358), which provided for a new Flood Compensation Program (FCP). Likewise, the FCP was codified in part 1439. That rule was followed in turn by an interim rule published on November 1, 1999 (64 FR 58766), which provided for a new Livestock Indemnity Program. In the meantime, as indicated, Pub. L. 106–78 was enacted, which allowed for new relief for livestock interests and led to a new rule published on February 16, 2000 (65 FR 7942) that updated the LIP and LAP regulations so as to provide for the new LIP and LAP provisions.

The March 19, 1999 rule reorganizing part 1439 took into account the existence of the regulations published on November 27, 1998 (63 FR 65524), creating, by an interim rule, the American Indian Livestock Feed Program (AILFP), but did not finalize those regulations. Hence, prior to this time, there have been three interim rules pending for part 1439: (1) The AILFP rule of November 27, 1998, (2) the FCP rule of August 31, 1999, and (3) the LIP rule of November 1, 1999. For all three interim rules, the comment periods are closed and those rules are made final in this rule.

With respect to comments, none were received for the LIP and FCP rules. Accordingly, and on further review, no changes were needed in those regulations. For the AILFP two comments were received. First, the comments suggested that the benefits of the AILFP should not be limited to tribal-governed land but should include non-dependent lands that are now held by private persons but were formerly reservation. The AILFP is a very limited program with very limited funds. This comment was not adopted in light of the limited funds available and also because the limitations contained in the program reflected the sovereign-to-sovereign nature of this special program. Also, citing Executive Order No. 13804, § 3(b), a comment suggested that the tribes be compensated for their AILFP efforts. This comment was not adopted because the program is not a regulatory program but a voluntary program to which the Executive Order does not apply. Also, however, on reviewing the rule, it was determined that a definition of ''dependent Indian community'' should be added. Under the interim rule, a ''dependent Indian community'' is one of the categories of land that are considered under the rule to be ''tribal governed land.'' In this new rule, that phrase would be defined to mean a limited category of Indian lands that are neither reservations nor allotments and are found by FSA to be: (a) Land set aside by the Federal Government for the use of Indians as Indian land; and (b) under Federal superintendence.

With respect to the FCP, as all claims in that program are past claims, there does not appear to be a good reason to republish the regulations. Hence, they are removed by this rule, though such removal will not affect any past, pending, or future claims under that program. Also, with respect to the AILFP regulations, a provision has been added to § 1439.902 so that the regulations for that program will, except for the change noted above, be the same as they were in substance despite the reorganization of part 1439. Also, for consolidation purposes, the LIP regulations have been renumbered. Conforming amendments to existing rules have also been added as needed to reflect the reorganization of part 1439. The language dealing with the application deadline for the 1999 LAP program was changed because of changed circumstances. Also at various places in the regulations provisions have been added to make explicit that nothing in the regulations will require expenditures for programs beyond that which is deemed appropriate by CCC with respect to overall funding levels, taking into account statutory limits.

5. 7 CFR Part 1464—Assistance for Losses of Certain Warehouse-Stored Tobacco

Section 803 of Pub. L. 106–78 authorized the Secretary to use $328 million of CCC funds to make payments to States with tobacco producers whose 1999 poundage quotas or acreage allotments for tobacco were reduced from 1998 crop year levels due to a drop in the national marketing quote or poundage quota for their kind of tobacco. In addition, Pub. L. 106–78 made provision for a number of other programs, which were implemented by a final rule published in the **Federal Register** on February 16 (65 FR 7942). The provisions dealing with the $328 million for tobacco producers were codified at 7 CFR Part 1464, Subpart C. Those regulations call for the funds to be distributed by the individual States with qualifying persons. This follows the language of § 803, which basically calls for the distribution of the funds to

be made in the same way that state trusts are making $5 billion available to tobacco growers using the so-called ''Phase II'' funds made available by tobacco companies.

Section 803(c) of Pub. L. 106–78 defines those persons who were eligible to receive the tobacco payments as being those persons who own or operate, or produce tobacco on, a farm: (A) For which the quantity of quota allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) was reduced from the 1998 crop year to the 1999 crop year; and (B) that was used for the production of tobacco during the 1998 or 1999 crop year. As for the distribution of the funds and amounts, § 803 called for the funds to be distributed in the same way as the States were or are distributing the so-called ''Phase II'' funds made available by tobacco companies to producers through state trusts.

While Pub. L. 106–78 was being considered there was a series of severe weather conditions in the flue-cured tobacco growing area of North Carolina. In particular, there were three hurricanes that hit in quick succession, leading to widespread flooding in that area. That flooding destroyed some 1999-crop tobacco that had been delivered to warehouses for sale by producers under the customary auction warehouse system. Some of this tobacco had not yet, however, been sold at auction and producers still held the risk of loss on that tobacco even though the tobacco had been harvested and thus was not eligible for coverage under the normal crop loss programs run by the Department.

Subsequently, Pub. L. 106–113, provided an additional $2.8 million for tobacco assistance authorized by § 803(c)(1) of Pub. L. 106–78 and provided ''that the definition of eligible persons in § 803(c)(2) of Pub. L. 106–78 shall include producers who have suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold.'' The quoted language constitutes essentially the entirety of the statutory provision.

Literally, the new language would only seem to simply add an additional amount to the $328 provided for in § 803 without, as such, changing the distribution method called for in § 803, and would seem to be limited to a technical adjustment of the eligibility definition contained in § 803(c)(3). However, the intent of the language seems clearly, instead, given the background set forth above and other factors, to provide relief to those flue-cured producers who had tobacco that was still theirs in the flooded warehouses but that was lost. This would follow from the nature of the language adopted, from the timing of the bill and from the amount allotted. The original $328 million roughly corresponded to a dollar per pound for all tobacco that met the eligibility criteria of the original legislation and the additional $2.8 million corresponds to roughly a dollar per pound for the amount of producer tobacco that internal Department assessments made prior to the passage of Pub. L. 106–113 indicated had been lost in flue-cured warehouses in North Carolina as the result of the three hurricanes. Damage of the kind covered by the legislation appears to be limited to North Carolina. Furthermore, simply adding to the definition of 803(c)(3) would not seem to be purposeful in and of itself if that addition was not meant to indicate a separate kind of payment, since, presumably all of the persons who lost tobacco in the warehouses during the natural disaster were persons who already met the definition in 803(c)(3). Rather, the addition only appears to make sense as a method of indicating a separate form of recovery for producers whose incomes for the tobaccos covered by § 803 were reduced by the warehouse disasters caused by the floods. Of the tobaccos covered in § 803 (those which, nationally, had reduced quotas or allotment for 1999), the only tobacco that appears to have had any sort of widespread 1999-crop loss in warehouses due to a natural disaster at or near the time that Pub. L. 106–113 enacted was flue-cured tobacco.

In addition, there is a limited amount of funds made available by Pub. L. 106–113, and no payment formula is specified. Accordingly there is some discretion involved in deciding which claims to honor and how the funds will be distributed. Further, timely decision must be made about the distribution of the funds so that the universe of claims can be determined and the funds apportioned.

To that end, this rule provides for the $2.8 million to be distributed directly by the Department and provides that, except as determined by the Deputy Administrator for Farm Program of the Farm Service Agency upon petition, payable only on flue-cured tobacco and only for those losses in North Carolina as a result of the recent hurricanes. Because material damage appears to be limited to North Carolina, normal signup will be limited to that State. However, there are references in the rule to the ability of persons to petition the Deputy Administrator for relief so as to provide the leeway necessary in the event that there are meritorious circumstances of which the Department is not aware that were widespread and that should be considered to assure that all claims are reviewed. In all cases, requests for relief must meet the deadlines provided for in the regulations that are published in this rule.

6. 7 CFR Part 1479—Flood Assistance for Harney County, Oregon

In Pub. L. No. 106–113 Congress also provided that CCC could use up to $1.09 million of its funds to provide emergency assistance to producers on farms located in Harney County, Oregon, who suffered flood-related crop and forage losses in 1999 and several previous years and are expected to suffer continuing economic losses until the flood waters recede. Congress provided that any amounts made available should be for such losses for such years as determined appropriate by the Secretary to compensate such producers for hay, grain, and pasture losses due to the floods and for related economic losses.

General regulations for programs of this type are provided for in 7 CFR part 1478, 1999 Crop Disaster Program, published on February 16, 2000 (65 FR 7942), which was a new part intended to allow for a single-year disaster program in accordance with Pub. L. 106–7.

The regulations set out in this rule will provide for Harney County, in a new part, 7 CFR part 1479, compensation to producers whose land was not usable from January 1, 1999 through December 31, 1999. To be eligible for benefits, producers in Harney County, Oregon, must have owned or leased land that was intended to be used for crop or forage production or grazing during crop year 1999, and which was subject to flooding January 1, 1999, through December 31, 1999, and for which it is determined that due to flood-related losses, the land was unfit for crop or forage production, or grazing, at all times during CY 1999. Producers will be required to certify that the acreage was unable to be used due to flooding. In the new program, no ''person'', as ''person'' is defined in the applicable regulations, will be able to receive over $40,000 in program payments and no person can receive any payment if that person's gross revenue for 1998 was in excess of $2.5 million. These limits will also insure the most efficient use of funds for the producers most in need. The applicant must be the owner or lessee of the affected property under a binding lease during the 1999

crop year, and must still be the owner or lessee of the land. Other restrictions apply as well, including a requirement that the land must have been unusable for at least one other crop year in the years 1994 though 1998, and must be land that actually produced a crop, or that was actually used for pasture, on or after 1990.

Unadjusted payment rates will be based on the average local rental rates for crop land and pasture land, using, where possible, 5-year data of the National Agricultural Statistics Service.

Cost-Benefit Assessment

Summary

Outlays under the programs implemented by this rule will total approximately $616.5 million, of which approximately $604 million will be direct payments to producers. The outlays for the Livestock Indemnity Program and the American Indian Livestock Feed Program, totaling $15.5 million, have, for the most part already been made, and therefore do not represent a new funding commitment. The table summarizes the outlays and the discussion following summarizes the Cost/Benefit Assessments for each program.

SUMMARY OF OUTLAYS

Program	Outlays
Oilseeds Program	[1] 462.6
Cottonseed Payment Program	74.0
ELS Cotton Competitiveness Program	[2] 6.0
Pasture Recovery Program	[3] 40.0
Livestock Indemnity Program for Contract Growers	[4] 2.0
Finalization of Existing Livestock Regulations	[5] 15.5
Warehouse-Stored Tobacco Assistance	2.8
Harney Co., Ore. Emergency Assistance	1.09
Total	603.99

[1] After administrative expenses of approximately $12.4 million.

[2] Total of actual outlays up to May 4, 2000 and maximum expected outlays through September 30, 2000.

[3] Reallocated from funding previously attributed to the 1999 Crop Disaster Program.

[4] After administrative expenses of approximately $100,000.

[5] Includes $3 million for LIP in FY 1999 and $12.5 million for AILFP for FY's 1997 and subsequent years.

1999 Oilseed Market Loss Assistance Program

U.S. oilseed producers are experiencing serious financial hardship as a result of low oilseed prices. The farm-level market value of oilseed production has dropped substantially since the mid-1990's. In fact, the farm value of the 1999 U.S. oilseed crop was down an estimated $5 billion, or 27 percent from the previous 5-year high set in 1996, despite a 12-percent increase in production. Some producers have also had their financial problems exacerbated by isolated weather problems that reduced their 1999 production.

Section 804 of Pub. L. 106–78 authorized the use of $475 million in Commodity Credit Corporation funds to assist oilseed producers suffering from reduced farm income as a result of large supplies and low prices. To be eligible for payments from these funds, a producer must have produced an oilseed in 1999 that is eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). These oilseeds include: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed, flaxseed, and crambe.

The payment rate determined by the Secretary must consider the number of eligible payment acres and payment yields as well as the fixed amount of Commodity Credit Corporation funds authorized by Congress for the Oilseed Program. Section 822 of Pub. L. 106–78 provides that the Secretary may reserve up to $56 million of the amounts made available under subtitle A to cover administrative costs incurred by the Farm Service Agency directly related to carrying out that subtitle. For the Oilseed Program the authorized amount of $475 million will be reduced by approximately $12.4 million to cover administrative costs. After accounting for administrative costs, direct payments to producers under the Oilseed Program are expected to total approximately $462.6 million. Of this total about $442.7 million (96 percent) is expected to go to soybean producers. The remaining $19.9 million will be split among the producers of the other minor oilseeds eligible for marketing assistance. Payments to producers of those oilseed are estimated to be $13.2 million for sunflower seed producers, $3.8 million for canola producers, $1.7 million for safflower producers, $938,923 for flaxseed producers, $172,471 for mustard seed producers, $112,990 for crambe producers, and $16,260 for rapeseed producers. Because assistance will be in the form of direct payments, the program is expected to result in a dollar-for-dollar increase in farm income for oilseed producers.

Pre-enrollment estimates of per-unit payment rates are expected to be highest for safflower seed and mustard seed at 34 and 31 cents per hundredweight (cwt.), respectively. The lowest per unit rate is expected to be for flaxseed at 22 cents per cwt. (12 cents per bushel). The pre-enrollment estimate for the soybean payment rate is 24 cents per cwt. (14 cents per bushel). On a per-acre basis, the safflower seed payment will be highest among the various crops at $6.13 per acre. The pre-enrollment payment for soybeans is estimated at $5.92 per acre. For the remaining oilseeds, pre-enrollment estimates indicate that per-acre payments will range from a low of $2.55 for flaxseed to a high of $3.69 for rapeseed.

Cottonseed Market Loss Assistance

The cottonseed support payment program is designed to provide payments to cotton ginners in response to a severe decline in the price of cottonseed in the 1999 crop year. Throughout the Cotton Belt, in most years, the value of the cottonseed that is the by-product of the ginning process has been accepted by cotton ginners as payment in full for the cost of ginning seed cotton. Unless they are members of a co-operative gin (many are) or they own or are partners in a gin, farmers do not secure any benefit from the seed other than to have their ginning costs canceled.

This season, the average price of cottonseed has dropped by about $48 per ton (37 percent) from the average level received last year, and about $36 per ton (31 percent) from the average of 1994 through 1998. In the 1999 season, cottonseed prices in many parts of the Cotton Belt do not cover the cost of ginning.

Cottonseed prices this season equate to about $34 worth of seed per bale of cotton lint produced, on a national average. The national average ginning cost for 1999 is estimated at $46 per bale. Thus, the national average value of cottonseed falls about $12 short of the cost of ginning a bale of cotton. That is the equivalent of about 2.5 cents per pound of lint. For ginning services, some farmers are being asked to pay in cash to the ginner an additional 2 or 3 cents per pound of cotton lint beyond the value of the seed, while, in other cases, ginners are holding ginning bills until they see how this payment program will be implemented.

The most viable option to assist cotton producers is a direct payment program in which payments are made to ginners. There are between 1,000 and 1,100 gins in the United States. About 25 percent of those are co-operatives. Another 50 percent are owned as corporations by farmers who gin their own and their neighbors' cotton. About 25 percent are independent gins.

Thus, farmers have a direct interest in about 75 percent of the gins and can be expected to receive nearly the full benefit of payments made to the gins. In the other 25 percent of gins where farmers do not directly operate or share in the ownership of the gins, farmers still may be expected to receive a substantial portion of the program benefits because the gins may have held the ginning bills pending the implementation of this program, the gins may rebate to farmers any ginning bill already paid, or competition among gins may dictate that any payments beyond those needed to cover the shortfall in seed prices will be rebated to the gins customers.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Approximately $74 million of those funds will be available for cottonseed payments for crop year 1999. This will allow payments of approximately $4 per bale of lint, or about 1 cent per lb.

Extra Long Staple Cotton Competitiveness Program

The program is designed so that payments trigger in response to a reduction in other world prices, as specified in the legislation. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000.

It is not possible to predict whether there will be further reductions in foreign prices, nor how large they will be, nor how long they will last. There would be no theoretical maximum payment rate. However, during the 6-week period April 4, 2000, through May 2, 2000, in which payments were triggered, outlays were less than $1 million. For the remainder of FY 2000 (mid-May through September), the program could incur from $3 million to $5 million in outlays if there is no drastic change in price relationships currently being observed and if it operates every week until September 30.

It is projected that ELS competitiveness payments could increase domestic use of American Pima cotton by about 5,000 bales (about 3 percent) per year and exports by 25,000 bales (about 6 percent) per year. This increase in disappearance could add about 2 cents to the average price of American Pima and reduce net lending costs to CCC by about $25 million. Farm receipts would rise by about $4 million for the 1999 crop.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Approximately $10 million of those funds will be available for the ELS Cotton Competitiveness Payment Program.

Pasture Recovery Program

Weather-related disasters in calendar year 1999 exacerbated the financial crisis affecting the Nation's agricultural sector. Prolonged drought, predominantly in the Mid-Atlantic and Northeastern United States, left livestock producers with destroyed or severely damaged pasture. The purpose of the Pasture Recovery Program (PRP) is to provide payments to owners and operators of pasture who suffered pasture losses due to drought in 1999 and who reestablish the forage crop on their pastures.

Funds to reestablish pasture damaged by drought will be allocated from funds provided for crop and livestock loss assistance under Pub. L. 106–78 and Pub. L. 106–113 that otherwise would be committed to the Crop Disaster Program, the Livestock Assistance Program, or the Livestock Indemnity Program.

PRP payments will be authorized only in counties determined eligible for the Livestock Assistance Program and approved for the Emergency Conservation Program. As of mid-January, 2000, about 400 counties met both of these requirements and about 30,000 producers had applied for the 1999 LAP. The funding level of $40 million will be met if slightly more than half of the 30,000 eligible producers receive the maximum payment of $2,500 per person. To be eligible, land must be established pasture land on which livestock are normally grazed and that was so damaged by drought that seeding is required to reestablish a cover crop. Neither hay land nor rangeland is eligible.

Payment rates per acre will equal 50 percent of the eligible area's average cost of reestablishing the approved forage crop and are not to exceed $125 per acre. FSA's Deputy Administrator for Farm Programs must approve payment rates above $75 per acre.

The cost to reestablish pastures is estimated to be between $100 and $250 per acre, depending on the tillage and fertilization rates required. Most are expected to fall between $100 and $150 per acre, which will allow producers a payment rate of $50-$75 per acre. At an average payment rate of $62.50 per acre and subject to the $2,500 limitation producers could reestablish pasture on a maximum of 40 acres.

The Pasture Recovery Program will provide benefits to livestock producers who graze animals on land that has been damaged by drought. It will partially offset the cost of reestablishing a forage crop where cover has been destroyed, which will provide some reduction in soil erosion due to wind and water.

Funding for the program will provide payments for livestock producers who have suffered losses due to drought. Payments will be reduced for some producers in some programs in order to provide payments under PRP. Some funding will be shifted from crop programs to livestock producers and some will be shifted from other livestock producers to those using pastures affected by drought.

Livestock Indemnity Program for Contract Growers

Contract livestock growers are eligible for assistance through the Livestock Indemnity Program for Contract Growers (CG–LIP) if livestock or poultry lost on the farm exceeds normal nationally-determined mortality rates, and if the livestock or poultry lost were on a farm in a region affected by a natural disaster between January 1, 1999, and December 31, 1999.

The CG–LIP program will be administered in a manner similar to the 1999 LIP program for livestock owners. However, owing to the differing financial interests between the owners of livestock and poultry and contract growers of the lost livestock and poultry, payment rates will need to be adjusted to reflect the losses suffered by the contract growers. Generally, payment rates per animal lost for contract growers are expected to be less than for the livestock and poultry owners, reflecting the smaller per-animal investment (and loss) by contract growers. Contract growers will be paid on those losses exceeding normal mortality. Based on the numbers of livestock lost, claims are expected to be approximately $2 million, well short of the $10 million available. Consequently, it is unlikely that payments will be factored. On a sectoral basis, the payments represent a small fraction of the total value of livestock production.

However, for those contract growers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments will assist contract growers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and poultry, replace lost income, and to service debt. It is assumed, in part as a result of the CG-LIP, that contract producers affected by the disaster would remain in business and rebuild their contract growing operations to their previous size.

Finalization of Existing Regulations for the Livestock Indemnity Program and American Indian Livestock Feed Program

The Livestock Indemnity Program (LIP) provides financial assistance to livestock producers who suffered significant financial losses due to natural disasters between May 2, 1998, and May 21, 1999. The impact of the indemnity payments on livestock and milk market prices and consumers is not expected to be measurable. Farm income was expected to be $3 million higher, equaling the amount of indemnity payments. Federal outlays would also increase by the indemnity payment of $3 million.

For those producers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments assist producers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and to replace breeding stock. It is assumed, in part as a result of LIP, that producers affected by the disaster would remain in business and rebuild their foundation herds to their previous size.

The American Indian Livestock Feed Program (AILFP) provides assistance to eligible livestock producers who have suffered significant loss of livestock feed production for 1997 and subsequent years. Theses funds will help eligible producers to meet financial obligations against feed stocks purchased to maintain livestock as a result of lost feed production. It is expected that up to 45,000 livestock producers will receive assistance and be able to maintain their herds. The impact of the program on livestock and feed prices is not expected to be measurable. Aggregate American Indian farm income losses will be somewhat reduced by AILFP payments. Federal outlays for the 1997 and subsequent crop years might total around $12.5 million, which will be funded from the Feed Grain Disaster Reserve.

Warehouse-Stored Tobacco Loss Assistance

During the late summer and early fall of 1999, three major hurricanes dropped an unprecedented amount of rain in North Carolina. A substantial amount of warehouse-stored tobacco was destroyed in the flooding that resulted. Some producers, because they had placed their tobacco in warehouses and it had not been sold, suffered flood losses to that tobacco. However, because the tobacco had been harvested and placed in a warehouse, those producers were not eligible for disaster assistance under FSA's normal crop-loss programs and the producers therefore incurred the entire financial burden of the loss. Pub. L. 106–113 appropriated an additional $2.8 million to the assistance authorized by § 803 of Pub. L. 106–78, which authorized the Secretary to use $328 million of CCC funds to make payments to States for the reduction of quota or acreage allotted farms from the 1998 crop year to the 1999 crop year, provided that producers who suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold shall also be eligible.

The $2.8 million will assist quota holders and growers to roughly defray production costs for crops lost in crop year 1999 due to the flooding in auction warehouses. The Tobacco Disaster Assistance Program (TDAP) will pay producers approximately $1 for each pound of unsold 1999-crop tobacco lost to warehouses flooded by the hurricanes. Due to program provisions, producers may carry these unmarketed pounds over to crop year 2000.

Most tobacco operations are small family-owned affairs. The tobacco program run by the U.S. Department of Agriculture, along with topological limitations, limit the size of the typical farm and substitutability of competing crops. Accordingly, there currently may be few alternatives for tobacco. With no crop alternatives and little diversification in tobacco-growing regions, cash from the tobacco crop is vital to these producers. To the extent that the $2.8 million payment to producers and quota-holders defrays tobacco production costs, the TDAP enhances solvency. The production short-fall caused by the flooding is expected to be made up in the following year. In the short-term, the cost to the government roughly equals the benefits to the producers. In the longer term, to the extent that these disaster payments protect producers from bankruptcy, there is a net benefit.

Flood Assistance for Harney County, Oregon

Pub. L. 106–113 provides that the Secretary may use no more than $1.09 million for disaster assistance to Harney County. High precipitation during the winter of 1998 and 1999 led to flooding in the areas around Harney Lake and Malheur Lake in Harney County, Oregon. Heavy flooding began in February 1999 and continued until June when snow pack runoff slowed.

Such flooding can change the basic character of the land and render the land ineligible for other benefits or for enrollment in programs like the Conservation Reserve Program (CRP). Generalized conditions of that sort can produce tertiary effects in the local community and accordingly, problems such as those in Harney County have been the source of considerable attention and concern with respect to the exercise of discretionary authorities that may be available to the Secretary of Agriculture.

The impact on ranches in Harney County has been a loss of approximately 43,000 acres of pasture, 11,000 acres of native grass hay, 200 acres of alfalfa hay, and 200 acres of barley that were prevented from being planted. Approximately forty producers in Harney County are expected to be eligible for the program. Assistance therefore will average about $25,000 each if total claims meet or exceed $1.09 million. The expected average is well below the per-person payment limit of $40,000. Assistance will be in addition to assistance provided under other FSA programs.

For further information, the following individuals may be contacted regarding the different parts of the Cost/Benefit Assessment:

Livestock and Pasture Recovery—Dan Colacicco, 202–720–6733

Cotton—Wayne Bjorlie, 202–720–7954

Cottonseed—Gene Rosera, 202–720–8481

Harney County, Oregon—Brad Karmen, 202–720–4635

Oilseeds—Phil Sronce, 202–720–2711

Tobacco—Dan Stevens, 202–720–5291

List of Subjects

Part 1400

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

Part 1411

Oilseeds, Production Flexibility Contracts.

Part 1427

Cotton, Cottonseed, Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Part 1439

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

Part 1464

Imports, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco.

Part 1479

Crop insurance, Disaster assistance, Floods, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapter XIV is amended as set forth below.

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

§ 1400.1 [Amended]

2. Amend the table in § 1400.1(g) by adding a line to read, in the first column, ''Environmental Quality Incentives Program (EQIP)'', and, in the second column, ''10,000''.

3. Amend § 1400.2 by redesignating paragraphs (e) and (f) as (f) and (g), respectively, and adding new paragraphs (e) and (h) to read as follows:

§ 1400.2 Administration

* * * * *

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

* * * * *

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted to determine compliance with applicable statutes and regulations.

4. Add part 1411 to subchapter B of 7 CFR XIV to read as follows:

PART 1411—OILSEEDS PROGRAM

Subpart A—General Provisions

Sec.

1411.101 Applicability.
1411.102 Administration.
1411.103 Definitions.
1411.104 Misinformation and misaction.
1411.105 Appeals.

Subpart B—Eligibility Determinations

1411.201 Eligible producers.
1411.202 Violations, misrepresentation, or scheme or device.
1411.203 Payment amount.
1411.204 Payment acreage.
1411.205 Payment yield.

Subpart C—Application for Payment

1411.301 Signup period.
1411.302 Submitting application.
1411.303 Late-filed acreage reports.

Subpart D—Miscellaneous

1411.401 Limitation of payments.
1411.402 Offsets and Assignments; Powers of Attorney.

Authority: Sec. 804, Pub. L. 106–78, 113 Stat. 1178.

Subpart A—General Provisions

§ 1411.101 Applicability.

This part implements the oilseed provisions enacted in section 804 of the Agriculture, Rural Development, Food and Drug Administration, and Related Appropriations Act, 2000 (Public Law 106–78). That section provided funds to allow for payments to producers who planted eligible oilseeds in 1999 and who meet other conditions of eligibility.

§ 1411.102 Administration.

(a) This part shall be administered by CCC through the Farm Service Agency Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate on the ground that it serves the goals of the program or other goals, and does not adversely affect the operation of the program.

§ 1411.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 1999 Oilseeds Program, and shall be used for Oilseeds Program purposes only. Definitions contained in parts 718 and 1412 of this title shall also apply but to the extent that they conflict, the definitions in this section govern with respect to the Oilseeds Program in this part.

Actual yield means an oilseed yield certified by the producer on CCC–780, and if subject to spot check, documented by acceptable production evidence provided by the producer for all the producer's planted acreage of the oilseed for the year in which the yield is proven. If subject to a certified yield spot check, the producer must document an actual yield on form FSA–658 or present RMA documentation indicating actual yields for all of the producer's planted acreage of the oilseed for the year in which the yield is proven.

Control county means the county that for FSA administrative purposes will be considered to be controlling for purposes of making payment determinations with respect to particular applicants under the program provided for in this part.

County average soybean yield means an average yield approved by DAFP using an Olympic average of the county's average soybean yield for each of the crop years 1994 through 1998 as determined by the State committee. To the extent such data is available, data from NASS shall be used.

DAFP means the Deputy Administrator for Farm Programs, FSA.

Deputy Administrator means DAFP.

Eligible oilseed means one of the following kinds of oilseeds: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed (oil and confectionary), flaxseed, and crambe.

Established producer means a producer who planted an oilseed for the 1999 crop year, and shared in the production of that specific oilseed in 1997 or 1998.

National average oilseed yield means the Olympic average yield for an eligible oilseed using the National average yields for the oilseed for the years 1994 through 1998. Such yields shall be considered valid only if approved by DAFP.

New producer means a producer who planted an eligible oilseed for crop year 1999, but did not plant or share in the production of that oilseed in 1997 or 1998. A producer may be a new producer of one eligible oilseed, while being an established producer for another oilseed.

Oilseed Program Application means form CCC–780.

Olympic average yield means the average yield for the stated period, after dropping the highest and lowest yields of that period.

RMA means the Risk Management Agency of the United States Department of Agriculture.

Sunflower seed acreage means the total acreage planted to sunflower seed on the farm in the applicable crop year without regard to the type of market to which the sunflower seed will be committed, oil or confectionary use.

§ 1411.104 Misinformation and misaction.

The provisions of § 718.8 of this title are applicable to this part, with respect to performance based upon advice or action of county or State committees.

§ 1411.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Eligibility Determinations

§ 1411.201 Eligible producers.

(a) Section 804 of Public Law 106–78 authorizes the Secretary to make payments to a producer who planted an eligible oilseed in 1999. Accordingly, producers of the 1999 crop of oilseeds identified in § 1411.203 are eligible to receive 1999 Oilseeds Program benefits, providing the producer meets the requirements of this part, and is in compliance with part 12 of this title regarding the conservation and protection of highly erodible lands and wetlands, and § 718.11 of this title regarding denials of program benefits for activities relating to the use of controlled substances.

(b) Eligibility determinations made under this part will be made for each producer separately for each specific eligible oilseed planted by that producer in 1999. A producer is not eligible for payment with respect to an oilseed that the producer did not plant in 1999 regardless of whether the producer did or did not plant that oilseed in 1997 or 1998.

§ 1411.202 Violations, misrepresentation, or scheme or device.

Any person who is determined to have intentionally misrepresented any fact affecting a program determination made in accordance with this part shall not be entitled to oilseed payments under this part and must refund all payments, plus interest determined in accordance with part 1403 of this chapter (relating to debt settlement polices and procedures).

§ 1411.203 Payment amount.

Subject to the availability of funds, eligible persons can receive a payment under this part. The payment amount shall be equal to the payment rate established under this part multiplied by the producer's payment acreage multiplied, in turn, by the producer's payment yield. The payment rate shall be determined by DAFP after the level of program participation is known with sufficient clarity to allow for the calculation of the amount of payment that can be made, by unit of production, within the limits of the available funds. To the extent practicable, separate payment rates may be established for separate eligible oilseeds. Payments can be made only with respect to the production of eligible oilseeds.

§ 1411.204 Payment acreage.

(a) The oilseed payment acreage for an established producer shall, for a particular oilseed, be the higher of the two acreage amounts determined by calculating, for the 1997 and 1998 crops separately, the acreage determined to be equal to the producer's acreage for that oilseed at all locations for that crop year, adjusted to reflect interests that are only partial interests in such acreage.

(b) The payment acreage for a new producer of an eligible oilseed will be the producer's acreage for that oilseed for the 1999 crop at all locations, adjusted to reflect interests that are only partial interests in such acreage.

(c) Acreage not planted to an oilseed crop because of weather, or because of crop rotation practices or other management decisions, or because of any other reason, shall not be treated as qualifying production for determining a person's general eligibility for payment, a person's payment acreage, or for any other reason under this part.

§ 1411.205 Payment yield.

(a) For purposes of making yield determinations, under this part and for purposes of this section in particular, a producer's ''applicable average yield'' shall be, with respect to soybeans, the county average soybean yield. In the case of other oilseeds, the ''applicable average yield'' shall, for all persons qualifying for payment, be the national average oilseed yield for that oilseed. National and county average yields may be announced in advance of signup by DAFP.

(b) A new producer's payment yield with respect to a particular eligible oilseed shall be the higher of the:

(1) Applicable average yield for that oilseed or

(2) Producer's actual yield for the 1999 crop year.

(c) For established producers, the producer's payment yield for a particular oilseed shall be the higher of:

(1) Applicable average yield; or

(2) The higher for the 1997 and 1998 crops of the producer's actual yield respectively for those crop years for all acres of the oilseed planted by the producer.

(d) In making determinations under paragraph (c) of this section for established producers, the choice of a crop year history will not be limited to the same history year chosen to set the producer's payment acres.

(e) Where actual yields are used for purposes of establishing the producer's payment yields, the producer, if subject to a yield spot check or otherwise asked to do so, must document those actual yields using form FSA–658 and must establish those yields to the satisfaction of the county committee.

(f) In making yield determinations, the producer's yields and payments may be adjusted by DAFP and the county and state committees, as necessary and practicable to reflect instances in which the producer has different yields at different locations and to reflect partial interests that the producer may have in some acreages.

Subpart C—Application for Payment

§ 1411.301 Signup period.

A signup period shall be announced by the Secretary. Late-filed applications shall not be accepted so that DAFP may establish, to the extent practicable, a final payment rate that will limit total payments to not more than the allocated amount, which shall be, unless determined otherwise by DAFP, $475 million minus such administrative expenses as can be deducted by law and minus such reserve as may be determined needed to resolve disputes and problematic claims.

§ 1411.302 Submitting application.

(a) Producers shall properly complete, sign and file the application Form CCC–780, and submit the application to the Farm Service Agency during the signup period.

(b) A separate CCC–780 is required for each producer.

(c) For a producer to be considered to have properly filed the application, such applications must be filed by the producer in the FSA county office established as the control county for that producer at the time of application.

§ 1411.303 Late-filed acreage reports.

Late-filed acreage reports may be submitted for Oilseed Program purposes no later than February 18, 2000, or as determined by DAFP, provided that the producer shall submit sufficient documentation to verify the acreage to the satisfaction of the county committee.

Subpart D—Miscellaneous

§ 1411.401 Limitation of payments.

(a) No more than the allotted funds may be used for payments under this part. However, no ''per-person'' limit on payments shall apply nor shall there be a gross revenue test as a condition of payment for a person or entity.

(b) No person shall receive a payment under this part except upon a properly completed application properly submitted to the Farm Service Agency during the signup period announced by the Secretary.

§ 1411.402 Offsets and assignments; powers of attorney.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(c) In those instances in which, prior to the issuance of this part, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

PART 1427—COTTON

5. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7235–7237; 15 U.S.C. 714b and 714c; sec. 813 of Pub. L. 106–78, 113 Stat 1182; and sec. 104, Pub. L. 106–113.

6. In § 1427.25 revise paragraphs (c)(1)(ii), (c)(2), (d)(1) introductory text, (d)(2)(i), (d)(3)(ii), and (f)(2)(ii) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(c) * * *

(1) * * *

(ii) The average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * *

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1$^{1}/_{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

* * * * *

(d) * * *

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

* * * * *

(2) * * *

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch, cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

* * * * *

(3) * * *

(ii) the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

* * * * *

(f) * * *

(2) * * *

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton for SLM 1$^{1}/_{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton.

* * * * *

7. Add subpart F to 7 CFR part 1427 to read as follows:

Subpart F—Cottonseed Payment Program

Sec.

1427.1100 Applicability.
1427.1101 Administration.
1427.1102 Definitions.
1427.1103 Eligible cottonseed.
1427.1104 Eligible first handlers.
1427.1105 Payment application.
1427.1106 Total available program funds.
1427.1107 Applicant payment quantity.
1427.1108 Total payment quantity.
1427.1109 Payment Rate.
1427.1110 Payment calculation and form.
1427.1111 Liability of first handler.

§ 1427.1100 Applicability.

(a) The regulations in this subpart are applicable to the 1999 crop of cottonseed. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to first handlers who have applied to participate in the cottonseed payment program in accordance with section 104(a) of the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113). Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive cottonseed payments.

(b) Payments shall be available only for cottonseed produced and ginned in the United States.

§ 1427.1101 Administration.

(a) The cottonseed payment program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Management Office (KCMO) and Price Support Division (PSD).

(b) The KCMO and PSD representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCMO or PSD shall preclude the Executive Vice President, CCC, or a

designee, from determining any question arising under the program or from reversing or modifying any determination made by KCMO or PSD.

(d) The Executive Vice President, CCC, or a designee, may authorize KCMO or PSD to waive or modify deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program. The Executive Vice President may suspend the program should cause to do so appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator for Farm Programs, FSA, may waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the cottonseed payment program.

(h) This subpart shall be administered only to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to the program from sources specifically identified in the authorizing legislation.

§ 1427.1102 Definitions.

The definitions set forth in this section shall be applicable for purposes of administering the 1999 cottonseed payment program. The terms applied in §§ 1427.3, 1427.52, and 1427.102 shall be applicable to this subpart.

Cottonseed means the seed from any variety of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

Gin means a person (*i.e.,* an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cottonseed from cotton lint in commercial quantities as determined by CCC.

Number of bales means the absolute number of ginned cotton bales based on individual bale weights unadjusted to a uniform bale weight.

Olympic average means the average for the stated period after excluding the highest and lowest values.

Ton means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

§ 1427.1103 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been grown in the United States during the 1999-crop production period.

(b) Have been ginned by the applicant from 1999-crop cotton.

(c) Not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments.

§ 1427.1104 Eligible first handlers.

(a) For the purpose of this subpart, an eligible first handler of cottonseed shall be a gin that ginned 1999-crop cotton.

(b) Applicants must comply with the terms and conditions set forth in this subpart and instructions issued by CCC, and sign and submit an accurate, legible and complete Cottonseed Payment Program Application/Certification.

(c) Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent that such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers.

§ 1427.1105 Payment application.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application/Certification.

(b) Payment applications must be received within the program application period announced by CCC. Applications received after such application period will not be accepted for payment.

(c) Cottonseed Payment Program Application/Certifications may be obtained from the CCC as announced by news release. In order to participate in the program authorized by this subpart, first handlers of cottonseed must execute the Cottonseed Payment Program Application/Certification and forward the original according to announced instructions.

§ 1427.1106 Total available program funds.

The total available program fund shall be determined by CCC based on the funds available under section 802 of Public Law 106–78 (excluding any funds authorized to carry out title IX of Public Law 106–78) and under section 1111 of Public Law 105–277 not otherwise needed to fully implement those sections.

§ 1427.1107 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be determined by CCC based on the eligible number of ginned cotton bales and cotton lint weight indicated on the Cottonseed Payment Application/Certification and/or obtained by from the Agricultural Marketing Service.

(b) The applicant's payment quantity of cottonseed shall be calculated by multiplying:

(1) The applicant's eligible weight of lint, in tons, for which payment is requested, as approved by CCC, by

(2) 1.59 (the 1994–98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

§ 1427.1108 Total payment quantity.

(a) The total quantity of 1999-crop cottonseed produced in the United States is eligible for payment under this subpart. The total payment quantity of cottonseed will be the total of eligible quantities of cottonseed for which applications for payment are received within the application period announced by CCC.

(b) The total payment quantity of cottonseed shall be calculated by multiplying:

(1) The eligible weight of cotton lint, in tons, for which payment is requested by all applicants, as approved by CCC, by

(2) 1.59 (the 1994–98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

§ 1427.1109 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance with this subpart shall be determined by CCC by dividing the total available program funds, as determined by CCC, by

(a) The higher of:

(1) The total payment quantity, or

(2) The total quantity of 1999-crop cottonseed, as estimated by CCC, or by

(b) A quantity of cottonseed determined by CCC to provide applicants with payments at a level consistent with the statutory objectives.

§ 1427.1110 Payment calculation and form.

(a) Payments in accordance with this subpart shall be determined for individual applicants by multiplying:

(1) The payment rate, determined in accordance with § 1427.1109, by

(2) The eligible payment quantity of the applicant, determined in accordance with § 1427.1107.

(b) After receipt of the application for payment, together with required supporting documents, CCC will issue payments to the applicant, at the option of the applicant, to the applicant's mail address or by electronic deposit to the applicant's account.

§ 1427.1111 Liability of first handler.

(a) If a first handler makes any fraudulent representation in obtaining a cottonseed payment, such payment shall be refunded upon demand by CCC. The first handler shall be liable for the amount of the payment and applicable interest on such payment, as determined by CCC.

(b) Persons executing a joint payment application will be jointly and severally liable for any program violation, ineligibility, or refund due CCC, and each such person shall be and remain liable for the repayment of the entire payment of any amount due to CCC until the payment is fully repaid, without regard to such person's claimed share in the cottonseed payment.

(c) If the payment recipient is suspected by CCC to have knowingly: adopted any scheme or device to defeat the purposes of this program; made any fraudulent representation; or misrepresented any fact affecting a determination under this application, CCC will notify the appropriate investigating agencies of the United States and take steps as deemed necessary to protect the interests of the government.

(d) If the payment applicant receives a payment in excess of the entitled payment, the applicant shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(e) From the date of the payment application until the earlier of three years after the date of the application or July 31, 2003, the applicant shall keep records and furnish such information and reports relating to the application as may be requested by CCC. After that time, destruction of records shall be at the party's own risk. CCC may require the retention of the records for a longer period of time as the need arises. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received, plus interest thereon, as determined by CCC.

(f) Unless otherwise approved by CCC, no Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of payments provided under this program or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the payment is for the general benefit of such company, or to any benefit in which it is determined by CCC such person's interest is that of a producer of cotton.

8. Add subpart G to 7 CFR Part 1427 to read as follows:

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

Sec.

1427.1200 Applicability.
1427.1201 Administration.
1427.1202 Definitions.
1427.1203 Eligible ELS cotton.
1427.1204 Eligible domestic users and exporters.
1427.1205 ELS Cotton Domestic User/Exporter Agreement.
1427.1206 Form of payment.
1427.1207 Payment rate.
1427.1208 Payment.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 Applicability.

(a) Except as specified by CCC, the regulations in this subpart are applicable to the period beginning June 8, 2000, unless the Executive Vice President, CCC, shall apply the regulations to an earlier period, but not earlier than October 1, 1999, consistent with the authorizing statute. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program in accordance with section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127).

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient, in accordance with this subpart in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Wednesday through Tuesday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe is less than the Wednesday through Tuesday adjusted average domestic spot price quotation for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined in accordance with § 1427.1207, is less than 134 percent of the current crop year loan level for the ELS cotton grade 3, staple 44, micronaire 3.5 or higher.

(c) Additional terms and conditions may be set forth in the ELS Cotton Domestic User/Exporter Agreement, which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms that are used in administering the ELS cotton competitiveness payment program shall be prescribed by CCC.

§ 1427.1201 Administration.

(a) The ELS cotton competitiveness payment program shall be administered under the general supervision of the Executive Vice-President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the ELS cotton competitiveness payment program. In addition, the Executive Vice President may suspend the program to the extent that cause to do so may appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute ELS cotton competitiveness payment program payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and

conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) This program shall only be administered to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to this program from those sources specifically identified as the funding source in the authorizing legislation.

§ 1427.1202 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§ 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Adjusted spot price means the spot price adjusted to reflect any lack of data for grade 3 or staple 44 to make the adjusted spot price comparable to a spot price assuming grade 3 and staple 44. If grade 3 spot price data are not available, spot prices for grade 2, grade 1, or grade 4 will be used and will be adjusted by the average difference between spot prices for grade 3 and those for grade 2, grade 1 or grade 4, as the case may be, over the available observations during the previous 12 months. If spot prices for staple 44 are not available, spot prices for staple 46 may be used and will be adjusted by the average difference between spot prices for staple 44 and those for staple 46 over the available observations during the previous 12 months.

Bale opening means the removal of the bagging and ties from a bale of eligible ELS cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Consumption means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Wednesday-through-Tuesday week of the price quotations for foreign growths of ELS cotton, quoted C.I.F. Northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, grade 3, staple 44, micronaire 3.5 and higher, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the average for the preceding Wednesday through Tuesday of the current shipment prices for the lowest adjusted foreign growth, C.I.F. Northern Europe.

(2) *Forward LFQ* means the average for the preceding Wednesday through Tuesday of the forward shipment prices for the lowest adjusted foreign growth quoted C.I.F. Northern Europe.

Spot price means the Wednesday-Tuesday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for U.S. Pima, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be the average of the two quotations. If only one quotation is available, that quotation will be used.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is—

(1) Opened by an eligible domestic user on or after October 1, 1999, or,

(2) Exported by an eligible exporter on or after October 1, 1999, during a Wednesday through Tuesday period in which a payment rate, determined in accordance with § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible ELS cotton must not be—

(1) ELS Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes that are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes that have been blended with textile mill waste or other fibers.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton for the purpose of manufacturing such cotton into cotton products in the United States (''domestic user''), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (''exporter''), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from the Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–

6205. Telephone requests for copies of the agreement will be accepted at (816) 926–6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

§ 1427.1206 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, at the option of the participant, as determined and announced by CCC.

§ 1427.1207 Payment rate.

(a) The payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows:

(1) Beginning the Tuesday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period; and

(2) Beginning the Wednesday through Tuesday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Tuesday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for U.S. Pima grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ for only for one to three weeks and current LFQ and forward LFQ only for one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ (''Spring transition'') and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ (''marketing year transition''), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, with respect to the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible ELS cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Wednesday through Tuesday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (''landed mill weight'');

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible ELS cotton by the domestic user or proof of export of eligible ELS cotton by the exporter, as required by the provisions of the ELS Cotton Domestic User/Exporter Agreement issued by CCC.

9. Revise 7 CFR part 1439 to read as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

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1439.909 Payments.
1439.910 Program suspension and termination.
1439.911 Appeals.
1439.912—1439.915 [Reserved]

Authority: 15 U.S.C. 714b and 714c9; Pub. L. 105–277, 112 Stat. 2681–42 through 44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; and Pub. L. 106–113, 113 Stat. 1501.

Subpart A—General Provisions

§ 1439.1 Applicability and general statement.

(a) The regulations in this part set forth the terms and conditions applicable to programs that may be made available to livestock producers under various statutory provisions. Unless otherwise specified, the regulations in this subpart shall apply to all programs operated under this part.

(b) The regulations in this part 1439 in effect prior to March 17, 1999, (See 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) are applicable with respect to any emergency livestock assistance program that existed prior to March 17, 1999. The part 1439 regulations in effect on January 1, 2000 (See 7 CFR Parts 1200 to 1599, revised as of January 1, 2000) for the Flood Compensation Program shall continue to apply to all pending or new matters under that program.

(c) Nothing in this subpart shall be read as to require any expenditure of funds for a program in an overall amount greater than that determined to be appropriate by CCC.

§ 1439.2 Administration.

(a) This part shall be administered by CCC through, and as delegated to the Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate, serves the goals of the program, and does not adversely affect the operation of the program.

§ 1439.3 Definitions.

The definitions set forth in this section shall be applicable to all subparts contained in this part unless otherwise noted, or unless the definitions conflict with the definitions in subparts other than this subpart A, in which case they shall not apply.

Carrying capacity means the number of acres of pasture required to provide 15.7 pounds of feed grain equivalent per day for one animal unit during the period the pasture is normally grazed.

CCC means the Commodity Credit Corporation.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Equine animals used for food or in the production of food means horses, mules, and donkeys that are:

(1) Used commercially for human food;

(2) Maintained for commercial sale to processors of food for human consumption; or

(3) Used in the production of food and fiber on the owner's farm, such as draft horses, or cow ponies.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

FSA means the Farm Service Agency.

Livestock producer means a person who is determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of livestock and is:

(1) A citizen of, or legal resident alien in the United States; or

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States; any Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); any Indian organization or entity chartered under the Indian Reorganization Act (25 U.S.C. 461 *et seq.*) or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 (25 U.S.C. 1451 *et seq.*).

Natural disaster means a generalized disease, insect infestation, flood,

drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

Person means an individual or entity, including any organization, of any kind, provided that for per-person payment limitations the rules in part 1400 of this chapter shall be determinative in defining who is considered to be a separate person for such purposes.

Poultry means domesticated chickens, including egg-producing poultry, ducks, geese and turkeys.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Seeded small grain forage crops means wheat, barley, oats, rye, and triticale.

State committee, State office, county committee, or county office, means the respective FSA committee or office.

United States means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

§ 1439.4 Liens and claims of creditors.

Any payment or benefit or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

§ 1439.5 Assignments of payments.

Payments that are earned by a person under this part may be assigned in accordance with the provisions of part 1404 of this chapter and the applicable FSA or CCC forms for assignments.

§ 1439.6 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

§ 1439.7 Misrepresentation, scheme or device.

A person shall be ineligible to receive assistance under any program under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the State committee or the county committee or an official of FSA that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(b) Made any fraudulent representation with respect to such program; or

(c) Misrepresented any fact affecting a program determination.

§ 1439.8 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

§ 1439.9 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1439.10 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1400 of this chapter, shall be entitled to receive under any subpart may not exceed $40,000 for any one loss or year. Also, the Deputy Administrator may take such action as needed, whether or not specifically provided for, to avoid a duplication of benefits under the several programs provided for in this part and may impose such cross-program payment limitations as may be consistent with the intent of this section and this part.

§ 1439.11 Gross revenue limitation.

A person, as defined in part 1400 of this chapter, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

§ 1439.12 Maintenance of books and records.

Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain financial books and records that will permit verification of all transactions with respect to the provisions of this part for at least 3 years following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. Destruction of records after that date shall be at the risk of the producer or other person receiving assistance. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

Subpart B—1998–99 Livestock Assistance Program

§ 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 1998 Livestock Assistance Program authorized by Public Law 105–277 and the 1999 Livestock Assistance Program authorized by the Public Law 106–78. Benefits will be provided to eligible livestock producers in the United States but only in counties where a natural disaster occurred, and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs. For purposes of reference, the program authorized by Public Law 105–277 shall be referred to in this subpart as the 1998 LAP program and that administered under Public Law 106–78 shall be referred to in this subpart as the 1999 LAP program.

(b) The two LAP programs provided for in this part will be treated as separate programs for purposes of payment limitations and for other purposes relating to eligibility.

(c) A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 1998 calendar year for 1998 LAP or for 3 consecutive months during the 1999 calendar year for the 1999 LAP, as a result of damage due to a natural disaster as determined by the Deputy Administrator for Farm Programs, or a designee. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(d) To be eligible for assistance under this subpart, a livestock producer's pastures in an eligible county must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(e) Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

§ 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart.

Application means the Form CCC–740, Livestock Assistance Program Application. The CCC–740 is available at county FSA offices.

LAP means, depending on the context, either the 1998 Livestock Assistance Program provided for in this subpart, the 1999 Livestock Assistance Program provided for in this subpart, or the overall 1998–99 Livestock Assistance Program provided for in this subpart.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

§ 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 31, 1999, for the 1998 LAP or, for the 1999 LAP, such other date as established by the Deputy Administrator, or by prior rule. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

§ 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during the calendar year 1998 for the 1998 LAP or calendar year 1999 for the 1999 LAP. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State Committee concurrence, to the Deputy Administrator on Form CCC–654. The maximum grazing losses the county committees shall submit on Form CCC–654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called ''eligible counties.''

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 1998 for the 1998 LAP or during 1999 for the 1999 LAP, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

§ 1439.105 Loss criteria.

(a) The grazing land for which a livestock producer requests benefits must be within the physical boundary of the eligible county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

§ 1439.106 Livestock producer eligibility.

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(3) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying:

(2) The result of paragraph (c)(1) of this section for each pasture type; by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441071 per pound); by

(5) The applicable number of days in the LAP payment period; by

(6) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart shall in the case of the 1998 LAP exceed $270 million or in the case of the 1999 LAP exceed the amount determined appropriate by the Deputy Administrator, then such payments under such program shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Total 1999 LAP payments shall be prorated with payments for the Livestock Indemnity Program, Phase II provided for in this part such that total payments under the two programs shall not exceed $200 million minus, as deemed appropriate, other assistance provided to livestock producers unless CCC makes additional funds available.

Subpart C—Livestock Indemnity Program

§ 1439.201 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the original 1999 Livestock Indemnity Program

(hereafter ''1999 Livestock Indemnity Program, Phase I'') and the 1999 Livestock Indemnity Program, Phase II. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of a natural disasters in counties included in the geographic area covered by a qualifying natural disaster declaration:

(1) With respect to the 1999 Livestock Indemnity Program (''LIP''), Phase I, issued by the President of the United States or the Secretary of Agriculture of the United States in the period from May 2, 1998, through May 21, 1999, or

(2) With respect to the 1999 Livestock Indemnity Program (''LIP''), Phase II, issued by the President of the United States or the Secretary of Agriculture, which declaration was requested between May 22, 1999, through December 31, 1999, inclusive, and subsequently approved.

(b) Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under the 1999 LIP, Phase II.

§ 1439.202 Administration.

Where circumstances preclude compliance with § 1439.204 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

§ 1439.203 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the Form CCC–661, Livestock Indemnity Program Application.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when such buffalo and beefalo are maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock producer means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers so long as they meet the terms of the definition.

§ 1439.204 Sign-up period.

A request for benefits under this subpart must be submitted to the CCC at the Farm Service Agency county FSA office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county FSA office prior to the close of business on:

(a) November 1, 1999, or such other date as established by CCC for 1999 LIP, Phase I, or

(b) February 18, 2000, or such other date as established by CCC for 1999 LIP, Phase II.

§ 1439.205 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred:

(i) Between May 2, 1998, and May 21, 1999 inclusive for 1999 LIP, or

(ii) For 1999 LIP, Phase II, due to a disaster that was the subject of a Presidential or Secretarial disaster declaration, that was requested between May 22, 1999, and December 31, 1999, inclusive, and was subsequently approved.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses. Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer must also be submitted. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.206 Indemnity benefits.

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.205; and

(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

(d) Payments that are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds the amount available as specified in paragraph (b) of this section, then each payment shall be reduced by a uniform national percentage.

(b) Amounts available for payments under this subpart shall be:

(1) $3 million for 1999 LIP, Phase I or

(2) The amount determined to be appropriate such that payments for LIP, Phase II and the 1999 Livestock Assistance Program provided for in this part do not exceed $200 million as specified in § 1439.108 minus other adjustments as may be appropriate.

(c) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions. Notwithstanding any other provision of law, the payment limits for Phase I and II shall be considered separate limits except to the extent, if any, that a producer's recovery under the 2 phases are for losses from the same disaster.

§ 1439.208 Limitations on payments.

(a) No person, as determined in accordance with part 1400 of this chapter, may receive benefits for livestock losses in excess of:

(1) $50,000 for 1999 LIP, or

(2) $40,000 for 1999 LIP, Phase II.

(b) No person may receive payments under this subpart for the same losses that the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds $2.5 million.

(c) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as otherwise provided by the Deputy Administrator.

(d) No interest will be paid or accrue on disaster benefits under this part that are delayed or are otherwise not timely issued unless otherwise mandated by law.

Subpart D—Pasture Recovery Program

§ 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees (''State committees'' and ''county committees'', respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the PRP is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

(f) CCC may consult with other Federal agencies, State agencies, or other non-USDA sources for such assistance as is determined by CCC to be necessary to implement this part.

§ 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

Applicant means, unless the context indicates otherwise, the owner or operator.

Contract Period means the period of time the PRP contract is in effect.

Federally-owned land means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Forage crop means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

Hayland means land that was or has been routinely used to produce hay.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

Local FSA office means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

Operator means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

Participant means an owner or operator or tenant who has entered into a PRP contract.

Pasture land means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

Payment means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

Practice means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by drought, as determined by CCC.

Rangeland means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

State-owned land means land owned by a State Government or any department, bureau, or agency thereof, including political subdivision of a State, as determined by CCC.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the Department of Agriculture.

Technical assistance means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

§ 1439.303 General description.

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop. Contracts will require the producer to maintain the new crop for three full years after the calendar year of installation.

§ 1439.304 Eligible persons.

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by drought or related conditions during calendar year 1999 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

§ 1439.305 Eligible land.

(a) Except as otherwise provided in this section, as determined by CCC or the Deputy Administrator, to be eligible for the PRP, land must be pastureland that:

(1) As determined by CCC, is located within a county that was:

(i) Approved for participation in the 1999 Livestock Assistance Program;

(ii) Had a 1999 LAP payment period of at least 120 days; and

(iii) As of March 1, 2000, was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 1999 drought designation, or was later approved for such participation based upon an application filed by March 1, 2000, and based upon drought damage suffered in 1999.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by drought or related conditions in calendar year 1999 that the forage crop will not return in the 2000 grazing year, and seeding is required to reestablish the forage crop, as determined by the Deputy Administrator;

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC or the Deputy Administrator, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the Deputy Administrator.

§ 1439.306 Duration of contracts.

Contracts under this subpart and their forage crop maintenance requirements shall run through December 31, 2003; provided further that the installation of the practice must be completed no later than December 31, 2000.

§§ 1439.307–1439.319 [Reserved]

§ 1439.320 Obligations of participant.

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Do whatever else is necessary to establish and maintain the required forage crop according to the required practice requirements on the land subject to that contract and take such other actions that may be required by CCC throughout the PRP contract period as needed to insure that the purposes of the contract are met;

(d) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(e) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(f) Not harvest the re-seeded cover crop at any time during the contract period; and,

(g) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

§ 1439.321 Obligations of the Commodity Credit Corporation.

Subject to the availability of funds, CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

§ 1439.322 Eligible practices.

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively:

(a) Reestablish the approved forage crop, as determined by the Deputy Administrator, on acreage subject to the contract, including reseeding;

(b) Meet environmental laws and regulations, as applicable, for the contract period; and

(c) Accomplish other purposes of the program as determined by the Deputy Administrator.

§§ 1439.323–1439.329 [Reserved]

§ 1439.330 Signup.

Only applications for contracts submitted during designated signup periods as announced by CCC will be approved.

§ 1439.331 Applications for PRP contracts.

Applicants may submit applications to participate in the PRP subject to § 1439.330 of this part. Applications may be automatically accepted upon certification by the applicant that:

(a) The land meets the eligibility requirements of § 1439.305; and

(b) The applicant meets the eligibility requirements of § 1439.304; and

(c) The applicant certifies that the pasture land to be enrolled in the PRP

was damaged or destroyed by drought or related conditions in calendar year 1999 so that seeding is required to reestablish the qualifying forage crop.

§ 1439.332 PRP contract.

(a) In order to enroll land in the PRP, the participant must enter into a contract with CCC.

(b) The PRP contract will be comprised of:

(1) The terms and conditions for participation in the PRP; and

(2) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a PRP contract, the applicant must submit an application to participate at the local FSA office in the USDA service center.

(d) The PRP contract must, within the dates established by CCC, be signed by the applicant.

(e) The Deputy Administrator is authorized to approve PRP contracts on behalf of CCC.

(f) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant(s) voluntarily request in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be imposed by CCC;

(3) The participant(s) are not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program, unless the Deputy Administrator approves otherwise;

(5) The PRP practice fails after a certain time period, as determined by the Deputy Administrator, and the CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(g) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit a lesser payment to the extent that such a reduction will not impair program operations.

§ 1439.333 Contract modifications.

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by the Deputy Administrator.

§ 1439.334–1439.339 [Reserved]

§ 1439.340 Payments.

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Subject to the availability of funds, payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed $2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and ''person'' determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

§ 1439.341 Levels and rates for payments.

(a) As determined by the Deputy Administrator, CCC shall pay not more than 50 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate. Such cost may be the average cost in a State, a county, or a part of a county or counties, as determined by the Deputy Administrator.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed $75 per acre without approval of the Deputy Administrator. In no case shall a payment exceed $125 per acre.

§ 1439.342 Method of payment.

Payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or any combination of such methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§§ 1439.343–1439.349 [Reserved]

§ 1439.350 Payments to participants.

Payments shall be made to the participants responsible for the establishment of the practice.

§ 1439.351 Violations.

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC in accordance with this section then, in addition to all such other remedies as may be provided for in this subpart or elsewhere:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(d) CCC may also terminate a PRP contract without sanction if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(e) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1439.352 Executed PRP contract not in conformity with regulations.

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail and the contract may be terminated.

§ 1439.353 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1439.354 Access to land under contract.

(a) The applicant or participant shall, as requested, provide all representatives

or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

§ 1439.355 Miscellaneous.

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, the Deputy Administrator may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance, unless approved by the Deputy Administrator in accordance with law, may the amount expended under this subpart exceed an amount that, when added to the amounts expended for the 1999 LAP payments and for the Livestock Indemnity Program, Phase II, exceeds $200 million.

(i) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments except to the extent that an exemption if provided for by the Executive Vice President, CCC.

(j) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(k) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

Subpart E—Livestock Indemnity Program for Contract Growers

§ 1439.401 Applicability.

This subpart sets forth the terms and conditions of the Livestock Indemnity Program for Contract Growers. Under Title I of the Supplemental Appropriations Act (Public Law 106–113, 113 Stat. 1501), the Secretary is specifically authorized to use $10 million to provide assistance to persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999 if the Secretary finds that such losses are the result of natural disasters. Utilizing that authority, this subpart, accordingly, allows for benefits to be paid, up to that amount, to eligible producers that sustained a loss of income directly attributed to a reduction in the production of livestock and livestock products from livestock that were entirely owned by others, due to or as a result of natural disasters that occurred from January 1 through December 31, 1999, in those areas for which a Presidential or Secretarial Declaration was approved. Producers in contiguous counties that were not designated as a disaster area in their own right are not eligible for benefits under this part. Benefits will be provided with respect to eligible livestock where the death occurred in the disaster area during January 1 through December 31, 1999, and where the death was reasonably related to the disaster that prompted the disaster declaration as determined by the Deputy Administrator of Farm Programs, or designee. The livestock had to be in possession of the applicant during the time in which the disaster occurred.

§ 1439.402 [Reserved]

§ 1439.403 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this Livestock Indemnity Program for Contract Growers. Definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the request for benefits and the necessary documentation supporting such a request.

Contract means, with respect to contracts for the handling of livestock, an agreement between the livestock producer or grower and the livestock owner setting forth the specific terms, conditions and obligations of the parties involved regarding the production of livestock and livestock products.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible livestock means livestock that are:

(1) Beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when buffalo and beefalo are maintained on the same basis as beef cattle, and

(2) Was produced by the applicant subject to a contractual agreement between the such producer or grower and the livestock owner.

Eligible livestock producer means, with respect to particular livestock, one, other than the owner of the livestock, who possesses an independent financial interest in the eligible livestock or products derived from such eligible livestock, as defined and limited by the terms and conditions of a contractual agreement with the livestock owner; and is a citizen or a legal resident alien of the United States. Such producer may be individual or may be a farm cooperative, private domestic

corporation, partnership, or joint operation in which the majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation possesses a financial interest, but not as owner, in the eligible livestock or products derived from such eligible livestock. Also such producer may also be an Indian tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); an Indian organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Self-Determination and Education Assistance Act; or an economic enterprise under the Indian Financing Act of 1974.

§ 1439.404 Application period.

(a) A request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by May 1, 2000, or such other date as established by CCC.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without such data, program benefits will not be approved or provided.

§ 1439.405 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the loss of eligible livestock or livestock products, and the corresponding reduction of income, occurred in the area of a Presidential designation or Secretarial declaration referred to in § 1439.401 and that the death of the eligible livestock was reasonably related to the recognized natural disaster. The documentary evidence of loss, quantity of the loss, and type of eligible livestock claimed for payment, shall be reported to CCC together with any supporting documentation under paragraph (b) of this section.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee in verifying the loss and the quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: written contracts, production records, veterinarian receipts, bank loan papers, rendering truck receipts, Federal Emergency Management Agency and National Guard records, and any other documents available to confirm the presence of the livestock and the subsequent losses. Certification of third parties or the producer and other such documentation as the county committee determines to be necessary for the verification of the information provided by the applicant may be submitted, subject to review and approval of the county committee. Failure to provide documentation that is satisfactory to the county committee can result in disapproval of the application by the county committee.

(c) In all circumstances, livestock producers shall certify to the accuracy of the information provided. As provided by various statutes, providing a false certification to the government is punishable by imprisonment, fines and other penalties. All such remedies, as well as all civil remedies, may be applied. All information provided is subject to verification and spot check by the CCC.

§ 1439.406 Indemnity benefits.

(a) Payment under this part shall only be made to livestock producers who file a Certification of Livestock Losses for Eligible Disaster—Contract Growers, Form CCC–661B, for the specific livestock category for which relief is sought and file such form in accordance with instructions issued by the Deputy Administrator. In addition, payment may be made only if:

(1) The livestock producer submits a proof of loss that meets the requirements of § 1439.405; and

(2) The county or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the livestock producer's inventory at the time of the disaster event.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of eligible livestock that shall be used in making a payment shall be the number of animal losses in the category that exceed the normal mortality threshold established by CCC.

(c) Subject to the availability of funds, payments shall be made in an amount determined by multiplying: the national payment rate for the livestock category as determined by CCC by the amount specified in paragraph (b) of this section.

§ 1439.407 Proration of claims.

In the event that the funds made available to satisfy claims shall be less than the demand for such funds, the Deputy Administrator may reduce all claims by a uniform percentage to account for the level of available funds, or may take such other measures as he deems appropriate to apportion the funds among the claimants. Such payment reductions as are made shall be applied after the imposition of applicable payment limitation provisions.

§ 1439.408 Miscellaneous provisions.

(a) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(b) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(c) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(d) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(e) The Deputy Administrator can deny or adjust claims in those instances in which the party seeking relief was affiliated with or related to the owner of the livestock if it is determined by the Deputy Administrator that such action is consistent with the purposes of this subpart and may take such action as is deemed appropriate to avoid overlap with relief available under other subparts in this part.

(f) In no instance, unless otherwise approved by the Deputy Administrator, will the amount to be expended under this program exceed $10 million.

Subparts F-H [Reserved]

Subpart I—American Indian Livestock Feed Program

§ 1439.900 [Reserved].

§ 1439.901 Applicability.

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). The AILFP has been allocated a budget of $12.5 million. Assistance will be available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available under the AILFP shall be available beginning in crop year 1997 and in subsequent crop years. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

§ 1439.902 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, and other program requirements in cases where the applicant or tribe, as applicable, show that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and FSA State and county committees, recommend the geographical size and shape of the region where the natural disaster has occurred, and whether the regional eligibility requirement has been satisfied. Documentation to support the reported natural disaster shall be provided by the State FSA office and shall accompany the recommendation. The recommendation of eligibility must be acted on by the Deputy Administrator.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) The FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) The provisions of subpart A shall not apply to this part; however the following provisions of 7 CFR part 1439, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply in the conduct of this program: §§ 1439.3, 1439.11 through 1439.22, 1439.24 as well as §§ 1439.6(i)(1)(i), 1439.8(a), and 1439.9(d) through (f). Further, from those same regulations, the provisions of §§ 1439.10(a) and 1439.15, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply as set forth in §§ 1439.908 and 1439.909.

§ 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Animal Unit (AU) means a standard expression of livestock based on a net energy maintenance requirement equal to 13.6 megacalories per day.

Animal Unit Day (AUD) means an expression of expected or actual stocking rate equal to one day.

Approving official means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

Carrying capacity means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

Dependent Indian Community means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Disaster period means the length of time that damaging weather, adverse natural occurrence, or related condition has a detrimental affect on the production of livestock feed.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy megacalories and that is consistent with acceptable feeding practices and was not produced by the owner.

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; and swine.

Eligible owner means an individual or entity, including the tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

Livestock feed emergency means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

Natural disaster means damaging weather, including but not limited to

drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

Net energy maintenance means the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the weight range by type of eligible livestock as provided in this section, as determined by CCC.

Region means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

Tribal Governed Land means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act or other Act relating to Alaska Natives.

Tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community 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).

Type and weight range means the weight range by type of livestock and appropriate amount of energy required to provide the daily maintenance needs for livestock, as follows:

Kind/type	Weight range (lbs.)	Daily energy requirement
(1) Beef cattle (Buffalo/Beefalo):		
Beef	Less than 400	3.01 NEm Mcal.
Beef	400–799	5.59 NEm Mcal.
Beef	800–1099	7.31 NEm Mcal.
Beef	1100+	10.75 NEm Mcal.
Beef, cow	All	13.60 NEm Mcal.
Beef, bull	1000+	11.18 NEm Mcal.
(2) Dairy cattle:		
Dairy	Less than 400	3.01 NEm Mcal.
Dairy	400–799	5.59 NEm Mcal.
Dairy	800–1099	7.31 NEm Mcal.
Dairy	1100+	10.75 NEm Mcal.
Dairy, cow	Less than 1100	23.22 NEl Mcal.
Dairy, cow	11–1299	26.66 NEl Mcal.
Dairy, cow	1300–1499	28.38 NEl Mcal.
Dairy, cow	1500+	29.67 NEl Mcal
Dairy, bull	1000+	12.47 NEm Mcal.
(3) Equine:		
Equine	Less than 450	6.2 DE Mcal.
Equine	450–649	8.9 DE Mcal.
Equine	650–874	11.6 DE Mcal.
Equine	875+	17.3 DE Mcal.
(4) Swine:		
Swine	Less than 45	780 DE Kcal.
Swine	45–124	1630 DE Kcal.
Swine	125+	2867 DE Kcal.
Swine, sow	235+	9854 DE Kcal.
Swine, boar	235+	5446 DE Kcal.
(5) Sheep:		
Sheep	Less than 44	0.34 NEm Mcal.
Sheep	44–82	0.77 NEm Mcal.
Sheep	83+	0.95 NEm Mcal.
Sheep, ewe	150+	2.66 NEm Mcal.
Sheep, ram	150+	1.46 NEm Mcal.
(6) Goats:		
Goats	Less than 44	0.43 NEm Mcal.
Goats	44–82	0.95 NEm Mcal.
Goats	83+	1.29 NEm Mcal.
Goats, doe	125+	3.00 NEm Mcal.
Goats, doe, dairy 1994 and subsequent crop years.	125+	4.47 NEm Mcal.
Goats, buck	125+	1.80 NEm Mcal.

§ 1439.904 Region.

(a) The size of a region will consist of:

(1) An entire reservation, even if the reservation is less than 320,000 acres; or

(2) Contiguous acreage of at least 320,000 acres and include land acreage of an Indian reservation or tribal governed land. If a region is delineated based on minimum size of 320,000 acres, the region shall be delineated without regard to the boundary of a reservation or tribal governed land. If

the acreage affected by the natural disaster does not meet the minimum acreage requirement specified in this paragraph (a)(2), acreage will be added from surrounding land until the minimum requirement is met.

(b) The region must:

(1) Include acreage affected by the natural disaster that is the basis for the region's designation;

(2) Correspond to the shape of the natural disaster to the maximum extent possible;

(3) Be defined in a manner that does not intentionally include or exclude owners or crops;

(4) Contain some acreage of tribal governed land; and

(5) Have suffered a livestock feed emergency as defined in § 1439.903.

§ 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Approaching CCC to obtain a contract to participate in the AILFP based on the tribe's voluntary decisions that participation will benefit its members;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Accepting applications for payment from individual livestock owners;

(5) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(6) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative, shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

§ 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency exists due to a natural disaster, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of December 28, 1998, or 30 days after the end of the disaster period specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed form CCC–453, Contract To Participate; and

(2) A completed form CCC–648, Region Designation And Feed Loss Assessment; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year;

(iii) Climatological data provided by the State FSA office; and

(iv) A report of an on-site survey.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency exists not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and State FSA office of such determination as applicable.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency no longer exists. Notwithstanding the duration of any feeding period, assistance under this subpart terminates immediately and without notice when program funds are exhausted as specified in § 1439.901.

(e) The tribal government may request to extend the feeding period not to exceed an additional 90 days for each extension if disaster conditions have not diminished significantly and a livestock feed emergency continues.

§ 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the date of application for assistance made under this subpart shall be considered as being owned by the lessee if the lease:

(1) Requires the lessee to furnish the feed for such livestock; and

(2) Provides for an interest in such livestock, such as the right to market a share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application with the tribal government. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal governed land in the delineated region; and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

§ 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the tribal government by the owner no later than a date announced by the tribe, such date being no later than the applicable date in § 1439.907(c); and

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC; and

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in § 1439.907(d)(3) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and/or (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application, as specified by CCC, shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

§ 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met and funds are available, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application.

(d) CCC may reduce the benefits payable to an applicant under this program if CCC has made assistance available to such applicant under any other CCC program with respect to the same natural disaster.

(e) The amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased, as documented by acceptable purchase receipts, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period; or

(2) 30 percent of the amount computed by multiplying:

(i) The number of animal units determined on the basis of the number of eligible livestock of each type and weight range; by

(ii) The smaller of the number of days the owners provided feed to eligible livestock or the total days in the contract's feeding period; by

(iii) The Animal Unit Day value, as established by the Deputy Administrator for Farm Programs, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period.

(f) Payments issued in conjunction with this program will not be subject to offset for debts incurred through participation in any other program conducted by the Department of Agriculture.

§ 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance, may at any time during the operation of a program recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) Funding is exhausted.

§ 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

§§ 1439.912–1439.915 [Reserved].

PART 1464—TOBACCO

10. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

11. Amend 7 CFR part 1464 by adding a new subpart D to read as follows:

Subpart D—Tobacco Disaster Assistance Program

Sec.

1464.300 [Reserved]
1464.301 Applicability and basic terms for payment.
1464.302 Administration.
1464.303 Definitions.
1464.304 Loss requirements.
1464.305 Signup.
1464.306 Proof of loss.
1464.307 Benefits.
1464.308 [Reserved]
1464.309 Offsets and assignments.
1464.310 Misrepresentation and scheme or device.
1464.311 Refunds to CCC.
1464.312 Cumulative liability.
1464.313 Estate, trusts, and minors.
1464.314 Death, incompetence, or disappearance.
1464.315 Appeals.

Subpart D—Tobacco Disaster Assistance Program

§ 1464.300 [Reserved]

§ 1464.301 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Disaster Assistance Program (TDAP) authorized by Public Law 106–113. That legislation provides $2.8 million to the Commodity Credit Corporation (CCC) to be made available to eligible persons who have suffered quality or quantity losses due to natural disasters on tobacco crops harvested and placed in a warehouse and not sold.

(b) Payments from the $2.8 million allotted to this program shall be made to eligible persons in proportion, as determined by the Executive Vice President of CCC, to each person's

relative quantity of qualifying tobacco losses suffered due to natural disasters on crops harvested and placed in a warehouse and not sold.

§ 1464.302 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture (who shall be hereafter referred to in this part as the ''Deputy Administrator''). The program shall be carried out in the field by State and county Farm Service Agency committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegations herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1464.303 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Tobacco Disaster Assistance Program of this subpart. The terms defined in § 723.104 of this title shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible tobacco means 1999 marketing year flue-cured tobacco, (types 11, 12, 13 and 14).

Tobacco producer means one who possesses a beneficial interest in eligible tobacco as defined in this subpart.

§ 1464.304 Loss requirements.

Except as otherwise determined by the Deputy Administrator consistent with the provisions of Public Law. 106–113 authorizing the payment of the $2.8 million, to qualify for payment under this part, the person seeking the payment must have had a loss of eligible tobacco in 1999 in North Carolina due to hurricanes Dennis, Floyd or Irene and such loss must have been a quality or quantity loss on crops harvested and placed in a warehouse and not yet sold at the time that the loss occurred in the warehouse.

§ 1464.305 Signup.

(a) For losses in North Carolina (as provided for in § 1464.304) a request for benefits under this subpart must be submitted to the CCC at the county FSA office that is designated as the administrative office for the farm on which the tobacco was produced. All requests for benefits and supporting documentation must be filed in the county FSA office by the date established by the Deputy Administrator. However, parties seeking an exception to the normal rules of eligibility in § 1464.304 shall, in lieu of filing a claim with the county committee, file a petition directly with the Deputy Administrator. Such petitions for exception must be filed by the date established by the Deputy Administrator for filing requests for benefits and supporting documentation, or fifteen days after the date of the publication of this regulation, whichever is later, in order to be considered.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.306 Proof of loss.

(a) Tobacco producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that they suffered the claimed loss. The documentary evidence of the loss, quantity of the loss and type of tobacco claimed for payment shall be reported to CCC together with any supporting documentation as may be required under paragraph (b) of this section.

(b) The tobacco producer shall provide any available supporting documents that may be requested by the Farm Service Agency county committee for purposes of verifying the loss. Examples of supporting documentation include, but are not limited to: auction barn floor sheets, transportation receipts, and any other documents available to confirm the presence of the tobacco on the warehouse floor and the subsequent losses. Certifications of third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be requested and be subject to review by the county committee. Failure to provide documentation that is satisfactory to the county committee will result in disapproval of the application by the county committee.

(c) In all circumstances, tobacco producers shall certify the accuracy of the information provided.

§ 1464.307 Benefits.

The payment amount shall be determined by apportioning the available funds on a poundage basis among the timely claims that are filed, with an allowance for a reserve to handle disputes. The Deputy Administrator may make a preliminary payment before making a final payment in which case later adjustments may be made and a refund may be due from the payee to the CCC after such an adjustment.

§ 1464.308 [Reserved]

§ 1464.309 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except that the regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments made under this part and such offsets and withholdings may be taken against such payments.

(b) Any producer entitled to any payment may assign the right to receive such payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1464.310 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to

CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all applications and the producer's interest in all applications shall be terminated.

§ 1464.311 Refunds to CCC.

(a) Persons who are party to the tobacco disaster assistance program application must refund to CCC any excess payments made by CCC with respect to such application.

(b) In the event that a benefit under this subpart was established as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 1464.312 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.313 Estate, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.314 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance, of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1464.315 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for kinds of tobacco and others for which there are no appeal rights because they involve matters of general applicability, shall be allowed in accordance with parts 11 and 780 of this title.

12. Add part 1479 to subchapter B of 7 CFR chapter XIV to read as follows:

PART 1479—HARNEY COUNTY FLOOD ASSISTANCE

Sec.

1479.1 Applicability.
1479.2 Administration.
1479.3 Definitions.
1479.4 Application process.
1479.5 County committee determinations of general applicability.
1479.6 Loss criteria.
1479.7 Producer eligibility.
1479.8 Calculation of assistance.
1479.9 Availability of funds; payments.

Authority: Sec. 207, Pub. L. 106–113, 113 Stat. 1501.

§ 1479.1 Applicability.

This subpart sets forth the terms and conditions applicable to flood assistance for Harney County, Oregon. Benefits will be provided to eligible producers in Harney County, Oregon, on land where flooding occurred during the 1999 crop year, and has been subject to flooding, one of the years 1994 through 1998.

§ 1479.2 Administration.

(a) This program shall be, to the extent practicable and to the extent not inconsistent with the provisions of this part, be administered in the same manner as the program provided for in 7 CFR part 1478 utilizing the regulations effective in that part as of March 1, 2000.

(b) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action that is not in accordance with this part.

(e) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(f) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1479.3 Definitions.

Terms in this part shall have the same meanings as those defined in § 1478.1 of this chapter. In addition, for purposes of this part and notwithstanding any contrary definitions in part 718 of this title or part 1478 of this chapter:

Application means the Form CCC–454, which was previously used for the Flood Compensation Program formerly provided for in this chapter, which form shall now be used for the program provided for in this part. The CCC–454 shall be used to collect the information necessary to determine the total acres flooded for purposes of this program.

Calendar year 1999 means January 1, 1999 through December 31, 1999.

Cropland means cropland as defined in part 718 of this chapter.

Forage means growing vegetation used for food for domestic animals.

NASS means the National Agricultural Statistics Service.

§ 1479.4 Application process.

(a) Producers must submit a completed application by the date established by the Deputy Administrator. The application and any supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible flooded land or to the county FSA office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information being requested in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the producer's eligibility.

§ 1479.5 County committee determinations of general applicability.

(a) County committees shall determine whether land that is the subject of the application is land that has suffered flood-related production losses during calendar year 1999, and is at the same time land to which the following apply:

(1) It is land that otherwise would have been used for crops or for pasture and could not be used because it was inaccessible, incapable of production, or the production was unusable during CY 1999, due to flooding;

(2) The land was inaccessible, incapable of production, or the production was unusable any one of the years 1994 through 1998, due to flooding; and

(3) The land has, otherwise, a history of actual crop production or use as pastureland at some time since 1990.

(b) In making the determination called for in paragraph (a) of this section, the County committee shall use what it considers to be the best information available including but not limited to: Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(c) If the county Committee makes an affirmative determination under paragraph (a) of this section, the producer with the affected acreage shall be considered an ''eligible producer'' for purposes of this part.

(d) For purposes of setting rental rates for calculations required to be made elsewhere in this part the county committee shall use the established rental rates for Harney County, for cropland and pasture-land. These rates shall be reviewed by the State Committee and may be equal to the estimated 5-year average rental rates for all such land of each type in the county. The State Committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (e) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(e) Except as provided by the Deputy Administrator, rental rates shall be established based on NASS data, if available for 1999.

§ 1479.6 Loss criteria.

(a)(1) The flooded land for which a producer requests benefits must be within the physical boundary of Harney County, Oregon.

(b) To be eligible for benefits under this subpart, a producer in Harney County and contiguous counties must have a tract of land that meets all the following criteria:

(1) The land is cropland or pasture land intended to be used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in CY 1999 and one of the years 1994 through 1998;

(2) The land, for calendar year 1999, was inaccessible or unable to be used for crop production, grazing, or haying, or the production was unusable because of flooding;

(3) The land has been owned, leased or under a binding cash lease by the producer for crop year 1999;

(4) The land is a contiguous parcel of land with an area equal to one acre or more;

(5) The land actually produced a crop, or was used for pasture, during or after the 1990 crop year.

(c) On the CCC–454 producers shall be required to certify on each farm the number of flooded cropland and non-cropland acres for the farm in 1999.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

§ 1439.7 Producer eligibility.

(a) Producers in Harney County will be eligible to receive benefits under this part only if they have suffered 1999-crop losses of eligible crops as a result of flooding.

(b) Payments made for losses suffered by eligible producers under this subpart shall be subject to the provisions of §§ 1478.4 through 1478.12 of this chapter, and their successor regulations, except as otherwise provided in this subpart.

(d) No person as defined and determined under part 1400 of this chapter may receive more than $40,000 under this subpart.

(e) No person as defined and determined under part 1400 of this chapter will be eligible for payment under this subpart if that person's annual gross receipts for the 1998 tax year were in excess of $2.5 million. That determination shall be made in the manner provided for in § 1478.6 of this chapter.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of § 1400.501 and § 1400.502 of this chapter.

§ 1479.8 Calculation of assistance.

(a) The unadjusted value of this emergency assistance determined with respect to the flooded land in Harney County for each producer shall not exceed the amount obtained by adding paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland, the number of qualifying acres will be multiplied by the established local payment rate for cropland, as determined by the county Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying pastureland or other land that does not meet the FSA definition of ''cropland,'' the number of qualifying acres will be multiplied by the established payment rate for ''non-cropland'' acres.

§ 1479.9 Availability of funds; payments.

In the event that the total amount of claims submitted under this subpart exceeds the $1.09 million appropriated for the program provided for in this part, payments otherwise calculated under § 1478.8 shall be reduced by a uniform percentage to allow for a proration of claims within the appropriated amount. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Applications for payment must be submitted by the time and in the manner specified by the Deputy Administrator.

Signed at Washington, DC, on May 30, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–13934 Filed 6–1–00; 3:45 pm]

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Thursday,
June 8, 2000

Part IV

Department of Education

Educating Blind and Visually Impaired Students; Policy Guidance; Notice

DEPARTMENT OF EDUCATION

Educating Blind and Visually Impaired Students; Policy Guidance

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of policy guidance.

SUMMARY: The Department issues this Notice of Policy Guidance (notice) to address the requirements of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, as they apply to the education of blind and visually impaired students. This notice updates OSEP memorandum 96–4, Policy Guidance on Educating Blind and Visually Impaired Students dated November 3, 1995, to reflect new and revised statutory provisions added by the IDEA Amendments of 1997 and conforming regulatory changes to implement those requirements. The Department issued guidance for the education of students who are deaf in the form of a Notice of Policy Guidance published in the **Federal Register** on October 30, 1992 (57 FR 49274). That policy guidance also is being updated for consistency with the IDEA Amendments of 1997.

This notice provides important background information to educators in meeting their obligations to ensure that blind and visually impaired students receive appropriate educational services in the least restrictive environment appropriate to their unique needs. A description of procedural safeguards also is included to ensure that parents are knowledgeable about their rights, including their right to participate in decisions regarding the provision of services to their children.

FOR FURTHER INFORMATION CONTACT: Rhonda Weiss or JoLeta Reynolds, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, Room 3086, 330 C Street, SW, Washington, D.C. 20202. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD), may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center, telephone (202) 205–8113.

SUPPLEMENTARY INFORMATION: To respond to concerns that services for some blind and visually impaired students were not appropriate to address their unique educational and learning needs, particularly their needs for instruction in reading, writing, and composition, as well as orientation and mobility and other self-help skills, policy guidance on educating blind and visually impaired students was issued as OSEP memorandum 96–4 (November 3, 1995). This policy guidance provided some background information on these students and their unique needs, and applicable requirements of Part B of the Individuals with Disabilities Education Act (Part B) were explained.[1]

In the reauthorization of the IDEA Amendments of 1997, Public Law 105–17, Congress clarified public agencies' responsibilities in educating blind and visually impaired students in two important respects. Specifically, the reauthorized statute provides that Individualized Education Program (IEP) teams are required to make provision for instruction in Braille and the use of Braille for blind and visually impaired students, unless, based on relevant evaluations, the IEP team determines that instruction in Braille or the use of Braille is not appropriate.

Also, reflecting an awareness that a blind or visually impaired individual's ability to move around independently is closely linked to the individual's self esteem, an amendment to the statutory definition of ''related services'' adds ''orientation and mobility services'' to the list of examples of supportive services specifically identified in the statute.

The IDEA Amendments of 1997 contain other new requirements applicable to all children with disabilities, particularly in areas relating to requirements for evaluations and reevaluations, focusing IEPs on a student's meaningful involvement and progress in the general curriculum, and strengthening procedural safeguards and opportunities for parent participation in important educational decisions. Even with these significant statutory changes, the core concepts that were applicable prior to the enactment of the IDEA Amendments of 1997 continue to apply.

Background

The population of children who receive services under Part B because of blindness or visual impairment is extremely diverse. These children display a wide range of vision difficulties and varying adaptations to vision loss. With regard to degree of vision, the student population includes persons who are totally blind or persons with minimal light perception, as well as persons with varying degrees of low vision. For some individuals, blindness or visual impairment is their only disability, while for others, blindness or vision impairment is one of several identified disabilities that will affect, to varying degrees, learning and social integration. For example, some children who are blind or visually impaired also have hearing, orthopedic, emotional, or cognitive disabilities.

In addition, persons with similar degrees of vision loss may function very differently. A significant visual deficit that could pose formidable obstacles for some children may pose far less formidable obstacles for others. This is because adaptations to vision loss are shaped by individual factors, such as availability and type of family support and degree of intellectual, emotional, physical, and motor functioning. Therefore, in addition to the nature and extent of vision loss, a variety of factors needs to be considered in designing an appropriate educational program for a blind or visually impaired child, and these factors could change over time.

The challenge for educators of blind and visually impaired children, including those with other disabilities, is how to teach skills that sighted children typically acquire through vision. Blind and visually impaired students have used a variety of methods to learn to read, write, and acquire other skills, both academic and nonacademic. For example, for reading purposes, some students use Braille exclusively; others use large print or regular print with or without low vision aids. Still others use a combination of methods, including Braille, large print, low vision aids and devices with computer-generated speech, while others have sufficient functional vision to use regular print, although with difficulty.

In order to receive an appropriate education under Part B, it is generally understood that students who are blind or visually impaired must be provided appropriate instruction in a variety of subjects, including language arts, composition, and science and mathematics. However, in order to be educated in these subject areas effectively, blind and visually impaired children must be taught the necessary skills to enable them to learn to read and to use other appropriate technology to obtain access to information. It also is very important for blind and visually impaired children, including those with other disabilities, who need orientation and mobility services, to receive appropriate instruction in orientation and mobility as early as possible. Providing these children with needed orientation and mobility services at the appropriate time increases the likelihood that they can participate meaningfully in a variety of aspects of their schooling, including academic,

nonacademic, and extracurricular activities. Once these individuals are no longer in school, their use of acquired orientation and mobility skills should greatly enhance their ability to move around independently in a variety of educational, employment, and community settings. These skills also should enhance the ability of blind and visually impaired students to obtain employment, retain their jobs, and participate more fully in family and community life.

This policy guidance contains an explanation of the provisions of Part B of IDEA as amended by the IDEA Amendments of 1997 and Department regulations that address public agencies' obligations in educating blind and visually impaired students. Statements that utilize the word ''should'' constitute guidance and do not mean ''must,'' and are not intended to impose any new requirements that go beyond the requirements of the applicable statutory and regulatory provisions explained below.

Application of the Free Appropriate Public Education Requirements of Part B to Blind and Visually Impaired Students

A. In General

Under Part B, each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all children with specified disabilities residing in the State in mandatory age ranges, and that the rights and protections of Part B are afforded to those children and their parents. FAPE includes, among other elements, special education and related services that are provided at no cost to parents, under public supervision and direction, that meet State education standards and Part B requirements, that include an appropriate preschool, elementary, or secondary school education in the State involved, and that are provided in conformity with an individualized education program (IEP) that meets Part B requirements.[2]

Consistent with this obligation to ensure FAPE, the Part B regulations also provide that the services and placement provided to a child with a disability under Part B must be based on all of the child's identified special education and related services needs, and not on the child's disability.[3] This includes meeting the child's needs that result from identified disabilities other than blindness or visual impairment.

B. Evaluation Requirements

Before the initial provision of special education and related services to a child with a disability under Part B, a full and individual initial evaluation must be conducted in accordance with 34 CFR §§ 300.532 and 300.533.[4] The IDEA Amendments of 1997 require that a variety of assessment tools and strategies must be used in the evaluation process to gather relevant functional and developmental information about the child. This includes information provided by the parents, to assist in determining (1) whether the child is a child with a disability, and (2) the content of the child's IEP, including the extent to which the child can be involved and progress in the general curriculum, and for a child of preschool age, to participate in appropriate activities.[5] Through the evaluation process, determinations also can be made about the range of accommodations and modifications necessary for a blind or visually impaired child to be involved and progress in the general curriculum, the same curriculum as for nondisabled children.

An evaluation under Part B must assess the child in all areas related to the suspected disability, including, if appropriate, ''health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.''[6] In addition, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.[7] Any standardized tests that are utilized for those assessments must be conducted by trained and knowledgeable personnel.[8]

An assessment of a child's vision status generally would include the nature and extent of the child's visual impairment and its effect, for example, on the child's ability to learn to read, write, do mathematical calculations, and use computers and other assistive technology, as well as the child's ability to be involved in and progress in the general curriculum. For children with low vision, this type of assessment also generally should include an evaluation of the child's ability to utilize low vision aids, as well as a learning media assessment and a functional vision assessment. For children who are blind and for children who have low vision, consistent with the new statutory requirement regarding Braille instruction, the assessment of vision status generally would be closely linked to the assessment of the child's present and future reading and writing skills, needs, and appropriate reading and writing media. This information would be used by the IEP team in determining whether it would be inappropriate to provide a blind or visually impaired child with instruction in Braille or the use of Braille.[9]

As required for children with other disabilities, appropriate assessments of blind and visually impaired children, including those with other disabilities, also must address each child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children. This information could be obtained, for example, from an assessment of academic performance that would focus on the child's ability to learn to read, including reading comprehension, and to learn composition, science and mathematics, and computing.

As part of the evaluation process, it is especially important to address a blind or visually impaired child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children, particularly in situations where the child has other disabilities. This is because of the relationship of the evaluation to the child's IEP, which focuses specifically on participation in the general curriculum offered to nondisabled students, including the need for any supplementary aids and services, other accommodations, modifications, or devices to facilitate the blind or visually impaired child's involvement in the general curriculum. This information is needed regardless of whether a child will be educated in a regular classroom or in a separate classroom or school.[10] The evaluation also should identify any necessary program modifications or supports for school personnel needed for a child or on behalf of a child to ensure that the child's unique needs arising from blindness or visual impairment or other identified disabilities are appropriately addressed in the IEP.

Because of the importance for some blind and visually impaired students of acquiring the skills necessary to access information, additional assessments may be necessary to determine whether a child should receive specific instruction in listening skills. Possible assessments for this purpose could include assessments of hearing, general intelligence, or communicative status. A child's need for orientation and mobility services and the appropriate method or methods for acquiring the requisite skills also should be assessed, and this generally would be accomplished through an assessment of motor abilities, as well as vision and communicative status, which should be conducted as early as possible. This is

especially important because parents and organizations representing the interests of blind and visually impaired individuals have reported that, in some instances, these students are not receiving appropriate orientation and mobility services and that appropriate evaluations of their needs for these services are not being conducted. In all instances, the results of all assessments administered to the child, including those administered to determine the child's needs resulting from one or more disabilities other than blindness or visual impairment, must be considered as the child's IEP is developed.[11]

C. IEP Development and Content Requirements

The IDEA Amendments of 1997 make a number of significant changes to the Act's IEP requirements, which are applicable to all disabled students, including blind and visually impaired students.[12] Under Part B, an IEP developed in accordance with 34 CFR §§ 300.341-300.350 is the essence of each child's entitlement to a FAPE. The IDEA Amendments of 1997 clarify that each child's IEP must (1) relate the child's education to the child's involvement and progress in the general curriculum, the same curriculum as for nondisabled children, and (2) address unique needs arising out of the child's disability or disabilities. The IDEA Amendments of 1997 also require that IEPs for disabled children, including blind and visually impaired children, contain a statement of measurable annual goals, including benchmarks or short-term objectives.[13] The annual goals must be related to (1) meeting the child's needs that result from the disability, or disabilities, to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability, or disabilities.

With regard to these criteria for developing annual goals, IEP teams for blind and visually impaired children must ensure that those children can appropriately access the general curriculum offered to nondisabled children, and that unique needs relating to the child's blindness or visual impairment or other identified disabilities are addressed.[14] Therefore, if IEP teams identify educational needs of individual children arising from their blindness or visual impairment or other disability, that the general curriculum does not sufficiently address, those specific needs must be addressed.[15] For example, if a particular student has little or no skill in Braille reading and writing, the IEP team may conclude that more frequent and intensive instruction in Braille likely would be necessary before the student could be fully involved and make meaningful progress in the general curriculum offered to nondisabled children. In addition, once the child's initial need for Braille instruction has been met, the IEP team should periodically make a determination of the child's ability to be involved and progress in the general curriculum, and the extent to which continued intensive Braille instruction and other accommodations would be needed.

The IDEA Amendments of 1997 include specific requirements regarding including children with disabilities in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.[16] For example, each child's IEP must include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed for the child to participate in the assessment. Also, if the IEP team determines that a child will not participate in a particular assessment or part of an assessment, the IEP must include a statement of why that assessment is not appropriate for the child, and how the child will be assessed.[17]

Consistent with the emphasis in the IDEA Amendments of 1997 on relating the child's IEP to the child's involvement and progress in the general curriculum, IEP teams must ensure that blind and visually impaired students, including those with other disabilities, receive appropriate instructional accommodations and modifications. Providing appropriate instructional accommodations and modifications will help prepare these students to participate in State or district-wide assessments of student achievement with appropriate accommodations or individual modifications in test administration.

The IDEA Amendments of 1997 also require the development of guidelines for use of alternate assessments, which are used if an IEP team determines that an individual child cannot participate in regular assessments, even with appropriate accommodations or individual modifications in test administration.[18] However, it is expected that if IEP teams properly make individualized determinations about what testing accommodations or individual modifications in test administration are appropriate for a child, it should be necessary to use alternate assessments for a relatively small percentage of children with disabilities. In addition, if the purpose of a test is to measure a student's ability to read, States need to be able to test to determine whether blind or visually impaired students, whose primary reading medium is not standard print, can read, whether by providing them with a Braille or large print version of the test, or through some other means, as appropriate.

Each child's IEP must be developed by an IEP team, that is, a group of individuals that includes:

- The parents of the child;
- At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- At least one special education teacher of the child, or, if appropriate, at least one special education provider of the child;
- A public agency representative who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general curriculum, and about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP team;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- If appropriate, the child.[19]

Public agencies must ensure that students are invited to attend IEP meetings if the participation of the student would be appropriate.

For IEP meetings involving transition services, there are additional requirements. The Part B regulations provide that the public agency must invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of either the student's transition services needs, the statement of needed transition services for the student, or both. In these situations, if the student does not attend the meeting, the public agency must ensure that the student's preferences and interests are considered. If another agency would likely be responsible for providing or paying for needed transition services, the public agency must ensure that a representative of that agency is invited to the meeting.[20] The public agency responsible for the student's education generally must initiate and conduct meetings for the purpose of developing, reviewing, and, if necessary, revising the IEP, or the individualized family

service plan (IFSP), of a child with a disability. The public agency must ensure that the child's IEP team (1) reviews the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved, and (2) revises the IEP as appropriate.[21]

An IFSP, the written plan for providing early intervention services under Part C of IDEA to an infant or toddler with disabilities and his or her family, may serve as the IEP for a child with a disability aged 3 through 5 (or at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year). For this to occur, the IFSP must contain the material described in section 636 of the Act, and must be developed in accordance with §§ 300.341–300.346 and §§ 300.349–300.350. In addition, using the IFSP to serve as the IEP must be consistent with State policy and agreed to by the agency and the child's parents.[22] If an IFSP is to be used, the public agency must provide the child's parents a detailed explanation of the differences between an IFSP and an IEP and must obtain written, informed parental consent to use an IFSP.[23]

D. Special Factors in IEP Development

In developing IEPs, the IDEA Amendments of 1997 require IEP teams to consider a range of special factors. The following two factors are particularly relevant for blind and visually impaired students.

1. Instruction in Braille and the Use of Braille

One of the most serious concerns voiced by parents of blind or visually impaired children and their advocates, as well as by adults who are blind or visually impaired, is that the number of students receiving instruction in Braille has decreased significantly over the past several decades. As a result, these individuals believe that Braille instruction is not being provided to some students for whom it may be appropriate. Braille has been a very effective reading and writing medium for many blind and visually impaired persons, and knowledge of Braille provides numerous tangible and intangible benefits, including increased likelihood of obtaining productive employment and heightened self-esteem.

The IDEA Amendments of 1997, therefore, include a specific provision with regard to instruction in Braille and the use of Braille and state:

The IEP team must—* * * (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; [24]

This statutory provision requires IEP teams to make provision for instruction in Braille or the use of Braille, unless it is determined, after appropriate evaluations of the child's reading and writing needs, that this instruction is not appropriate for a particular child. Decisions about instruction in Braille and the use of Braille must be made on a case-by-case basis, consistent with the individual needs of a particular child. In developing IEPs for children with low vision, even for those with a high degree of functional vision, IEP teams also must consider evaluations of the child's need for instruction in Braille and the use of Braille, and must make provision for such instruction unless it is determined, after appropriate evaluation, to be inappropriate for the child. Factors such as shortages of trained personnel to provide Braille instruction, the availability of alternative reading media, such as large print, recorded materials, or computers with speech output, or the amount of time needed to provide a child with sufficient and regular instruction to attain proficiency in Braille or the use of Braille, may not be used to deny Braille instruction to a child for whom that instruction has not been determined individually to be inappropriate. Once the IEP team includes instruction in Braille in the IEP, this instruction, as is true for other aspects of the child's IEP, must be implemented as soon as possible following the child's IEP meeting.[25]

For a child to become proficient in Braille, systematic and regular instruction from knowledgeable and appropriately trained personnel is essential. For blind and visually impaired children, including those with other disabilities, IEP teams must ensure that the instructional time allocated for Braille instruction is adequate to provide the level of instruction determined appropriate for the child. IEP teams also must ensure, as discussed more fully below, that appropriate assistive technology is provided to facilitate necessary Braille instruction. Likewise, for children with low vision, instruction in the appropriate utilization of functional vision and in the effective use of low vision aids requires regular and intensive intervention from knowledgeable and appropriately trained personnel.

IEP teams also must consider the method or methods for teaching blind and visually impaired children, including those with other disabilities, how to write and compose. Children whose reading medium is Braille likely will use Braille for these purposes. For composition, however, in addition to writing Braille manually, these children also may benefit from using assistive technology devices, such as a personal computer with speech output or a Braille display. IEP teams must make individualized determinations about the needs of blind and visually impaired children, including those with other disabilities, for instruction in writing and composition, and must include effective methods for teaching writing and composition, including the appropriate use of assistive technology, in the IEPs of these students.

In addition to mastering the skills taught to all children, blind and visually impaired children, including those with other disabilities, must receive instruction in the skills that the IEP team determines are necessary for the child to obtain access to information needed to participate in the general curriculum, as a supplement to instruction in the reading method determined appropriate for the child. The skills that could be taught to access information include use of cassette recordings, including recordings that utilize compressed speech, personal computers with speech output or a Braille display, and optical scanners with speech output. Use of these devices, methods, and services should be considered on an individual basis to supplement Braille instruction for students for whom Braille is the primary reading medium, or to supplement print or large print for children using print as their primary reading medium. While instruction in the skills necessary to access information is extremely important, local educational agencies also are required by Part B and Section 504 to provide instructional materials in the format determined appropriate for the child by the IEP team to enable the child to participate in the public agency's program.[26]

In addition, for most students who are blind or visually impaired, including those with other disabilities, the development of skills related to future employment, vocational training, or postsecondary education, such as the use of reader services, would be appropriate. For example, reader

services have proven to be vital for the workplace success of many adults who are blind or visually impaired. As appropriate, IEP teams should consider making reader services available, as well as providing instruction in the skills necessary to the effective use of those services. In considering whether reader services or other services related to the workplace success of these students would be appropriate, IEP teams should consider whether those services would be necessary to supplement the techniques that the student already may be receiving to access information, or necessary for the student's successful transition from school to post-school activities.

2. Assistive Technology

The IDEA Amendments of 1997 continue to recognize the importance of assistive technology in the education of children with disabilities, and specify assistive technology as one of the special factors that IEP teams must consider in IEP development.[27] Issues related to accessing information frequently arise in the education of blind and visually impaired students, as well as those with other disabilities. Therefore, it is especially important that IEP teams for blind and visually impaired students give appropriate consideration to these students' needs for assistive technology and the full range of assistive technology devices and services that are available for them, and this consideration needs to occur as early as possible. As is true for students with other disabilities, a blind or visually impaired student's ability to become proficient in the use of appropriate assistive technology could have a positive effect on the development of the student's overall self-confidence and self-esteem. Students taught the skills necessary to address their disability-specific needs are more capable of participating meaningfully in the general curriculum offered to nondisabled students.

The Department's regulations also provide that, on a case-by-case basis, consideration of the use of school-purchased assistive technology devices in a child's home or in other settings may be required. If the child's IEP team determines that the child needs to have access to a school-purchased device at home or in another setting in order to receive FAPE, a statement to this effect must be included in the child's IEP, the child's IEP must be implemented as written, and the device must be provided at no cost to the parents.[28]

In meeting the assistive technology needs of blind and visually impaired students, public agencies may use whatever State, local, Federal, and private sources of support available in the State to finance required services.[29] To obtain information about assistive technology, including information about assistive technology that could be used to assist in the education of blind and visually impaired students, public agencies may wish to consult the Assistive Technology Act of 1998 (Tech Act) project that serves their State.[30] In making assistive technology purchases, public agencies also need to ensure that they comply with applicable requirements of Federal law, including Section 504, Title II of the ADA, and the Tech Act.[31]

E. Orientation and Mobility Services

For some blind and visually impaired children, the inability to move around independently can be a formidable obstacle to participating in school, family, and community life. In some instances, blind and visually impaired individuals have felt discouraged from seeking employment opportunities because of their inability to get to the job or negotiate the work environment once on the job, or because of their fears that this will be the case. Still in other instances, some blind and visually impaired individuals have been denied access to employment opportunities because of employers' misperceptions that the individual will be unable to get around without sighted assistance. Therefore, acquisition of orientation and mobility skills, like the acquisition of other skills such as academic and social skills, is of great importance to the social and economic independence of blind and visually impaired persons.

Orientation and mobility services are generally recognized as encompassing distinctive strategies particular to the educational needs of blind or visually impaired students. The IDEA Amendments of 1997 amended the list of examples of ''related services'' contained in the statute to include ''orientation and mobility services.'' [32] The term ''orientation and mobility services'' is defined in the Part B regulations, at 34 CFR § 300.24(b)(6), as follows:

(i) * * * services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (*e.g.,* using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

The responsible public agency must ensure that orientation and mobility services are provided by trained and knowledgeable personnel who meet appropriate State qualification standards. In some instances, these personnel will need to be qualified to work with blind and visually impaired students who, in addition to their blindness or visual impairments, have other physical, sensory, or emotional disabilities. Because the need for safe movement throughout their school, home, and community environments is of critical importance for blind and visually impaired students, and because inadequate skill in this area could have an adverse impact on the ability of some blind and visually impaired persons to obtain appropriate employment, orientation and mobility services should be considered for each blind and visually impaired child. The extent to which orientation and mobility services are necessary for an individual child and, if so, the amount and duration of those services that are necessary for a child to receive FAPE are decisions for the child's IEP team. If a blind or visually impaired child has other disabilities, such as hearing, motor, or emotional disabilities, the child's unique disability-specific needs arising from those other disabilities also must be considered in designing an appropriate program of orientation and mobility services for the child. Orientation and mobility services should be provided as early as possible in a child's education, and updated or supplemented periodically, as needed. For example, while it may not be appropriate to teach a very young child how to cross a busy street, a very young child still could be taught the skills necessary to move around inside a school building. As students mature, it might be appropriate, depending on individual factors, for the student to be taught how to cross a busy street. Therefore, IEP teams need to be aware of individual factors that would affect the nature and extent to which orientation and mobility services may be needed for a particular student.

For some children with disabilities such as children with significant cognitive disabilities, ''travel training

* * * is often an integral part of their special educational program in order for them to receive FAPE and be prepared for post-school activities, including employment and independent living.'' [33] Providing blind or visually impaired students, particularly those with other disabilities, with travel training also could facilitate their fuller integration into their communities in and outside of school, both during and following their school attendance. Therefore, the definition of ''special education'' has been amended at 34 CFR § 300.26(a)(2)(ii) to include ''travel training,'' and the pertinent definition reads as follows:

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (*e.g.,* in school, in the home, at work, and in the community).[34]

Since the importance of travel training has been recognized for children with disabilities, such as children with significant cognitive disabilities, IEP teams for blind and visually impaired students, particularly those with significant cognitive disabilities, may need to consider these students' need for travel training, as appropriate. Travel training is often integral to ensuring that some children with disabilities receive FAPE and are prepared for post-school activities such as employment and independent living. Travel training is important to enable these students to attain systematic orientation to and safe movement within their environment in school, at home, at work and in the community.[35]

F. Additional Factors in IEP Development

The following needs [36] also may need to be considered and appropriately addressed by the child's IEP team to ensure a child's appropriate access to the general curriculum:

- Compensatory skills, such as communication and listening modalities;
- Extended school year services, if determined necessary to provide FAPE to the student; [37]
- Social interaction skills;
- Recreation and leisure skills;
- Career education; and
- For students with low vision, visual efficiency skills.

This list is not intended to be exhaustive. A child's IEP team could determine that it would be appropriate to consider an individual child's need for other skills or services, in addition to those listed above. Therefore, in making decisions about the educational programs for a blind or visually impaired child, as is true for other disabled children, IEP teams must consider the full range of skills and services necessary for the child to receive FAPE, and to be involved and progress in the general curriculum, as appropriate.

Least Restrictive Environment and Provision of Services Requirements

Part B requires States to have policies and procedures for ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[38] This requirement is known as the least restrictive environment (LRE) requirement. Consistent with this LRE principle, the IDEA Amendments of 1997 require that each child's IEP contain an explanation of the extent, if any, to which the child will not be educated and participate with nondisabled children in the regular class and in academic, extracurricular and other nonacademic activities.[39] Department regulations also provide that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum for that child.[40]

Thus, before a disabled child can be removed from the regular classroom, the placement team, which includes the child's parents, must consider whether the child can be educated in less restrictive settings with the use of appropriate supplementary aids and services and make a more restrictive placement only when they conclude that education in the less restrictive setting with appropriate supplementary aids and services cannot be achieved satisfactorily.[41]

Recognizing that the regular classroom may not be the LRE placement for every disabled student, the Part B regulations require public agencies to make available a continuum of alternative placements or a range of placement options, to meet the needs of students with disabilities for special education and related services. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In addition, the continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.[42]

Part B also requires that each child's placement must be based on the child's IEP.[43] That is why placement decisions cannot be made before a student's IEP is developed. Rather, it is the child's IEP that forms the basis for the placement decision. This means, for example, that the statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, the statement of the program modifications or supports for school personnel that will be provided for the child, and the explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes and other academic, nonacademic and extracurricular activities, form the basis for the placement decision. Under Part B, the IEP team for each child with a disability must make an individualized determination regarding how the child will participate in the general curriculum, including supports needed for the child, and what, if any, educational needs will not be met through involvement in the general curriculum. If, in the evaluation process, full consideration has been given to the range of accommodations and modifications that might be needed for the blind or visually impaired student, including a student who has other disabilities, such as a hearing impairment or an emotional disability, to access the general curriculum offered to nondisabled students, information about those needs should be readily available to the IEP team. After the student's IEP is developed, the placement determination, that is, the determination as to the setting in which services will be provided, must be made on an individual basis, consistent with the student's IEP and the Act's LRE requirements.

The IDEA Amendments of 1997 specify that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[44] Public agencies and parent training and information centers should take steps to ensure that parents of blind and visually impaired

students are informed about available placement options for their child, including those addressing unique needs arising from a child's blindness or visual impairment and other disabilities, if applicable, and other identified educational needs. This will help to ensure that parents can provide meaningful input to the group making the placement decision.

The overriding rule in placement is that each student's placement must be determined on an individual basis.[45] In addition, as is true for students with other disabilities, the potential harmful effect of the placement on the blind or visually impaired student, or the quality of services he or she needs, must be considered in determining the LRE.[46] As in other situations, placements of blind and visually impaired students, including those with other disabilities, may not be based solely on factors such as category of disability, significance of disability, availability of special education and related services, availability of space, configuration of the service delivery system, or administrative convenience.[47]

In implementing Part B's LRE requirements, in some instances, placement decisions are inappropriately made before IEPs that address a child's unique needs are developed. Individual determinations of appropriate special education and related services, supplementary aids and services, and program modifications and supports for school personnel must be made through the IEP process, which must address the development of skills necessary for a student to cope with the impact of blindness or low vision or other identified disabilities on the student's ability to learn and to be involved and progress in the general curriculum. Since Part B requires that each child's placement must be based on his or her IEP, making placement decisions before a student's IEP is developed is a practice that violates Part B and could result in the denial of FAPE in the LRE.

Still in other instances, some students have been inappropriately placed in the regular classroom although it has been determined that their IEPs cannot be appropriately implemented in the regular classroom even with the necessary and appropriate supplementary aids and services. In these situations, the nature of the student's disability and individual needs could make it appropriate for the student to be placed in a setting outside of the regular classroom in order to ensure that the student's IEP is satisfactorily implemented. By contrast, there are other instances where some blind and visually impaired students have been inappropriately placed in settings other than the regular classroom, even though their IEPs could have been implemented satisfactorily in the regular classroom with the provision of appropriate supplementary aids and services. As is true for all educational decisions under Part B, these concerns about the misapplication of the LRE requirements for blind and visually impaired students underscore the importance of making individual placement determinations based on each student's unique abilities and needs.

In making placement determinations regarding children who are blind or visually impaired, it is essential that groups making decisions regarding the setting in which appropriate services are provided consider the full range of settings that could be appropriate depending on the individual needs of the blind or visually impaired student, including needs that arise from any other identified disabilities that the student may have. The following are some examples:

- A regular classroom with needed support services provided in that classroom by an itinerant teacher or by a special education teacher assigned to that school;
- The regular classroom with services provided outside the classroom by an itinerant teacher or by a special education teacher assigned to that school;
- A self-contained classroom in a regular school that provides services that address needs arising from the student's blindness or visual impairment as well as other identified disabilities, if applicable; and
- A special school with a residential component that provides services that address the full range of the blind or visually impaired student's disability-specific needs, including those arising from other disabilities, if applicable.

Procedural Safeguards

Part B also requires that public agencies afford parents of children with disabilities an array of procedural safeguards. These include giving parents written notice, in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. This written notice must be given a reasonable time before a public agency proposes or refuses to initiate, or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. Included in this notice, among other components, are a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, a description of any options the agency considered and the reasons why those options were rejected, a description of any evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action, and sources for parents to contact, such as parent training and information centers or Protection and Advocacy entities or other advocacy organizations, to gain assistance in understanding the provisions of the Act.[48] The requirement to provide a description of any option considered includes a description of the types of placements that were actually considered for the child, e.g., regular class placement with needed supplementary aids and services, regular classroom with pull-out services, special school, and the reasons why these placement options were rejected. Providing this kind of information to parents will enable them to play a more knowledgeable and informed role in the education of their children.

Informed parental consent must be obtained before conducting an initial evaluation or reevaluation, with certain limited exceptions, and before the initial provision of special education and related services to a child with a disability.[49] Section 300.500(b)(1) of the Part B regulations defines ''consent'' to mean that the parent has been fully informed of the activity for his or her consent has been sought in his or her native language or other mode of communication.

The IDEA Amendments of 1997 also require public agencies to give parents a copy of a notice of procedural safeguards available to parents under Part B, written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Such a notice must be provided prior to an initial referral of a child for evaluation, before an IEP meeting, before a reevaluation, and upon receipt of a request for a due process hearing. This notice, among other matters, must inform parents of their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662, as well as their right to seek mediation or request a due process hearing.[50] Part B affords parents and public educational agencies the right to initiate an impartial due process hearing on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.[51]

The IDEA Amendments of 1997 provide that, when a parent requests a due process hearing on matters involving the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, the public agency must inform the parents of the availability of mediation as a means to resolve the dispute. Mediation, at a minimum, must be available whenever an impartial due process hearing is requested. The mediation process must be voluntary on the part of the parties, not be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the Act, and be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.[52]

Disagreements between parents and public agencies over issues such as the extent that Braille instruction should be included in a child's IEP, or the educational setting in which the child's IEP should be implemented, are examples of some of the matters that can be the subject of mediation or an impartial due process hearing. The use of mediation is strongly encouraged, since its use could eliminate the need to utilize the Act's due process procedures to resolve the dispute. Public agencies need to inform parents of all children with disabilities, including parents of blind and visually impaired students, about their right to initiate a due process hearing if agreement cannot be reached on important educational decisions, as well as their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662 of the Part B regulations, including a description of how to file a complaint and the timelines under those procedures.

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Dated: June 5, 2000.

Richard W. Riley,

Secretary of Education.

Appendix

[1] Two other related Federal laws also are applicable to the education of blind and visually impaired students. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. 794 and Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), 42 U.S.C. 12131, are civil rights laws that protect persons with disabilities from discrimination on the basis of disability. The Department's Office for Civil Rights (OCR) enforces Section 504, as it applies to recipients of Federal financial assistance from the Department. OCR also enforces Title II of the ADA, as it applies to public entities, regardless of receipt of Federal funds. Under Section 504 and its implementing regulations at 34 CFR Part 104, children with disabilities in public elementary and secondary education programs operated by recipients of Federal financial assistance are entitled to a free appropriate public education in accordance with the Section 504 regulations at 34 CFR 104.33–104.36. With respect to elementary and secondary education programs, OCR generally interprets Title II of the ADA and its prohibition against discrimination on the basis of disability in a manner consistent with Section 504 and its regulations. The IDEA requirements described in this Notice are consistent with recipients' and public entities' obligations to provide FAPE to blind and visually impaired students under Section 504 and Title II of the ADA.

For further information about the requirements of Section 504 and Title II of the ADA, as they apply to the education of blind and visually impaired students, contact the OCR Customer Service Team at the following address and telephone number: OCR Customer Service Team, U.S. Department of Education, 330 C Street, S.W. Room 5212, Washington, D.C. 20202–1100, Telephone: (202) 205–5413; (202) 260–0471 for TTD services, Toll Free: 1–800–421–3481. Fax: (202) 205–9862, E-mail: ocr@ed.gov.

[2] 20 U.S.C. 1412(a)(1) and 34 CFR 300.121; 20 U.S.C. 1401(8) and 34 CFR 300.13.

[3] 34 CFR 300.300(a)(3)(i)–(ii).

[4] 34 CFR 300.531.

[5] 34 CFR 300.532(b).

[6] 34 CFR 300.532(g).

[7] 34 CFR 300.532(h).

[8] 20 U.S.C. 1414(b)(3)(B)(i) and 34 CFR 300.532(c)(1)(ii).

[9] *See* 20 U.S.C. 1414(d)(3)(B)(iii).

[10] 34 CFR 300.532(b)(1)–(2); *see also* Appendix A to 34 CFR Part 300, question 2 (Appendix A), 64 FR at 12472 (Mar. 12, 1999).

[11] The IEP is a written statement for a child with a disability that is developed, reviewed, and revised at a meeting in accordance with the requirements of 34 CFR 300.341–300.350. *See* 34 CFR 300.340(a).

[12] For a fuller explanation of IEP and other requirements of the Individuals with Disabilities Education Act Amendments of 1997, *see* Notice of Interpretation, Appendix A to 34 CFR Part 300, published at 64 FR 12406, 12469 (Mar. 12, 1999).

[13] 34 CFR 300.347(a)(2).

[14] *See* National Agenda for the Education of Children and Youths with Vision Impairments, including Multiple Disabilities, AFB Press (1995).

[15] 34 CFR 300.347(a)(2); Appendix A, question 2, 64 FR at 12472 (Mar. 12, 1999).

[16] 34 CFR 300.138(a).

[17] 34 CFR 300.347(a)(5)(i)–(ii).

[18] 34 CFR 300.138(b); *see also* Attachment 1, 64 FR at 12564 (Mar. 12, 1999).

[19] 34 CFR 300.344(a)(1)–(7).

[20] 34 CFR 300.344(b).

[21] 34 CFR 300.343(c).

[22] 34 CFR 300.343(a) and 300.342(c).

[23] 34 CFR 300.342(c)(2).

[24] 20 U.S.C. 1414(d)(3)(B)(iii) and 34 CFR 300.346(a)(2)(iii).

[25] 34 CFR 300.342(b)(1)(ii).

[26] *See* Analysis of Comments and Changes, published as Attachment 1 to 34 CFR Part 300 (Attachment 1), 64 FR at 12590 (Mar. 12, 1999).

[27] 34 CFR 300.346(a)(2)(v).

[28] 34 CFR 300.308(b); Appendix A, question 36, 64 FR at 12479 (Mar. 12, 1999).

[29] 34 CFR 300.301(a). *See also* 34 CFR 300.244 regarding an LEA's obligations to use up to 5 percent of the amount the agency receives in any fiscal year in combination with other amounts other than education funds to develop and implement a coordinated services system designed to improve results for children and families; OSEP memorandum 00–7 dated January 13, 2000 to State Directors of Special Education, entitled Enhancing Coordinated Services Systems among LEAs and SEAs.

[30] For a complete list, see a project sponsored by the National Institute on Disability and Rehabilitation Research (NIDRR), a component of the Office of Special Education and Rehabilitative Services, at http://www.resna.org/taproject/at/statecontacts.html

[31] *See* the October 9, 1997 ''Dear Colleague'' letter from the Secretary and the attached technical assistance packet. For guidance on standards that the Department uses for its suppliers, *see* Requirements for Accessible Software Design, 1997, at http://gcs.ed.gov/coninfo/clibrary/software.htm

[32] 20 U.S.C. 1401(22).

[33] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[34] 34 CFR 300.26(a)(4).

[35] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[36] National Agenda for the Education of Children and Youth with Visual Impairments, including Multiple Disabilities, AFB Press, at p. 14 (1995).

[37] 34 CFR 300.309.

[38] 34 CFR 300.550(b).

[39] 20 U.S.C. 1414(d)(1)(A)(iv) and 34 CFR 300.347(a)(3)–(4); Appendix A, question 1, 64 FR at 12471 (Mar. 12, 1999).

[40] 34 CFR 300.552(e).

[41] 34 CFR 300.550(b); Attachment 1, 64 FR at 12638 (Mar. 12, 1999).

[42] 34 CFR 300.551(b).

[43] 34 CFR 300.552(b)(2). That regulation requires that each child's placement is determined at least annually, is based on his or her IEP, and is in the school or facility as close as possible to the child's home. 34 CFR 300.552(b)(1)–(3). Further, unless a disabled student's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 CFR 300.552(c).

[44] 20 U.S.C. 1414(f) and 34 CFR 300.501(c) and 300.552(a).

[45] *See* 34 CFR 300.552.

[46] 34 CFR 300.552(d).

[47] Appendix A, question 1, 64 FR 12406 at 12471 (Mar. 12, 1999).

[48] 34 CFR 300.503(a)(1) and (b)(2)–(4), and (7).

[49] 34 CFR 300.505(a)(1).

[50] 34 CFR 300.504.

[51] 34 CFR 300.507(a).

[52] 34 CFR 300.507(a)(2), 300.506(a)(2) and (b).

[FR Doc. 00–14485 Filed 6–7–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Thursday,
June 8, 2000

Part V

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research and Training Centers and Notice Inviting Applications for Fiscal Year (FY) 2000; Correction Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research and Training Centers and Notice Inviting Applications for Fiscal Year (FY) 2000

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On May 18, 2000 a notice of final funding priorities and a notice inviting applications for new awards for three Rehabilitation Research and Training Centers (RRTCs) for FY 2000 were published in the **Federal Register** (65 FR 31752, 31757).

The absolute priority for the Improving Services and Supports for Individuals with Long-Term Mental Illness (84.133B–7) shown on page 31755 was published as incomplete. This notice corrects the absolute priority to include additional requirements and a changed point value for the selection criteria. It is corrected to read:

In carrying out these purposes, the Center must:

(1) Develop measures that can be applied to evaluate self-determination activities in terms of rehabilitation outcomes, quality of services, and availability of community resources;

(2) Identify and assess self-determination direction theories, models, and activities, as well as the barriers to participation in self-determination activities for individuals with disabilities;

(3) Develop and evaluate management tools to enable service providers to support self-determination;

(4) Develop, conduct, and evaluate, training on self-determination and consumer choice to improve understanding and support of self-determination;

(5) Identify factors that prevent access and expanded use of technology to enhance self-determination;

(6) Identify or develop and evaluate self-determination models that integrate technology into activities and services that support self-determination and assess consumer satisfaction and benefits;

(7) Identify and evaluate the extent of knowledge and experience that service providers (*e.g.,* rehabilitation counselors, therapists, job coaches, psychiatrists and psychologists, and other service providers) have using technology to support self-determination; and

(8) Assess policies of service providers and payers in terms of their implications for fostering or impeding self-determination, and identify strategies for policy improvements.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

(1) Conduct in the third year of the grant, a state-of the-science conference on self-determination for persons with significant and persistent mental illness and publish a comprehensive report in the fourth year of the grant; and

(2) Address in its research the specific needs of minority populations with LTMI.

This notice corrects the ''Maximum Award Amount Per Year'' as shown on page 31758 for the Improved Management of CIL Programs and Services (84.133B–1). The published maximum award amount per year reads ''$500,000''. It is corrected to read ''$600,000''. This notice also corrects the ''Maximum Award Amount Per Year'' for Improving Services and Supports for Individuals with Long-Term Mental Illness (84.133B–7). The published maximum award amount per year reads ''$550,000''. It is corrected to read ''$750,000''.

The published point total in the selection criteria for (h) *Collaboration* as shown on page 31759 reads ''(2 points total)''. It is corrected to read ''(3 points total)''.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna_Nangle@ed.gov.

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Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Centers)

Dated: May 31, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–14386 Filed 6–7–00; 8:45 am]

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Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206

To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207

Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208

National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209

To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the ''John J. Buchanan Post Office Building''. (May 26, 2000; 114 Stat. 320)

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H.R. 3629/P.L. 106–211

To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212

American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213

To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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